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

**CWP No.21190 of 2015 (O&M)
Date of decision:18.05.2018**

Naresh Dilawari

...Petitioner

Versus

Union Territory Chandigarh and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Yogesh Goel, Advocate,
for the petitioner.

Mr. Ramandeep Singh, Advocate,
for respondents no.1 to 3.

Rakesh Kumar Jain, J.

The petitioner has prayed for the issuance of a writ in the nature of *certiorari* for quashing the order dated 04.02.2014 passed by the Registration and Licensing Authority, Union Territory, Chandigarh (respondent no.3 herein) and the order dated 25.08.2015 passed by the Secretary, Transport, Union Territory, Chandigarh (respondent no.2 herein) by which appeal filed by the petitioner against the order dated 04.02.2014 has been dismissed.

In brief, respondent no.4, namely, Amit Kumar @ Vishal Kumar, resident of Zirakpur, District SAS Nagar Mohali had purchased a Tata India (Vista) car from Joshi Auto Zone Pvt. Ltd., Chandigarh on 16.11.2009, to which a temporary registration No.CH-18T-2758 was assigned. The said vehicle was financed from the State Bank of Patiala, Panchkula. It is alleged by the petitioner that respondent no.4 was not in a position to repay the loan

amount, therefore, he purchased the said vehicle from respondent no.4 with an assurance to pay off the dues of the bank. It is further averred in the petition that since the car in question was involved in a criminal case registered vide FIR No.233 dated 22.11.2009, under Sections 420/467/468/471/473/120-B IPC at Police Station Phase-VIII, Mohali against Sukhwinder Singh etc., therefore, it was taken into possession by recovery memo Ex.PX by the prosecution in that case. It is further averred that since the said car remained in police custody as a case property from 22.11.2009 to 30.09.2013, therefore, the petitioner could not get it registered with respondent no.3 but as soon as he got it released on *superdari*, he moved an application to respondent no.3 for registration of the said car as a new vehicle. It was brought to the notice of respondent no.3 that the bank has already issued 'No Objection Certificate' in regard to the car in question but his application was rejected vide impugned order dated 04.12.2014 on the ground that since the sale letter of the vehicle was issued in favour of Vishal Kumar Gupta, resident of Zirakpur, whose jurisdiction falls in the State of Punjab, therefore, the application was not maintainable before it in view of Section 47 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act") and Rule 47 of the Central Motor Vehicle Rules, 1989 (hereinafter referred to as the "Rules").

Aggrieved against the order dated 04.02.2014, the petitioner filed appeal before respondent no.2 and since it was not decided, therefore, he filed CWP No.14625 of 2015 before this Court, which was disposed of with a direction to respondent no.2 to decide the appeal within a period of two weeks from the date of receipt of certified copy of that order. Thereafter, the appeal was decided by respondent no.2 against the petitioner by order dated

28.05.2015 particularly on the same grounds on which respondent no.3 had passed the impugned order dated 04.02.2014.

Counsel for the petitioner has submitted that respondents no.2 and 3 have erred in law while refusing registration of the vehicle while referring to Section 47 of the Act and Rule 47 of the Rules, which would apply to a vehicle already registered and not to a vehicle which is sought to be registered for the first time. According to the petitioner, the vehicle in question only had the temporary registration number and had not been registered so far when it was got involved in a criminal case and was not registered either by his vendor Amit Kumar @ Vishal Kumar Gupta or by him till it was released on *superdari* in the year 2013. It is further submitted that even the said criminal case arising out of FIR No.233, which was tried before the JMIC, SAS Nagar Mohali as “State vs. Sukhwinder Singh etc.”, was decided in favour of the accused therein as the prosecution had failed to prove the charges and the accused were acquitted vide order dated 17.05.2017.

On the other hand, counsel for respondents no.1 to 3 has submitted that the petitioner, being a subsequent purchaser of the vehicle bearing temporary registration number, was not in possession of the sale letter in his favour which is required in Form 21, as provided in the Rules, which is the first condition for the purpose of filing application for registration of a motor vehicle in terms of Rule 47 of the Rules. It is further submitted that the temporary registration assigned to the vehicle in question was only valid for a period of 30 days from the date of its issuance and is not renewable, as provided in Section 43(2) of the Act. It is also submitted that even if the stand taken by the petitioner that the temporary registration of the vehicle in question

had expired when it was in possession of the police, therefore, he had no occasion to get the vehicle registered is accepted only for the sake of arguments, still the registration cannot be applied without obtaining the sale certificate in Form-21 as provided in Rule 47 of the Rules. It is further submitted that even if Rule 55 of the Rules provides for transfer of ownership of a vehicle in which one of the necessary condition is the certificate of registration which has to accompany with Form 30, to be filled in by the transferee at the time of purchasing the vehicle. The sum and substance of the argument of the respondents is that the registration of the vehicle in question cannot be allowed in the name of the petitioner until and unless the sale certificate of the vehicle in question is issued in favour of the petitioner.

I have heard learned counsel for the parties and examined the available record with their able assistance.

From the resume of the aforesaid facts and circumstances, the question involved in the present petition is as to whether the petitioner, without possessing the sale certificate in Form 21 issued in his favour, can apply for registration of the vehicle in question for the first time only on the basis of its purchase from the person in whose favour Sale Certificate in Form 21 was issued by the authorized dealer?

