

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.M-12258 of 2015

Date of decision:- April 21, 2015

Gora Lal

....Petitioner...

versus

Sheikh Farid Finvest Limited and another

....Respondents...

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. PKS Phoolka, Advocate,
for the petitioner.

JASPAL SINGH, J.

The present petition has been preferred under Section 482 of the Code of Criminal Procedure by Gore Lal seeking quashing of judgment dated February 09, 2015 (Annexure P-2) passed by Id. Additional Sessions Judge, Bathinda, in case File No. 64-A, dated September 16, 2014, whereby revision preferred by respondent No. 1 has been allowed by reversing the order dated September 09, 2014 (Annexure P-1) passed by JMJC, Bathinda and has ordered the sapurdari of motorcycle No. PB-03-AD-6120 to respondent.

2. Briefly stated, the facts giving rise to the instant petition is that M/s Sheikh Farid Finvest Limited, non-banking finance company advance a loan of ₹35,000/- to Saravjit Singh for the purchase of motorcycle in question from M/s BalbirMotors, Goniana Mandi. The said loan had duly sanctioned by respondent-company

on December 05, 2012 and a hire-purchase agreement was executed by Sarvjeet Singh. The loan amount of ₹35,000/- was paid to M/s Balbir Motors, Goniana Mandi through cheque for the purchase of said motorcycle by Sarvjeet Singh. As per the agreement of loan, Sarvjeet Singh had agreed to repay the loan amount by way of installments. After hire-purchase agreement, hypothecation was endorsed by DTO, Bathinda in the registration certificate in the name of respondent-company. Though, Saravjeet Singh repaid some of the installments but thereafter he stopped making the payment. As a result whereof, he was declared defaulter. On May 22, 2014, representatives of respondent-company visited the house of Saravjeet Singh at village Goniana Mandi and at the time, his wife disclosed that motorcycle is with Gora Lal. After showing their identity to Gora Lal and addressing him about the facts that Saravjeet Singh is defaulter and further that as per the agreement, they have right to get back the motorcycle, said motorcycle was handed over by Gora Lal to the representatives of company. But subsequently, petitioner managed to get FIR No. 54, dated May 22, 2014 registered under Sections 382,323/34 IPC against the employees of the company. After registration of FIR, sapurdari of motorcycle in question was granted to Gora Lal by Id. Magistrate but said order has since been set aside by Id. Additional Sessions Judge, Bathinda in the revision petition vide order dated February 09, 2015.

3. Feeling aggrieved against the order passed by the Id. Additional Sessions Judge, Bathinda, Gora Lal-petitioner has approached this Court by way of filing instant petition.

4. Impugned order has been assailed by learned counsel for petitioner contending that Id. Additional Sessions Judge has gravely erred while setting aside the impugned order dated September 09, 2014 passed by the Id. Magistrate (Annexure P-1) and allowing the sapurdari of the vehicle in question to respondent-company. It is fully proved on record that petitioner has purchased motorcycle in question from Saravjit Singh vide affidavit dated November 19, 2013. At the time of execution of affidavit/agreement, Saravjit Singh undertook to clear the remaining installments and to obtain NOC from finance company. Moreover, petitioner was in possession of motorcycle in question which was illegally and forcibly taken into possession by the employees of finance company. Even otherwise, report of SHO was also been received by the Id. Magistrate, according to which, police has no objection in case motorcycle is released on sapurdari to the petitioner. It is also well settled that when there is a dispute with regard to ownership of a vehicle to be released on sapurdari, owner is entitled to sapurdari of said vehicle. If, finance company is so aggrieved by the release of the vehicle to the petitioner, it can approach the civil court. Saravjit Singh has also no objection in case sapurdari of the vehicle is given to Gora Lal. Thus, impugned order is not sustainable in eyes of law and is liable to be set aside whereby impugned order passed by the Id. Magistrate is to be restored.

6. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the parties and has gone through the record available.

7. Undisputably, motorcycle bearing registration No. PB-03AD-6120 was purchased by Saravjeet Singh by obtaining loan from finance company. Without complying with the terms and conditions of the hire-purchase agreement and in violation thereof, Saravjeet Singh sold away motorcycle in question to petitioner-Gora Lal. In fact, he was not competent to sell away the motorcycle in question as he was not owner, it being hypothecated to finance company. There was also an endorsement in this regard in the registration certificate of motorcycle in question. There is also one of the terms and conditions of hire-purchase agreement that in case owner of the vehicle commits default and fails to make the payment of the installments, the finance company shall be well within its right to take possession of hypothecated vehicle. Thus, there is nothing on record to suggest that finance company has committed any wrong and giving of possession of motorcycle in question to the finance company on sapurdari is perfectly justified. The Id. Additional Sessions, Judge, Bathinda has rightly set aside the order passed by the Id. Magistrate whereby sapurdari of motorcycle in question was given to respondent-Gora Lal.

8. This Court does not find any infirmity or illegality in the impugned order dated February 09, 2015 passed by the Id. Additional Sessions Judge, Bathinda, which is otherwise inconsonance with the legal proposition. Accordingly, instant petition stands dismissed.

April 21, 2015
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(JASPAL SINGH)
JUDGE