

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2857-2018 (O&M)
Date of Decision : 24.01.2018

Bijender Kumar.

... Petitioner

VERSUS

State of Haryana and another.

... Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Prashant Singh Chauhan, Advocate
for the petitioner.

B.S.WALIA, J.

1. Challenge in this petition under Section 482 Cr.P.C. is to judgment dated 17.08.2017 i.e. Annexure P-3, passed by the learned Sessions Judge, Rewari dismissing the revision petition against order dated 05.07.2017 i.e. Annexure P-4, passed by the learned Judicial Magistrate Ist Class, Rewari, releasing the motorcycle on superdari to the respondent in case FIR No.354, dated 29.12.2016, under Sections 498-A, 406, 506 and 34 of IPC, registered at Police Station Khol, District Rewari.

2. Background of the case leading to the filing of the instant petition is that respondent No.2 i.e. wife of the petitioner lodged an FIR against the petitioner and his family members alleging that after her marriage, she was maltreated and subjected to cruelty by the accused on account of having got insufficient dowry. Pursuant to the registration of the FIR, investigation was carried out and dowry articles including TVS Apache motorcycle

bearing registration No.RJ-40SC-4523 was taken into possession by the police.

3. Both the petitioner as well as respondent No.2 moved separate applications for releasing the motorcycle on superdari on the plea that the same belongs to the respective applicant. As per investigation conducted, the motorcycle in question was part of the dowry articles / Istridhan given at the time of marriage although, respondent No.2 i.e. wife had got the registration of the motorcycle in question done in the name of the petitioner-husband. On the other hand, stand of the petitioner-husband was that it was purchased by him from his own funds after marriage. The learned trial Court after considering respective contentions of the parties, passed order dated 22.02.2017, directing release of the motorcycle in question to the petitioner on account of being its registered owner and dismissed the application filed by the respondent-wife.

4. Aggrieved against dismissal of the application filed by the respondent No.2- wife, a revision petition was filed by her and the same was allowed vide judgment dated 29.04.2017. The learned Sessions Judge set aside the order of the learned trial court with directions to conduct a fact finding enquiry over the rival claims of ownership of motorcycle after giving opportunity to both parties to lead evidence and then to pass a fresh order.

5. In compliance of order dated 01.05.2017 both parties were granted opportunity by the learned trial Court to lead evidence and vide order dated 05.07.2017, the application filed by respondent No.2 i.e. wife for release of motorcycle TVS Apache on superdari was allowed while the application

filed by the petitioner-husband was dismissed. The petitioner was directed to handover custody of the motorcycle to respondent No.2-wife within 7 days.

6. Aggrieved, the petitioner filed a revision petition against order dated 05.07.2017. However, the same was dismissed by the learned Sessions Judge, Rewari, vide order dated 17.08.2017.

7. Learned counsel contended that the Courts below failed to take into account that the vehicle in question had been purchased by the petitioner by borrowing money from his uncle RamKishan and getting the motorcycle registered in Bhiwadi, Rajasthan in the name of the petitioner. Learned counsel also referred to the statement of DW-3 Ram Kishan, who stated that he had got Rs.35,00,000/- at the time of his retirement and was also getting Rs.30,000/- per month as pension and had given Rs.75,000/- as loan to the petitioner for purchasing a TVS Apache motorcycle after withdrawing Rs.70,000/- on 15.10.2015.

8. Learned counsel contended that in the circumstances, it was apparent that the motorcycle had been purchased by the petitioner out of the money taken on loan from his uncle DW-3 Ram Kishan. Therefore, the impugned order was unsustainable in the eyes of law and was liable to be set aside.

9. I have considered the submissions of learned counsel, but am unable to agree with the same. Respondent No.2-wife has lead evidence of having withdrawn Rs.55,000/- from the account of her mother on the date when the motorcycle in question was purchased. Although the motorcycle was registered in Bhiwadi in Rajasthan, yet the same was purchased from M/s Kunal TVS Agency, Rewari on 20.11.2015 i.e. the home town of

respondent No.2 wife, whereas the petitioner is resident of Bhiwadi, Rajasthan. No explanation whatsoever has been given by the petitioner to explain as to why despite being resident of Bhiwadi, Rajasthan, the motorcycle was purchased from Rewari. Secondly, the statement of DW-3 that he had advanced loan of Rs.75,000/- does not inspire confidence since Rs.70,000/- was withdrawn by him on 15.10.2015 while the vehicle in question was purchased on 20.11.2015. In case loan had been given to the petitioner, it belies comprehension as to why payment was not made by DW-3 by cheque. In any case, without commenting upon the evidence led thereto, prima facie I am of the view that the petitioner has not been able to establish that the motorcycle in question was purchased by him. The marriage between the parties took place on 07.12.2015, whereas the withdrawal by DW-3 was on 15.10.2015 and the motorcycle in question was purchased on 20.11.2015 from Rewari i.e. the home town of respondent No.2 i.e. wife, Beside the respondent No.2/wife has led evidence to show that on the date of purchase i.e. 20.11.2015, there was a withdrawal of Rs.55,000/- from the account of her mother. The learned Sessions Judge, Rewari has also taken into account the evidence of PW-2 Mahabir Singh, resident of Khijuriwas, District Alwar, Rajasthan i.e. the village of petitioner-husband that motorcycle in question was part of the dowry article.

10. In the light of the position noted above, the learned Sessions Judge, Rewari concluded that there was sufficient evidence to show that the motorcycle in question was part and parcel of the dowry articles/ Istridhan, consequently, respondent No.2-wife entitled to get it released on superdari

till the decision of the case. Thus, in the light of the position as noted above, there is no illegality whatsoever in the impugned order especially since the same is an interim arrangement during the trial and if in the trial, the petitioner is able to prove ownership of the motorcycle, appropriate order's can be passed by the trial Court.

11. In the circumstances, I do not find any reason to take a view contrary to the view taken by the Courts below.

12. Accordingly, finding no merit in the petition, the same is dismissed in limine with no order as to costs.

(B.S.WALIA)
JUDGE

24.01.2018
rajesh.k.khurana

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No