IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-23971-2018 (O&M)
Date of decision: 09.04.2019

Sandeep Kumar

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. Rakesh Nehra, Advocate and
Mr. Ravinder Hooda, Advocate
for respondent No.2.

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ARVIND SINGH SANGWAN, J.

This is 2nd petition praying for setting aside the order dated 26.02.2018 (Annexure P-6), vide which the trial Court released the vehicle bearing registration No.HR-12Z-0004, on superdari, in favour of respondent No.2-complainant as well as the order dated 07.05.2018 (Annexure P-8) passed by the revisional Court, vide which the revision petition, challenging the order of the trial Court, was dismissed.

Brief facts of the case are that respondent No.2 Jyoti Gahlawat got registered FIR No.86 dated 15.02.2018 under Section 379 of the Indian

Penal Code (for short 'IPC') at Police Station Rohtak Sadar, against the petitioner with the allegations that she had purchased a vehicle make Toyoto Fortuner bearing registration No.HR-12Z-0004, chasis No.MB11JV61040323, Engine No.1KDU605403, white colour, from the petitioner, for a sum of Rs.15.00 lacs, out of Rs.10.00 lacs were paid in cash and remaining amount of Rs.5.00 lacs was paid vide cheque dated 04.09.2017 of HDFC Bank. The petitioner handed over the registration certificate and an affidavit regarding sale along with three Forms No.28, 29 & 30, duly signed by him, for the purpose of transferring the vehicle in the name of the complainant. It is further stated in the FIR that the petitioner had handed over only one key of the vehicle and said that he will hand over another key and insurance to her and further assured that he will pay the loan installment upto 26.02.2018 and thereafter, he will transfer ownership of the vehicle in the name of the complainant. It is further stated that on 14.02.2018, the aforesaid vehicle was lying parked outside house of the complainant and in the morning, when her husband returned home, he found that the vehicle is missing and on inquiry, it was found that another car along with the aforesaid vehicle was seen going towards Rohtak side and on checking the CCTV footage of Makdoli Toll Plaza, it was found that both the vehicles crossed the toll plaza at about 11.54 p.m. It is further stated that since the petitioner-accused was having another key, he had stolen the vehicle along with mobile phone of her husband, arms licence, cheque book, credit card, driving licence, ATM card, PAN card and other important documents. The police arrested the petitioner and recovered the vehicle.

Thereafter, respondent No.2 moved an application before the Illaqa Magistrate for releasing the said vehicle on superdari in her name. Similar application was moved by the petitioner to release the vehicle in his favour. The trial Court, vide impugned order dated 26.02.2018, released the vehicle on supedari in favour of respondent No.2-complainant. Thereafter, the petitioner preferred a revision petition. In the grounds of revision, the petitioner stated that in fact a stamp paper was purchased by him on 18.08.2017 in the name of one Udey Bhan, who was posted as Manager in ICICI Bank, Bhiwani and he had transferred certain amount in the account of petitioner and there is no document regarding purchase of the vehicle in the name of complainant Jyoti Gahlawat. It is also stated that the petitioner has also not signed in register of Notary Public, who attested the affidavit. The revisional Court, vide impugned order dated 07.05.2018, dismissed the revision petition.

The operative part of the order passed by the revisional Court reads as under: -

> *"Feeling dissatisfied with the impugned order, the accused has filed the present revision petition.*
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> *The plea of the complainant is that she has purchased the aforesaid vehicle for a sale consideration of Rs. 15,00,000/- and out of the sale consideration, a sum of Rs. 10,00,000/- was paid in cash whereas for the remaining amount a cheque worth Rs. 5,00,000/- dated 4.9.2017, drawn on HDFC Bank was issued. In order to confirm the aforesaid sale, the requisite affidavit was executed by the accused and he also signed relevant papers for transfer of the vehicle in favour*

of complainant.

Original file called for and perused.

From the perusal of the case file, it would reveal that present case regarding theft of aforesaid vehicle was registered against the accused for the offence punishable under Section 379 of Indian Penal Code and further on the day of occurrence, the vehicle was in possession of the complainant and was taken away by the accused by committing theft.

The claim of the accused is that registration certificate was standing in his name and even if the contents of the affidavit dated 18.8.2017 are gone into, he was responsible for all the disputes regarding police case/ accident/challan/tax before that day.

There is no denial of the fact that till date, registration certificate of the vehicle has been running in the name of accused and he has not denied the execution of the said affidavit wherein he fairly conceded that he has received fill and final payment of Rs. Fifteen lacs and would get the vehicle transferred in the name of the complainant on or before 26.02.2018 after paying the loan amount. Further more, accused Sandeep signed forms No.28, 29 and 30 for getting the vehicle transferred in the name of the complainant. The deposit of Rs. Five lacs in the bank account of the accused by way of cheque dated 4.9.2017 drawn on HFDC Bank issued by the complainant would further fortify the claim of the complainant that he had made the part payment of Rs. Five lacs by way of cheque and remaining amount was paid in cash. There is no cogent and plausible explanation how and under what circumstances amount of Rs. Five lacs was deposited in the account of the accused from the account of the complainant. There is nothing on the file to suggest that there was any other *deal between the accused and the complainant except the sale of the vehicle in question.*

The mere fact that registration certificate has been running in the name of the accused, would not make him ipso facto eligible for taking the vehicle on superdari. Admittedly, the accused has admitted the execution of the affidavit and there is no denial that he executed the documents referred to above, therefore, it can not be believed by any stretch of imagination that accused would keep the custody of the vehicle after receiving the sale consideration of Rs.15,00,000/- and signing documents in favour of the complainant. The present case has been got registered by the complainant and police after thread bare investigation has filed challan against the accused prima facie proving that possession of the vehicle at the time of occurrence was with the complainant.

