

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

CRR No.1298 of 2020

DATE OF DECISION: 21.12.2020

Suresh Kumar

.....Petitioner

Versus

State of Punjab & Anr.

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. B.K. Mehta, Advocate for the petitioner

Mr. H.S. Sitta, AAG Punjab for respondent No.1

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ALKA SARIN, J.:

Heard through video conferencing.

The present criminal revision petition has been filed against the order dated 20.11.2020 passed by the Special Court, SBS Nagar whereby the Special Court declined the request of the petitioner for release of a car (Alto bearing registration number PB-20-C-5444) on Supardari while ordering release of the other articles on Supardari.

In February 2019, Neha, daughter of the petitioner was got married to the accused-respondent No.2. It is alleged that at the time of

marriage numerous articles were given in dowry by the petitioner. According to the petitioner, the car was also given in dowry. Neha, the daughter of the petitioner, died on 10.05.2020. The petitioner lodged FIR No.36, dated 10.05.2020 under Section 304-B and 120-B of the Indian Penal Code, 1860 at Police Station Balachaur against the accused-respondent no.2 (husband of Neha) and his family members. The police recovered some of the dowry articles including the car.

The petitioner filed an application before the Special Court, SBS Nagar for release on Supardari of the recovered dowry articles including the car. The accused-respondent No.2 did not file any reply to the said application and his counsel made a statement that a similar application was filed by the petitioner before the Area Magistrate and he had filed objections and thereafter the said application was withdrawn by the petitioner. His counsel further stated that he does not want to file any reply and the objections filed by him earlier before the Area Magistrate may be read as reply to the application.

Vide the impugned order, the Special Court declined the request of the petitioner for release of the car on Supardari while ordering release of the other articles on Supardari. The Special Court noticed that though the petitioner had produced receipt dated 06.02.2019 issued by Lovely Autos pertaining to the car and that the payment of ₹3,38,000/- was made in favour of Lovely Autos vide a cheque issued from the bank account of the petitioner, the car stood registered in the name of the accused-respondent No.2. The Special Court further held that since the plea of the petitioner was that the car was given in dowry at the time of

marriage of his daughter Neha it meant that the same was gifted to the accused-respondent No.2. By getting the car registered in his name the accused-respondent No.2 accepted the said gift and thus the car cannot be said to be the istridhan of deceased Neha thus cannot be ordered to be released to the applicant.

Before this Court, counsel for the petitioner has contended that the car was purchased by the petitioner from his own funds and was given at the time of marriage of Neha though in the name of the accused-Respondent No.2. The car was a dowry article and the petitioner being the de-facto purchaser of the car was entitled to it's possession after the death of Neha.

I have heard learned counsel for the petitioner and the State. Notice has not been issued to the accused-respondent No.2.

The trial in the case is pending before the Special Court, SBS Nagar. The custody and disposal of property pending trial is governed by Section 451 CrPC which reads as under :

“451. Order for custody and disposal of property pending trial in certain cases - When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation - For the purposes of this section, 'property' includes -

- (a) property of any kind or document which is produced before the Court or which is in its custody,*
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence."*

The Special Court has declined to order release of the car on Supardari in favour of the petitioner on account of the fact that the car stood registered in the name of the accused-respondent No.2. The registration certificate of a vehicle in favour of a person is an important determinative factor of ownership of the vehicle, keeping in view the limited scope of inquiry in a proceeding under Section 451 CrPC. The term 'owner' is defined in Section 2(30) of the Motor Vehicles Act, 1988 and the same reads as under :

"owner means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;"

Thus, the owner of the car is the accused-respondent No.2 in whose name the vehicle stands registered.

In the matter of **‘Nafe Singh vs. Devender Kumar’** [2004(1) RCR Cri. 987] this Court inter-alia held that *“Therefore, from the above, it is evident that superdari of vehicle in proceedings under Section 451 Criminal Procedure Code, 1973 should be given to the person who is prima facie found to be the owner of the vehicle or is an ostensible owner and this is normally to be determined from the fact as to in whose name the vehicle stands registered. The person in whose name the vehicle stands registered is prima facie the owner of the vehicle and therefore is entitled to its custody on superdari which is of course subject to the final decision of the criminal trial”*.

In the matter of **‘Paramjit Singh vs. State of Punjab’** [2010(1) RCR Cri. 386] it was held that *“The legal position, therefore, is that the sapurdari of a vehicle in proceedings under Section 451 Criminal Procedure Code should be given to the person who is prima facie owner of the vehicle and there is some semblance of ownership in the shape that it is so recorded in the records of the registering authorities. The person in whose name vehicle stands registered in the records of the motor vehicles authorities can, therefore, be taken to be the prima facie owner of the vehicle. This, however, would be subject to determination of the rights of the parties before the Civil Court. A criminal Court is not the forum for determining the issue of title or ownership of the vehicle. However, as a temporary measure by an arrangement the vehicle in question is liable to be given to the person who is prima facie owner of the vehicle and that too on certain terms and conditions so as to provide for its safe custody and prevent its decay and deterioration. The question whether the allegations*

made by Parminder Singh (respondent No.2) are correct or not cannot be gone into without recording evidence. These, therefore, are to be considered by a civil Court on the basis of evidence and material that is adduced before it. In case the allegations are accepted as there are the chances of persons preparing documents before sale or even after sale of a vehicle to another person and then laying claim on the basis of documents so prepared cannot be ruled out. Therefore, the purpose of giving the vehicle in favour of a registered owner on sapurdari is to prevent any person to set up a false claim by preparing the documents before its sale or for that matter even after its sale to another person and then claiming its ownership on the basis of the prepared documents. Therefore, in order to prevent such a situation it is normally safe to give the temporary custody on sapurdari to the person who is prima facie owner of the vehicle and is recorded as registered owner in the records of the motor vehicle authorities and leave the parties to get their rights determined from an appropriate forum which would normally be the civil Court. The release of vehicle on the basis of mere allegations in the FIR would be unsafe and not workable. Therefore, the petitioner being recorded as owner of the vehicle in question with the registering authority the same is liable to be released in his favour”.

The above referred decisions make it apparent that custody of a vehicle should be given to the person who is recorded as its registered owner and in case another person disputes such ownership he should get his rights determined from the civil court. This Court is also conscious of the fact that in case of any claim arising on account of misuse of a vehicle

released on Supardari it would be the registered owner who would be liable for the same. It is well settled that the party, in whose name the vehicle stands in RTO records, is liable to a third person.

Counsel for the petitioner has cited the decisions in '**Pratibha Rani vs. Suraj Kumar**' [AIR 1985 SC 628], '**Dhirender Tyagi @ Ashu & Ors. vs. Ram Singh Tyagi & Anr.**' [CRM-M No.40444 of 2012 decided on 17.09.2018] and '**Ghafoor Bhai Nabbu Bhai Tawar vs. Motiram Keshaorao Bongirwar & Ors.**' [1978 CriLJ 405]. However, the said judgements are distinguishable and not applicable to the facts and circumstances of the present case. The petitioner can always stake his ownership on the car after getting the same determined by a competent court of law. It is yet to be determined whether the car was part of the istridhan. The ownership rights of the petitioner cannot be determined in proceedings under section 451 CrPC.

In view of the discussion above, I find no error or irregularity in the impugned order dated 20.11.2020 passed by the Special Court, SBS Nagar. Consequently, the present criminal revision petition is dismissed.

Dismissed.

(ALKA SARIN)
JUDGE

December 21, 2020
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NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO

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