

2023:PHHC:080664

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4382-2023

RESERVED ON: 27.01.2023

PRONOUNCED ON:01.06.2023

RAMESH CHAND

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Karan Singla Advocate
for the petitioner

Mr. Rajiv Verma, DAG Punjab

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Section 482 Cr.P.C. has been invoked for quashing of the impugned order dated 23.09.2022, (Annexure P-6) passed in CRM No. 955 of 2022 in FIR No. 87 dated 18.11.2018 under section 302,420,230-B,467,468,471,473, IPC and 25,54,59 of ARMS ACT Police Station Sadar Rajpura, Patiala by the court Sessions Judge, Patiala, against the petitioner, whereby he has failed to produce the vehicle bearing registration number HR-55-D-5354 allotted to car Make Toyota, which was released on Superdari to its owner on his application and the petitioner stood surety for the same vide order dated 11.03.2019 Annexure P-2 passed in CRM-117-2019 by the court of JMIC, Rajpura, and also for quashing of the warrant dated 11.11.2022 Annexure P-13 and Annexure P-14 and quashing of the letter dated 10.01.2023.

2. Factual matrix of the present case is presented as under that one Sube Singh S/o Mohan R/o Near OBC Bank Rasina, Kaithal was the registered owner of the car involved in FIR No. 87 Under Section 302, 420, 230-B, 467, 468, 471, 473 IPC Under Section 25, 54, 59 Arms Act and he moved an application for releasing the car bearing registration No HR-55-D-5354 on superdari and the said application was allowed vide order dated 11-03-2019 (Annexure P-2) subject to furnishing of the superdari bonds in the sum of Rs.2 lakhs with one surety of the like amount with the condition that said vehicle shall be produced in the court whenever required without changing its nature in any form and the said vehicle shall not be transferred further till the final disposal of the case. The present petitioner i.e. Ramesh Chand stood as surety for the said vehicle which was released on superdari.

3. Learned counsel for the petitioner has contended that there is no frequent communication between the Superdar Sube Singh and the present petitioner, as both belong to different village and the said fact has not been considered by the court of Sessions, Patiala. He further contends that he has not been provided adequate opportunity to explain his position with regard to not producing the vehicle. It is asserted that the petitioner cannot be made liable for the personal act of the main offender, when there is no direct link to show that the petitioner was actually at fault. The petitioner cannot be held liable for furnishing the surety amount of Rs. 2,00,000/-.

4. Learned State counsel has vehemently opposed the prayer made in the present petition stating that no interference is called for setting aside the impugned orders as there is no illegality or perversity.

5. Before proceedings further it would be appropriate to reproduce

the relevant Sections.

6. Sections 451 and 457 of the Code of Criminal Procedure, read 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 any 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.

457. Procedure by police upon seizure of property.-

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a

proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

7. Indisputably, the vehicle in question i.e. HR-55-D-5354 was released to the registered owner of the vehicle namely Sube Singh vide order dated 11.03.2019 (Annexure P-2) and the petitioner stood as surety and undertook to produce the said vehicle as and when required by the Court. There is no dispute to the fact that the vehicle in question has not been produced by the superdar, despite repeated directions by the Court below. The petitioner being surety was called upon to produce the vehicle in question but he also failed to do so.

8. In the considered opinion of this Court, the transaction between the surety and the Court is akin to separate contract, which the petitioner is bound to honour, which has not been honoured by the petitioner, therefore, he has rightly been inflicted with the penalty of Rs.2,00,000/-. It is worth mentioning that the petitioner has given sufficient opportunities to produce the vehicle in question, however, on his failure the order impugned has been passed, which do not suffer from any illegality and perversity to invite interference by this Court.

8. Thus, the present petition stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

01.06.2023
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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*