

Sher Singh Vs. the State

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Court : Delhi

Decided On : Apr-16-1981

Reported in : 1981CriLJ1337; 20(1981)DLT22b

Judge : D.R. Khanna, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 379 and 420

Appeal No. : Criminal Revn. No. 71 of 1981

Appellant : Sher Singh

Respondent : The State

Judgement :

ORDER

1. Fiat Car No. DEA 3470 with the following :

Engine No. PA 168914, and

Chassis No. PA 251489

was purchased by Mr. D. S. Dang, Advocate, Delhi, from the Prem Nath Motors Limited on 29-6-1978. It was, however, stolen from the precincts of the Delhi High Court when he had parked that car there on 2-4-1979. A report of this theft was lodged by him at the Tilak Marg Police Station of New Delhi vide F.I.R. Case No. 146 of 1979.

2. Soon thereafter, one Hardayal, alias Har Narain, got a fiat car registered with the transport authority of Ganga Nagar under registration No. RRK 6873 with following :

Engine No. PA 168814 and

Chassis No. 252489.

It had the same colour as of the car of Mr. D. S. Dang except that the roof had a different colour. Hardayal transferred this car to Karam Chand on 5-6-1979 and on the same day Karam Chand transferred that to Kashmiri Lal for a purported consideration of Rupees 35,500/-. Kashmiri Lal claimed to be a cloth merchant of Ganga Nagar. This Kashmiri Lal later agreed to sell this car to Sher Singh. Petitioner, who is a regular dealer in old cars, on 3-12-1980 for a consideration of Rs. 45,000/-, and purportedly received Rs. 40,000/- from him. The balance of Rs. 5,000/- was payable on Kashmiri Lal producing a no objection certificate from Ganga Nagar registration authority. He, however, delivered registration and insurance certificates to Sher Singh and also issued a receipt of the payment of Rupees 40,000/-.

3. Har Narain was arrested by the Delhi Police from Jagraon, Punjab on 4-12-1980 in F.I.R. Case No. 157/79 (seems wrongly mentioned as No. 157/78), Kashmiri Gate, Delhi. He was interrogated, and as a result 18 cars said to have been stolen, were recovered on his disclosure statements.

4. One of them was the car which Sher Singh had obtained under the agreement of sale dated 15-12-1980 from Kashmiri Lal. It was seized by the Crime Branch, Delhi on 9-12-1980. The seizure was effected from Sher Singh in F.I.R. case No. 146/79, which had been registered at the instance of D. S. Dang.

5. On 19-12-1980, Sher Singh applied to the court of Shri M. L. Mehta, Metropolitan Magistrate, Delhi, who was dealing with cases of Crime Branch, for delivery back of the car to him as he claimed to be a bona fide purchaser for consideration. The Magistrate called for a report which was submitted by Jai Chand, Sub-Inspector on 24-2-1981 to the effect that the Car No. RRK 6873 (Fiat)

had been taken into possession on 9-12-1980 under Section 102, Criminal P.C. in the course of investigation of the case F.I.R. No. 157 of 1979 under Section 379, I.P.C. of Police Station Kashmiri Gate, Delhi, from the possession of Sher Singh of 3/15, Old Rajinder Nagar, New Delhi, and that during investigating it had transpired that the car was stolen property of case No. 146 of 1979 under Section 379, I.P.C. of Police Station Tilak Marg (seems mistakenly mentioned as Police Station Tilak Nagar), and was linked with the said case. It next narrated that Sher Singh had produced a receipt of purchase of the car for Rs. 45,000/- out of which Rs. 40,000/- had been paid in cash and Rs. 5,000/- were payable later. Kashmiri Lal, the seller of the car, it was next mentioned, was of Ganga Nagar, and had not been arrested till then. The real accused Har Narain, it was stated, had been arrested in case F.I.R. No. 146/79 also, and had been remanded to judicial custody up to 9-3-1981.

