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

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CRM-M-3722-2022 (O&M)

Date of decision: 12.12.2025

Devinder Sharma**...Petitioner****Versus****State of Punjab and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Rupam Aggarwal, Advocate
for the petitioner.

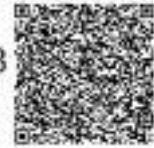
Mr. Roshandeep Singh, AAG, Punjab.

Mr. Vaibhav Narang, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition is for quashing of order dated 05.03.2020, passed by the Court of learned Judicial Magistrate First Class, Rupnagar in case titled as ***State vs. Tejinder Sharma***, arising out of FIR No. 55 dated 07.06.2019, registered under Sections 406, 420, 467, 468, 471, 465 and 411 of IPC at Police Station Sadar Rupnagar, District Rupnagar, whereby an application filed by the petitioner, who is the complainant of the aforementioned FIR, for the release of 42 tons of nut bolts, which was in the custody of the police, in his favour, had been dismissed, whereas an application filed by respondent No. 2-Gian Chand Sharma for release of the said nut bolts had been allowed, subject to compliance of certain terms and conditions. The petitioner has further laid challenge to order dated 07.01.2022, passed by the revisional Court in ***CRR No. 69 of 2020***, whereby the revision petition filed by respondent No. 2-proprietor of M/s Sharma Steel Traders had

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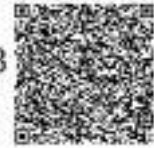


been allowed and the condition of furnishing bank guarantee equivalent to *sapurdari* amount was set aside; as well as to the order dated 07.01.2022, passed by the revisional Court in **CRR No. 70 of 2020**, whereby the revision petition filed by the petitioner against the order dated 05.03.2020 had been dismissed.

2. The aforementioned FIR was registered on the basis of the statement recorded by the petitioner with the allegations that one Tejinder Sharma had placed order of manufacturing and supply of nut bolts to him. As per instructions of said Tejinder Sharma, the goods/nut bolts were sent to Faridabad for coating and thereafter they were to be sent to Karnataka as projected by Tejinder Sharma. However, the petitioner was not paid the amount of the said goods and it was found that fraud was committed upon him and he was cheated by Tejinder Sharma. In pursuance of some conspiracy, he had got prepared fake documents and had made the petitioner to deliver the nuts and bolts. As substantial loss to the tune of Rs.1.6 crore had been caused to the petitioner, therefore, he prayed for taking action.

3. After registration of the FIR, investigation proceedings were initiated. Accused Tejinder Sharma @ Chetan Sharma was arrested on 08.06.2019. On interrogation, he suffered disclosure statement and in pursuance thereof got recovered 35 tons 130 kgs. of nut bolts from the factory premises of respondent No. 2, who had purchased the same from Tejindner Sharma after making payment of an amount of Rs. 12,25,812/-. The same were taken into custody by the police. The petitioner as well as respondent No. 2 then moved applications for release of the nut bolts in question on *sapurdari* and as mentioned, the prayer made by the petitioner for release of

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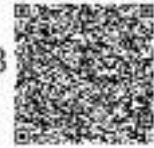


the goods in his favour had been declined by the Courts below, whereas the similar prayer made by respondent No. 2 had been accepted.

4. It is submitted by learned counsel for the petitioner that the impugned orders are not sustainable in the eyes of law as while passing the same, the Courts below did not take into consideration the fact that the petitioner was the actual victim in the matter. It was him, from whom, 35 tons 130 kgs. of nut bolts had been taken by accused Tejinder Sharma and had been sold to respondent No. 2. These nut bolts were new and were not scrap item. The claim of respondent No. 2 that he had purchased the same as scrap was not at all convincing since the material was fresh. The goods worth Rs. 60 Lakhs had been purchased by respondent No. 2 allegedly for a sum of Rs. 12 Lakhs from accused Tejinder Sharma. The petitioner is actual owner of these goods and it is he who deserves to have possession of the same. He is having purchase bills along with e-way bills qua sending the nut bolts to Faridabad. Even accused Tejinder Singh, in his disclosure, has identified these nut bolts having been taken from the petitioner. The Courts concerned did not take all these points into consideration and committed illegality in passing the impugned orders. It is, therefore, urged that the petition deserves to be allowed, the impugned orders are liable to be set aside and the petitioner deserves to be given the custody of the said goods. He is ready to abide by the terms and conditions to be imposed upon him for release of the goods.

