

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

**CRM-M No.45839 of 2018 (O&M)
Date of Decision: 09.07.2019**

Jethananad

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Shiva Khurmi, Advocate for
Mr. Sarfraj Hussain, Advocate for the petitioner.

MAHABIR SINGH SINDHU, J. (ORAL)

Present petition has been filed under Section 482 of the Code of Criminal Procedure (*for short 'Cr.P.C.'*) for quashing of impugned order dated 14.06.2018 (P-3), passed by learned Additional Sessions Judge, Faridabad, whereby the revision petition, filed by respondent No.2-Khalil Azad, has been allowed and order dated 11.06.2018 (P-2) of learned Judicial Magistrate 1st Class, Faridabad, thereby dismissing his application for release of Fortuner Car bearing registration No.HR51-AW-0953 on *Superdari*, has been set aside.

Brief facts of the case are that an FIR No.348 dated 08.05.2018, under Sections 420, 406, 506, 34 of the Indian Penal Code (*for short 'IPC'*), Police Station Saran, District Faridabad was registered on the basis of a complaint made by one Ashaan Kureshi against Arun Kapoor and Vishnu with the allegations that they sold the above Fortuner Car to him on 22.01.2018 for a sale consideration of ₹ 13,80,000/- and owner of the Car was one Shaukat Azad. Further alleged that he had paid ₹ 11 Lakh in cash to above Vishnu and Arun Kappor and remaining amount of ₹ 2,80,000/- was to be paid within three days

after giving all documents of the Car in question. The possession of the Car was handed over to the complainant on the same very day i.e. 22.01.2018. After 2/3 days, when complainant along with his children was going to his relative's house in Mathura (Uttar Pradesh) and taking Tea at Hotel Hindustan, Mathura, then 5/6 police personnel came there and told that they have received an information to the effect that this Car is stolen from someone. Immediately, complainant contacted the above accused persons and on the next day, both of them along with Khalil Ahmed came to Police Station Mathura. They were asked to show the original papers of the Car, but failed to produce any document. On enquiry by the police, they came to know that original owner of the Car is one Jethalal, resident of Delhi, from whom, Khalil Ahmed had taken the same by playing a fraud. Consequently, above FIR was lodged against Arun Kapoor, Vishnu, Khalil Ahmed and Shaukat Azad for defrauding the complainant to the tune of ₹ 11 Lakh regarding the Car in question.

During the pendency of trial in the above FIR, respondent No.2- Khalil Azad moved an application dated 08.06.2018 (P-1) for release of the Car on *Superdari*, which was dismissed by learned Judicial Magistrate 1st Class, vide order dated 11.06.2018 (P-2).

Aggrieved against the above order, a revision petition was preferred, which has been allowed by learned Additional Sessions Judge, vide order dated 14.06.2018 (P-3). Hence, the present petition.

It is contended that petitioner is the registered owner of the Car in question, therefore, impugned order for releasing the same on *Superdari* in favour of respondent No.2 is not legally sustainable. Also submitted that even an

application, filed by the petitioner, was also allowed by learned Judicial Magistrate 1st Class on 25.06.2018 (P-4), but the Car has not been handed over to him till date.

Heard learned Counsel for the petitioner and perused the paper-book.

It seems that petitioner did not disclose the factum of order dated 14.06.2018 (P-3), passed by learned Additional Sessions Judge, Faridabad at the time of accepting his application and that is the only reason learned Judicial Magistrate passed the order dated 25.06.2018 (P-4) for release of the Car in question on *Superdari* in favour of the petitioner. Had the petitioner brought to the notice of learned Judicial Magistrate that an order dated 14.06.2018 (P-3) was already passed by learned Additional Sessions Judge, Faridabad for release of the Car in question on *Superdari*, then there has been no occasion for the Magistrate to pass the order dated 25.06.2018 (P-4), therefore, the act of non-disclosure of order dated 14.06.2018 (P-3) lacks *bona fide* on the part of petitioner.

Perusal of application dated 08.06.2018 (P-1), moved by respondent No.2, reveals that Car in question was recovered by the police from his possession on 07.06.2018, but during the pendency of the criminal proceedings arising out of the above FIR, compromise had taken place between the complainant-Ashaan Kureshi as well as respondent No.2. It transpires that an affidavit to that effect was filed before the Court concerned and on the basis thereof, respondent No.2 was released on bail. Also mentioned in the application that complainant had already been paid back the amount given to respondent

No.2, but learned Magistrate rejected the application by observing that there is no Registration Certificate (R.C.) on the Court file. Submissions were made before learned Revisional Court to the effect that respondent No.2 purchased the Car in question from Jethanand (petitioner) after making full & final payment and possession of the same was handed over to him, but he became dishonest and filed a Civil Suit for permanent injunction for restraining respondent No.2 not to transfer the Car in question to any third person. It was also brought to the notice of learned Revisional Court that respondent No.2 had been regularly paying the insurance premium of the Car and receipts to that effect were also produced before that Court. Consequently, revision petition filed by respondent No.2 was allowed with the directions to the police to hand over the possession of the Car to him on furnishing the bonds for a sum of ₹ 14 Lakh with the undertaking that he will not sell, transfer and alienate the same to any third party till the final disposal of the civil suit. As acknowledged by learned Counsel for the petitioner, the Car in question has already been released in favour of respondent No.2 on the basis of *Superdari* in pursuance of order dated 14.06.2018 (P-3), passed by learned Additional Sessions Judge, Faridabad and he is in possession of the same, therefore, there is no justification to interfere with the arrangement made by learned Revisional Court.

Despite repeated queries by this Court, learned Counsel for the petitioner has failed to respond regarding the fate of civil litigation pending between the parties. This shows that petitioner is not candid, rather trying to hide the real facts from the Court.

In view of the above, it is clearly established that respondent No.2

has furnished the bonds of ₹ 14 Lakh and the Car in question has already been released in his favour in terms of order dated 14.06.2018 on *Superdari* subject to final outcome of the civil suit between the parties, thus, there is no justification to interfere with the discretion exercised by learned Revisional Court while entertaining the present petition under Section 482 Cr.P.C. Consequently, the petition is dismissed.

However, it is clarified that the observations, made above, may not be construed as an expression of opinion on the merits of the *lis* pending between the parties.

July 09, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes