

271 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Hemlata
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CRM-M-46191-2017(O&M)
Date of decision: 22.05.2018

Mohd. Shahzad

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ranjan Lakhanpal, Advocate, for the petitioner.

Mr. Abhaypal Singh Gill, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 01.04.2017 passed by Additional Sessions Judge, Patiala in case filing No. CRM/6121/2016 (CNR No.PBPT01-012239-2016) as Annexure P-3, vide which, an application filed by the petitioner for releasing of car Ford Endeavour, Model 2008, Bearing No. DL-4CAF-3923, has been rejected.

Counsel for the petitioner submits that admittedly, during the investigation of FIR No. 43, dated 07.05.2015 under Sections 379, 420, 465, 467, 468, 471, 473, 411, 413, 120-B of IPC, registered at Police Station Julkan, District Patiala, the car in dispute was taken in possession from the petitioner and the petitioner has purchased the said car.

Counsel for the petitioner further submitted that in the application for releasing the car, the petitioner has also made a request before the trial Court that either the police authority should verify the owner of the car, bearing registration No. DL-4CAF-3923 from the car dealer/manufacturer or from the Insurance Company with regard to lodging of any complaint for the total loss of the aforesaid vehicle but neither such direction was given by the trial Court nor an inquiry was conducted by the trial Court, by allowing the petitioner to lead his evidence and the application has been dismissed

summarily on the premise that as per the police report, the original engine number and chasis number were obliterated.

Counsel for the petitioner further submits that without affording an opportunity of allowing the petitioner to lead his or and documentary evidence to prove the ownership of the car and to summon any other witness from the car dealer from which the car was purchased as well as from the Insurance Company and the summarily dismissal of the application of the petitioner is illegal.

Counsel for the petitioner has further submitted that the car is lying parked in the premises of the Police Station, Julkan since 2015 and by not putting the same in use, by the passage of time, the same will be reduced into a junk and it will be of no use in case, if the same is not released to the petitioner. Counsel for the petitioner has relied upon the judgment in **2010 (1) RCR 908, Balbir Singh @ Fauji Vs. State of Punjab**, wherein, it has been held by this Court as under:-

“ In the case of Sunderbhai (supra) while dealing with Section 451 of Cr.P.C. the Apex Court observed as under:-

"In our view, the powers under Section 451, Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

- (1) Owner of the article would not suffer because of its remaining unused or by its misappropriation.
- (2) Court or the police would not be required to keep the article in safe custody.
- (3) If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail"

Learned State counsel has no serious objection to the prayer made by the petitioner that the matter be remanded back to the trial Court for

deciding a fresh, after affording an opportunity of hearing to the petitioner and to lead his oral as well as documentary evidence to prove that he is the owner of the car in dispute and take it on supardari.

In view of the above, the present petition is allowed. The impugned order dated 01.04.2017, passed by Additional Sessions Judge, Patiala is set aside and the matter is remanded back to the trial Court for deciding the same afresh, in accordance with law after affording opportunity of leading the evidence to the petitioner as well as the State, in accordance with law.

The parties are directed to appear before the trial Court on 31.05.2018.

Since, the car is in possession of the police for the last about 3 years, the trial Court is directed to pass an order, preferably, within a period of 03 months from today.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

22.05.2018

Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No