In order to search answer to this question, it would be relevant to refer to Chapter IV of the Act which deals with the registration of motor vehicles. Section 39 of the Act provides that no person shall drive any motor vehicle and no owner of a motor vehicle shall allow the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with the provisions of Chapter IV of the Act and that the

certificate of registration of the vehicle has not been suspended or cancelled and the motor vehicle carries a registration mark displayed in the prescribed manner. Section 43 deals with the temporary registration which would remain valid only for a period not exceeding one month and is not renewable. In case the temporary registration would survive only for 30 days, the necessary implication is that the person, who owns a vehicle, has to get it registered to avoid the rigors of Section 39 of the Act. In this regard, reference could be had to Section 40 of the Act which says that every owner of a motor vehicle shall get his vehicle registered by a registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept.

The question, thus, arises as to how the registration is to be made.

In this regard, procedure is prescribed in Section 41 of the Act in which it is categorically mentioned that an application has to be filed by or on behalf of the owner of the vehicle for registration in such form and shall be accompanied by such documents, particulars and information and shall be made within such period as may be prescribed by the Central Government. The Central Government has provided procedure for registration of a vehicle in the Rules in which Rule 47 deals with the registration much-less the requirements to be fulfilled at the time of filing application for registration. Rule 47 of the Rules is reproduced as under:-

“47. Application for registration of motor vehicles.—(1) An application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of seven days from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by--

- (a) sale certificate in Form 21;
- (b) valid insurance certificate;
- (c) copy of the proceedings of the State Transport Authority or

Transport Commissioner or such other authorities as may be prescribed by the State Government for the purpose of approval of the design in the case of a trailer other than a vehicle of category T;

- (d) original sale certificate from the concerned authorities in Form 21 in the case of ex-army vehicles;
- (e) proof of address by way of any one of the documents referred to in rule 4;
- (f) temporary registration, if any;
- (g) road-worthiness certificate in Form 22 from the manufacturers, Form 22-A from the body builders;
- (h) custom's clearance certificate in the case of imported vehicles along with the licence and bond, if any;

Provided that in the case of imported vehicles other than those imported under the Baggage Rules, 1998, the procedure followed by the registering authority shall be same as those procedure followed for registering of vehicles manufactured in India; and

- (i) appropriate fee as specified in rule 81;
- (j) proof of citizenship;
- (k) proof of legal presence in India in addition to proof of residence in case of foreigners;
- (l) technical specifications and any other document as may be required by the registering authority in respect of the modular hydraulic trailer:

Provided that upto 31st December, 2016, on and from the date of publication of the Central Motor Vehicles (Amendment) Rules, 2015 published on 13th January, 2015, in respect of the models of the E-rickshaws and E-carts existing prior to publication of the Central Motor Vehicles (Sixteenth Amendment) Rules, 2014 and the notification published vide S.O. 2590(E), dated the 8th October, 2014, the application for registration under this sub-rule shall be made in Form 20 to the registering authority within a period of seven days from the date of issue of Form 21 and Form 22 and shall be accompanied by-

- (i) road worthiness certificate in Form 22 to be issued by the manufacturer or dealer or registered E-

rickshaw or E-cart Association or any agency authorized by State Government; and

- (ii) sale certificate in Form 21 to be issued by manufacturer or dealer or registered E-rickshaw or E-cart Association or any agency authorized by State Government for presentation along with the application for registration.

(2) In respect of vehicles temporarily registered, application under sub-rule (1) shall be made before the temporary registration expires.

(3) On and from the 1st January, 2015, every vehicle manufacturer shall, in accordance with Form 20, Form 22 and Form 22-A, upload the vehicle details in the portal <https://www.vahan.nic.in/makemodel/>.

(4) The modular hydraulic trailers registered under these rules shall ply in public place in laden condition subject to such other conditions as may be determined by the Central Government from time to time.”

Rule 47(2) of the Rules categorically provides that an application for registration of a vehicle is required to be filed before the period of temporary registration expires. Rule 47(1)(a) of the Rules further provides that for the purpose of seeking registration of a motor vehicle, application has to be filed in the prescribed Form 20 to the registering authority which shall accompany by sale certificate issued in Form 21, valid insurance certificate and the temporary registration certificate, if any. The sale certificate in Form 21 is a specific condition laid down in the Rules and sale certificate in Form 21 provides that it has to be issued by the manufacturer or dealer. On receipt of the application filed in terms of Rule 47 of the Rules, the Registering Authority, while applying its mind under Rule 48 of the Rules, shall issue certificate of registration in Form 23 or Form 23-A, as the case may be.

Thus, there is no reference of any kind of affidavit to be used at

the time of registration of a motor vehicle which is generally issued at the time of sale of the vehicle by the seller because the first document, which is required for registration of a vehicle, is the sale certificate issued in Form 21.

Now the question would arise as to how the vehicle is transferred. Section 50 of the Act deals with the transfer of ownership and Rule 55 of the Rules deals with the procedure provided for the transfer of ownership. In both the situations, certificate of registration is the first requirement. Thus, the petitioner has rightly been denied the registration of his vehicle by respondents no.2 and 3 and in the absence of the certificate of registration obtained by him from the Registering Authority.

There is no doubt that the petitioner can ask for registration of his vehicle in Chandigarh provided he obtains the sale certificate issued in Form 21 in his favour from the manufacturer or dealer from whom the said vehicle was purchased by Amit Kumar @ Vishal Kumar Gupta but in the absence of sale certificate in Form 21 in his possession, registration of the vehicle in question only on the basis of an affidavit, alleged to have been obtained by him from the vendor, cannot be allowed being contrary to the provisions of the Act and the Rules.

Thus, in view of the aforesaid facts and circumstances, I do not find any merit in the present petition and hence, the same is hereby dismissed, though without any order as to costs.

May 18, 2018
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No