In such a scenario, learned lower Court was quite justified in releasing the vehicle in favour of the complainant being in possession of the vehicle at the time of occurrence. Thus, I do not see any reason to interfere in the impugned order which has rightly been passed by the learned lower Court. Accordingly, the revision petition has no merit and the same is hereby dismissed."

Learned counsel for the petitioner has argued that in fact there is no deal between the petitioner and the complainant, regarding sale of the case property and there is no proof of payment of Rs.10.00 lacs and the vehicle was recovered from possession of the petitioner, who is registered owner of the same. It is further argued that even after registration of the FIR, the petitioner is paying EMI to the Bank and after the vehicle was released in favour of the complainant, the same is being used by her without getting it insured and in case of any untoward incident, the petitioner, being the registered owner, will be liable for the same. Learned counsel has further argued that the dispute regarding the agreement to sell of the vehicle is primarily a civil dispute and the Courts below should have released the vehicle in favour of the petitioner, who is registered owner. Learned counsel has relied upon **Naveen Kumar Vs. Vijay Kumar and others, 2018 (2) RCR (Civil) 74**, wherein the Hon'ble Supreme Court has held that under the Motor Vehicles Act, 1988, it is liability of the owner under Sections 2 (30) and 50 of the Act, in case of any claim or compensation is set up under the Act. It is further held that where the registered owner has purported to transfer the vehicle but continues to be reflected in the record of the registering authority as owner, his liability is not absolved.

Learned counsel for the petitioner has next argued that where a dispute regarding ownership of vehicle is pending before the Civil Court, superdari be given to the registered owner subject to outcome of the civil suit. In this regard, he has relied upon **Manoj Vs. Shiram Tpt. Finance Ltd., 2002 (2) RCR (Crl.) 730**. Learned counsel has further relied upon **Paramjit Singh Vs. State of Punjab and another, 2010 (1) RCR (Crl.) 386**, wherein this Court has held that scope of inquiry under Section 451 Cr.P.C. is summary in nature and the Court cannot adjudicate civil right of the parties. It is further held in this judgment that it is for the Court to make such order, as it thinks fit for proper custody of the case property, pending conclusion of the trial and entrustment of the case property on superdari is to be based on prima facie semblance of ownership, which is to be recorded and reached at in the limited inquiry to be conducted by the Magistrate. Similar view has been taken by this Court in **Naf Singh Vs. Devender Kumar, 2004 (1) RCR (Crl.) 987.**

Reply by way of affidavit of Deputy Superintendent of Police, Rohtak, on behalf of respondent No.1, is on record, wherein it is stated that both the Courts below have passed a well reasoned order. In para No.4 of this affidavit, it is stated that during the investigation, it is found that the petitioner had sold the aforesaid vehicle to respondent No.2-complainant and handed over the original RC, affidavit regarding sale and Forms 28, 29 & 30, duly signed by him and in lieu thereof, he has received an amount of Rs.10.00 lacs in cash and Rs.5.00 lacs by way of cheque, which was cleared from the account of the complainant. It is also stated that during the investigation, it was found that the petitioner has handed over only one key and by using the second key, he has committed the theft of the said vehicle, which was parked outside house of the complainant.

Learned counsel for respondent No.2 has filed separate reply and has argued that the petitioner has sworn an affidavit dated 18.08.2017, which was duly attested by Notary Public. In this affidavit, the petitioner has sworn that he has received full and final payment of the vehicle and he will transfer the same in the name of the purchaser Jyoti Gahlawat on or before 26.02.2018, after paying the loan amount. Learned counsel has also placed on record Forms No.28, 29 & 30, which are duly signed by the petitioner.

Learned counsel for respondent No.2 has relied upon statement of account of the complainant showing that on 04.09.2017, an amount of Rs.5.00 lacs was transferred in the name of petitioner Sandeep Kumar. It is argued that as per the agreement/affidavit, the petitioner was to clear the outstanding loan amount against the vehicle on or before 26.02.2018 and since he had dishonest intention, he did not clear the loan amount and rather committed theft of the vehicle in dispute. It is further submitted that the payment of EMI by the petitioner does not given him a right, as it is agreed between the parties that the petitioner himself will clear the outstanding loan amount, though as per the affidavit, he was supposed to clear it on or before 26.02.2018, however, he was making EMI to avoid transfer of the vehicle in the name of the complainant.

Learned counsel for respondent No.2 has further submitted that the petitioner has denied his signatures on the affidavit, Forms No.28, 29 & 30 and there is no explanation why he received the amount by way of bank transfer on 04.09.2017. It is thus argued that in fact, for all intents and purposes, the petitioner had sold the vehicle to the complainant and had executed the documents but the transfer could not be effected in the name of the complainant on account of No Objection Certificate from the Bank, where the vehicle was got financed by the petitioner. Learned counsel has lastly submitted that respondent No.2 will get the insurance done immediately within a period of two weeks from today.

After hearing learned counsel for the parties, I find no merit in the present petition.

There is no dispute about the case law cited by learned counsel for the petitioner, however, the judgment in **Paramjit Singh**'s case (supra) supports the version of the complainant.

Both the Courts below have recorded a finding that prima facie the petitioner has transferred the ownership in favour of the complainant, though he remained the registered owner on account of his own fault and dishonest intention, therefore, I find no illegality in the impugned orders passed by both the Courts below.

In view of the above, present petition is dismissed.

[ARVIND SINGH SANGWAN]
09.04.2019 **JUDGE**
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No