

CRM-M-31842-2013 (O&M)

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

CRM-M-31842-2013 (O&M)

Date of Decision: February 18, 2015

Satbir Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Rajesh Bansal, Advocate
for the petitioner.

Mr.Gurdas Singh, DAG, Haryana
for respondent No.1.

Mr.Nitin Thatai, Advocate
for respondent No.2.

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Naresh Kumar Sanghi, J.(Oral)

Challenge in this petition, filed under Section 482, Cr.P.C., is for setting aside the order, dated 17.04.2010, passed by learned Additional Sessions Judge, Panipat, Annexure P4, vide which the order, dated 09.10.2009 passed by the learned Chief Judicial Magistrate, Panipat, Annexure P3, was set aside and the matter was remitted to the learned trial Court for passing the order afresh.

Learned counsel contends that at the behest of

respondent No.2-Informant, M/s Mahindra and Mahindra Financial Services Ltd., FIR No.460, dated 08.07.2009, for the offences punishable under Sections 120-B, 406, 420, 467, 468 and 471, IPC, was registered at Police Station, Chandni Bagh, District Panipat, primarily on the ground that the petitioner was in the process of selling out the tractor, which was purchased by him (petitioner) after taking loan from respondent No.2 on the basis of forged and fabricated documents. The tractor of the petitioner was taken into possession by the police and on an application moved by the petitioner, the learned Chief Judicial Magistrate, Panipat, ordered that the said tractor be handed over to the petitioner on *superdari*. Respondent No.2-Informant challenged the said order of learned Chief Judicial Magistrate by way of criminal revision petition before the Court of Session and the said revision petition was accepted by setting aside the order passed by the learned Chief Judicial Magistrate and it was ordered that the application filed by the petitioner for releasing the said tractor on *superdari* be decided afresh. He further contends that during investigation the allegations levelled against the petitioner could not be substantiated and, as such, the charge-sheet (report under Section 173, Cr.P.C.) was presented against

the other borrowers who had purchased the vehicles after availing the loan facility from respondent No.2-Informant. He further submitted that even if the allegations levelled in the FIR are taken at their face value then also ingredients of the offences for which FIR was lodged were not attracted qua the petitioner. He further pointed out that mere preparation for sale of the tractor and making preparation for forging the documents would not tantamount of commission of offences since preparation by itself is no offence. He further contends that the learned Chief Judicial Magistrate had ordered for the release of the tractor in favour of the petitioner by passing the well reasoned order while the learned revisional Court has misled itself by treating the said order to be illegal. He further pointed out that the revisional Court had very limited scope and the manner in which learned revisional Court scanned the facts, cannot be appreciated.

Learned counsel for the State, on instructions from ASI Om Parkash of Police Station, Chandni Bagh, very fairly concedes that after registration of FIR No.460, dated 08.07.2009, at Police Station, Chandni Bagh, the tractor of the petitioner was taken into possession but after investigation it was found that the petitioner had not committed any offence and, as such, the charge-sheet

was not filed for his (petitioner) prosecution. He further contends that the police does not require the custody of the tractor belonging to the petitioner.

Learned counsel for respondent No.2-Informant submits that as per Section 2 (30) of the Motor Vehicles Act, 1988, respondent No.2-Informant was competent to get the possession of the tractor since the loan was advanced to the petitioner for purchasing the tractor but he attempted to violate the terms and conditions. He further submits that as per order, dated 17.04.2010 passed by learned Additional Sessions Judge, Panipat, respondent No.2-Informant is entitled to the custody of the vehicle.

I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

Learned counsel for respondent No.2-Informant has very fairly conceded that respondent No.2 shall take possession of the tractor in accordance with law. He also conceded that police could not take possession of the tractor under the garb of the impugned FIR from the petitioner and, as such, he has no objection if the impugned order, dated 17.04.2010 passed by

learned Additional Sessions Judge, Panipat, is set aside and respondent no.2-Informant is permitted to take the possession of the tractor in question, as per law.

Learned counsel for the petitioner has also contended that respondent No.2-Informant can take possession of the impugned tractor after following the due process of law.

Learned counsel for the State has also not controverted the submissions made by the learned counsel for the private parties.

In view of the above, the order, dated 17.04.2010, Annexure P4, passed by learned Additional Sessions Judge, Panipat, is set aside, and the order passed by the learned Chief Judicial Magistrate, Panipat, Annexure P3, is restored. Respondent No.2-Informant is relegated to take possession of the tractor as per law.

February 18, 2015
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(NARESH KUMAR SANGHI)
JUDGE