

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8233-2019 (O&M)
Reserved On.: 20.09.2023
Pronounced On: 25.09.2023

M/s Magma Fincorp Ltd.

.....Petitioner

Vs.

State of Haryana and Another

.....Respondents

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Nakul Sharma, Advocate
for the petitioner.

Mr. Vipul Sherwal, AAG, Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioner prays for quashing order dated 26.09.2017 (Annexure P-1) as well as order dated 30.11.2018 (Annexure P-2), both passed by learned SDJM, Narwana, whereby application of the petitioner seeking permission to sell vehicle bearing registration No.HR-56B-5432, earlier released on superdari in favour of the petitioner, was dismissed in a case arising out of FIR No.139 dated 03.06.2017 registered at Police Station City Narwana, District Jind under Sections 279/337 of the IPC.

2. According to petitioner, it had financed the Car bearing registration No.HR-56B-5432 in favour of respondent No.2 Mohit. Hire purchase agreement and other necessary documents were executed. The said vehicle met with an accident, due to which FIR No.139 dated 03.06.2017 was registered at Police Station City Narwana, District Jind under Sections 279,

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337 of the IPC (Annexure P-5). During investigation, the vehicle was impounded by the police. Petitioner being the financier of the vehicle applied for superdari of the vehicle. That application was allowed vide order dated 16.08.2017 (Annexure P-6). One of the conditions for release the vehicle on superdari in favour of the petitioner was that it shall not be disposed of till final disposal of the case and that petitioner shall produce the same as and when required by the police.

3. Thereafter, petitioner moved an application (Annexure P-1) seeking permission to sell the vehicle, as it was likely to become junk with the passage of time and that on selling the vehicle, the petitioner- bank will be able to recover a part of the loan advanced. However, the application was dismissed on 26.09.2017 (Annexure P-1) and then the fresh application (Annexure P-8) for the same purpose was dismissed vide order dated 30.11.2018 (Annexure P-2).

4. It is contended by learned counsel that impugned orders are illegal and erroneous, as learned Court below failed to notice that respondent No.2 being registered owner defaulted in making payment of installments and as per the agreement of hire purchase, petitioner is entitled to dispose of the vehicle to recover the balance amount from the sale proceeds of the vehicle. Learned counsel contends that impugned order is likely to result in reducing the vehicle in question as a junk, which will cause loss to the petitioner as well as respondent No.2. With these submissions prayer is made for setting aside the impugned orders.

5. Learned State counsel opposed the petition by submitting that one

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of the conditions laid down in the order dated 26.09.20174 (Annexure P-1), whereby the vehicle was released, is that the petitioner will not dispose of the vehicle. It is contended that in case the vehicle is allowed to be sold, the same despite being a case property, will not be produced in the Court during trial.

6. I have heard the learned Counsel for the parties and perused the record.

7. [Section 451](#) of the Cr. P. C. reads as under: --

“Section 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.”*

8. A similar question as involved in the present case, arose before this Court in ***Canara Bank v. State of Punjab, (P&H): Law Finder Doc Id # 91198***, wherein a tractor financed by the Canara Bank, was impounded during investigation in a criminal case and that tractor after being seized by the police, was released on superdari to the bank subject to the undertaking that the bank will not alter its identification marks and would not dispose of the same without prior permission of the Court.

9. After referring to Section 451 Cr.P.C., this Court ***Canara Bank v. State of Punjab (supra)*** observed as under: -

“Invariably, property brought before a Court during the course of an inquiry or a trial would be case property and therefore, to decline permission, to sell on the sole ground, that the property is case property would be a negation of the provisions of Section 451 of the Cr P.C. The property being case property, is no doubt a relevant consideration but except where facts and

circumstances of a case so warrant cannot be a sole circumstance, to decline permission to sell. Each case must be decided on its own peculiar facts and circumstances. Applying the aforementioned principles of law, as contained in [Section 451](#) of the Cr. P. C. to the facts and circumstances of the present case, I am of the considered view that the application for permission to sell the tractor could not have been declined on the sole ground and that it was case property.

A tractor is an automobile consisting of mechanical and rubber parts, which by their nature are subject to natural decay. Though the tractor has been released to the bank vide order of the Judicial Magistrate 1st Class dated 5-2-2004, it is of no use to the Bank and is lying idle. It would soon be reduced to junk. The sale of the tractor, would benefit both the bank and the accused. The bank would be able to recover a part of the loan advanced and the civil liability of the accused would stand correspondingly reduced. In my considered opinion, in the facts and circumstances of the present case, even though the tractor is a case property expediency of the situation demands that the bank be permitted to sell the tractor subject to certain terms and conditions”

10. In the present case also, car in question was impounded in a case registered under Sections 279, 337 of the IPC. It is not disputed that petitioner being the financier, was given the superdari of the said vehicle. Petitioner is entitled to recover the balance amount out of the sale proceeds of the vehicle, as per the hire purchase agreement (Annexure P-3) placed on record. In case, the car is not allowed to be sold, it is most likely to become a junk with the passage of time. In case, the car is allowed to be sold, the petitioner will be able to recover the part of the loan advanced and in that eventuality, the civil liability of respondent No.2 would stand correspondingly reduced. In these circumstances, even if the car is the case property, the interest of justice demands that petitioner be permitted to sell the car, subject to certain terms

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and conditions in such a way that interests of all the parties are protected.

11. Consequently, the impugned orders dated 26.09.2017 (Annexure P-1) and 30.11.2018 (Annexure P-2) are hereby set aside. Permission is granted to the petitioner to sell the car bearing registration No.HR-56B-5432 subject to the following terms and conditions: -

(a) the sale proceeds of the car shall be deposited with the trial Court and released to such party as the trial Court may deem appropriate, upon the conclusion of the trial;

(b) the documents of sale, shall incorporate the fact that the car is case property and is required to be produced before the trial Court as and when so directed. The purchaser of the car would file an undertaking before the trial Court, to physically produce the same as and when so directed by the trial Court;

(c) the purchaser of the car shall also furnish a security equal to the amount of security furnished by the bank;

(d) the purchaser of the car shall not alienate the car any further, without prior permission of the trial Court; and

(e) the transfer of ownership, shall be subject to such orders that the trial Court or any other Court may pass on conclusion of trial.

(f) all terms and conditions already imposed, at the time of release on superdari shall remain in force.

12. Present petition is allowed in terms indicated above.

Pending application(s), if any, also stands disposed of.

September 25, 2023

Neetika Tuteja

(DEEPAK GUPTA)

JUDGE

Whether Speaking/reasoned: Yes/No

Whether Reportable : Yes/No