

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.130 of 2016

Arising Out of PS. Case No.-17 Year-2015 Thana- BHABHU(KAIMUR) COMPLAIN C
District- Bhabhua (Kaimur)

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Sanjay Kumar Sah @ Sanjay Kumar Gupta, Son of Shankar Prasad, Resident
of Village-Bhagwanpur, P.S.-Chainpur, District-Kaimur (Bhabua).

... .. Petitioner/s

Versus

1.The State of Bihar
2.Nasima Khatoon, W/o Iliyas Ansari, R/o Badi Takiya, P.S.-Chainpur,
District-Kaimur (Bhabua)

... .. Respondent/s

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Appearance :

For the Petitioner : Mr. Alok Kumar Agrawal, Advocate.
For the O.P. No. 2 : Mr. Om Prakash Pandey, Advocate.
For the Respondents : Mr. S.N.Shukla(App)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

7 24-04-2018 The petitioner/Sanjay Kumar Sah @ Sanjay Kumar Gupta is aggrieved by the order dated 01.10.2015 passed by the learned Judicial Magistrate Ist Class, Kaimur in Complaint No. 17/2015/Misc. Case No. 01/2015 whereby the vehicle in question viz. Hero Honda Super Splender motorcycle of 2014 model having Engine No. JA05ECE9J15674, Chassis No. MBLJA05EME9J15605 and having Registration No. BR45E-2273 has been directed to be released in favour of opposit party no. 2/Nasima Khatoon.

The case of the petitioner is that the husband of opposite party no. 2 had agreed to sell a plot of land to the father of the petitioner and pursuant to an



agreement between them, the husband of opposite party no. 2 had accepted Rs. 80,000/- from the father of the petitioner. Later it transpired that the title over the land in question was in cloud and therefore the father of the petitioner did not go ahead for purchasing the property. The husband of the opposite party no. 2 thereafter did not return the money which he had accepted from the father of the petitioner towards the sale consideration of the land. In order to pay off the aforesaid money, the opposite party no. 2 had agreed to sell off the motorcycle in question to the petitioner for a consideration of Rs. 60,130/-. A sale letter was also executed and an application was made by opposite party no. 2 in Form 30 of the Motor Vehicle Act and Rule for transfer of ownership of the aforesaid motorcycle in favour of the petitioner. Somehow or the other, the name of the petitioner could not be entered in the records of the Transport department.

On the contrary, the case of opposite party no. 2 before the Court below was that for paying of a debt of Rs. 80,000/- which the husband of opposite party no. 2 owed to the father of the petitioner, Rs. 60,000/- had been paid and the balance amount of Rs. 20,000/- was promised to be returned shortly. Showing impatience, the motorcycle of opposite party no. 2 was taken away



by the petitioner and the opposite party no. 2 was informed that only on payment of Rs. 20,000/-, the balance money, the motorcycle shall be returned. Apart from this, it was the further case of the opposite party no. 2 that by playing a fraud upon the opposite party no. 2, she was taken to the sale counter of the motorcycle and her signature was obtained on some forms which was later sought to be used for the purposes of transferring the vehicle in the name of the petitioner. The Court below asked for a report from the police and only on consideration of the fact that the registration of the motorcycle stood in the name of opposite party no. 2, directed for its release in favour of opposite party no. 2.

Learned counsel appearing for the petitioner has submitted that the documents which were offered on his behalf to demonstrate that the vehicle was attempted to be transferred in the name of the petitioner has not at all been adverted to by the learned Magistrate and only the registration of the vehicle in the name of opposite party no. 2 was taken into account for releasing the same in her favour.

It has further been argued that when a vehicle/motorcycle is purchased, the registration is bound to be the name of the purchaser but that may not



be ultimate proof of the fact that the vehicle was not sold to anybody else. The name of the transferee is registered only later, i.e. after the formalities with respect to transfer of the vehicle is fulfilled.

Learned counsel appearing for the opposite party no. 2 however, has submitted that the learned Magistrate did not have and in fact does not have any wherewithals or mechanism to go/look beyond the registration paper of the vehicle for deciding about its ownership/possession.

Be that at it may, the learned Magistrate was supposed to look into the documents offered by both sides and then to come to any conclusion before directing for release of the vehicle.

Now, since the vehicle has already been released in favour of the opposite party no. 2, this Court does not wish to disturb such possession as an interim measure.

However, the matter is remitted to the court of the learned Magistrate to pass a fresh order in accordance with law after hearing both the parties and taking into account the documents furnished by them.

Needless to say that the Court below shall not be swayed by the fact that the present petition on behalf of the petitioner has been entertained and the matter



has been remanded to him. Should the Magistrate find that the motorcycle has rightly been released in favour of the opposite party no. 2, there would be no necessity of varying or altering the order. In case the submissions of the petitioner is found to be correct, then necessary orders may be passed in accordance with law. If the order of the learned Magistrate is varied, it would be incumbent upon the opposite party no. 2 to return the vehicle and obey the orders passed by the Court.

With the aforesaid observation/direction, the present petition is disposed off.

It is expected that a decision shall be taken within a reasonable period of time, preferably within a period of three months from the date of production/receipt of this order.

(Ashutosh Kumar, J)

Krishna/-
Rahul Mishra

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