5. Status report has been filed by the respondent-State, as per which, accused Tejinder Sharma has been declared a proclaimed person. He had sold the nut bolts received from the petitioner to respondent No. 2 for a

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sum of Rs.12,25,812/-. It is submitted that the nut bolts are with the police and have been kept in Malkhana.

6. Reply has been filed by respondent No. 2. He has vehemently contested the petition by submitting that he is valid and *bona fide* owner of the nut bolts as the firm of accused Tejinder Sharma, after purchasing the same from M/s Anand Engineers, had sold the same to them after receiving due consideration amount. He has documents showing payment of the aforementioned amount of Rs.12,25,812/- to the firm of Tejinder Sharma. The Courts below have rightly ascertained the ownership of the said goods in his favour. There is no illegality or infirmity in the impugned orders. It is, therefore, urged that the petition is liable to be dismissed.

7. This Court has heard the rival submissions.

8. On considering the submissions made by the parties and going through the record, this Court is of the considered opinion that the petitioner's claim is supported by stronger and more credible material. The FIR clearly indicates that the petitioner manufactured the nut bolts at the instance of the accused Tejinder Sharma. The accused, in his disclosure statement, identified the recovered goods as the one taken from the petitioner. The petitioner has produced documentary evidence which *prima facie* establishes the manufacture and dispatch of the goods. On the contrary, the claim of respondent No. 2 is that he purchased the newly manufactured nut bolts as "scrap" for Rs. 12,25,812/- despite their actual market value being nearly five times higher, is not worth acceptance as the same does not satisfy the test of a prudent purchaser as contemplated under Section 411 of IPC. The transactions which are grossly undervalued and commercially implausible cannot

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ordinarily confer the status of a *bona fide* purchaser. Furthermore, the accused from whom respondent No. 2 claims to have purchased the goods has now been declared a proclaimed person, adding further suspicion to the alleged transaction. It is settled law that while deciding an application for *sapurdari*, the Court is not required to conclusively determine title to the property but only to identify the person who has a better *prima facie* claim for interim custody. The Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai vs. State of Gujarat, (2002) 10 SCC 290*** held that the seized property should not remain in *malkhana* indefinitely, as doing so results in deterioration and loss of value and that such property should ordinarily be released to the person who appears to be the rightful claimant. This principle was reaffirmed in ***General Insurance Council vs. State of A.P., (2010) 6 SCC 768***. On applying these principles to the facts of the present case, the petitioner, being the original manufacturer and the primary victim of the offence, clearly holds a superior *prima facie* claim compared to respondent No. 2. The Courts below mis-appreciated the evidence and ignored relevant material while accepting the doubtful claim of respondent No. 2. Hence, the impugned orders are not sustainable.

9. In view of the above discussion, the petition is allowed. The orders dated 05.03.2020 and 07.01.2022 passed by the Courts below are set aside. The custody of the recovered 35 tons 130 kgs of nut bolts shall be released to the petitioner, subject to his furnishing *sapurdari* bonds and surety bonds along with a bank guarantee equivalent to the assessed value of the goods to the satisfaction of the learned trial Court. The petitioner shall not sell, transfer, or otherwise dispose of the goods without the permission of the

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learned trial Court. Proper photographs, inventory and *panchnama* shall be prepared before release of the goods and the petitioner shall produce the goods before the learned trial Court as and when required.

10. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not affect the final adjudication of rights of the parties during trial in any manner.

11. Since the main petition stands disposed of, pending applications, if any, shall also be treated as disposed of.

12.12.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No