6. There was no mention in this report by Jai Chand S.I. that the 'superdari' of this car should be given to Sher Singh. However, Shri M. L. Mehta, Metropolitan Magistrate, allowed this 'superdari' in his favor on 25-2-1981, and as a consequence, the car was handed over to him on 26-2-1981.

7. According to D. S. Dang, he having learnt on 27-2-1981 that his car had been traced, applied to the court of Shri A. K. Srivastava, Metropolitan Magistrate, having jurisdiction over Police Station Tilak Marg, for 'superdari' of the car on 28-2-1981. On this, Shri Srivastava called a report from the police which was again submitted by Jai Chand, S.I. of Crime Branch to the effect that the seized car No. RRK 6873 was in reality Car No. DEA 3470 which was shown as stolen in case F.I.R. No. 146 of 1979 of Police Station Tilak Marg, New Delhi, and that case had been registered under S. 379, I.P.C. at the instance of D. S. Dang. It was also narrated that the car was lying at the Police Station Tilak Marg and there was no objection to the same being released on Superdari to Mr. Dang. Shri Srivastava, Metropolitan Magistrate, therefore, allowed the superdari of this car to D. S. Dang.

8. In the meanwhile, on 28-2-1981, Shri M. L. Mehta, Metropolitan Magistrate, cancelled the superdari of the car given to Sher Singh on a report submitted by

Ram Lal, S.I. to the effect that the car was traceable to case F.I.R. No. 146 of 1979 registered at the instance of D. S. Dang. The car was therefore, seized from Sher Singh on the evening of 28-2-1981, and handed over to Mr. Dang on 2-3-1981.

9. It is against this cancellation of the superdari and the handing over of the car to Mr. Dang, that Sher Singh has now moved the present Criminal Revision before this court.

10. Before proceeding further, it may also be mentioned that the car of Mr. Dang was lying insured with an insurance company from which he received the insured amount of Rupees 35,500/-. The insurance company, therefore, was subrogated to his rights over that car. However, later on learning that the car had been discovered and after obtaining its superdari, he returned the insurance amount to the insurance company. According to Mr. Dang, as well as the insurance company, in spite of the subrogation the right, title and interest in the car continued to vest in Mr. Dang even during the period when the insured amount stood paid to him.

11. Another circumstance to which reference may be made at this stage, was that on 15-12-1980, Kashmiri Lal claimed that there was a settlement between him and Sher Singh under which he paid Rs. 20,000/- back to Sher Singh, and the latter was satisfied that his claim over the car stood adjusted and he relinquished his rights over the same. This followed a case under Section 420, I.P.C. said to have been instituted by Sher Singh against Kashmiri Lal in which the latter was granted anticipatory bail. Although during the course of arguments the petitioner attempted to disown this settlement, he was reminded from the side of the respondents that the affidavit filed on their behalf in this regard has remained unrebutted, and the petitioner could file the counter-affidavit. None such, however was filed.

12. With this state of circumstances, I am not inclined to interfere at this stage in the impugned order of Mr. A. K. Srivastava, allowing 'superdari' of the car to D. S. Dang. It must, in this regard, be well understood that when a court grants 'superdari' during the pendency of a case of its property, the same is held by the 'superdari' at behest of the court. The latter can at any time require the surrender

of the property and bring to an end or curtail the responsibility which the 'superdari' has obtained on its behalf. This power is available to the Court throughout the pendency of the case, and when the circumstances warrant, its exercise at any stage, it cannot essentially be termed as reviewing the previous order. Moreover, an interlocutory order does not finally determine any material controversy in the case, and, therefore, no finality can be essentially attributed to it.

13. Furthermore, although under Section 457, Criminal P.C. the court is primarily concerned with the possessory entitlement of the property and not to its ownership, it cannot be stretched to such an extent as to disentitle an owner in possession of the property from which he had been deprived by an unlawful act. Thus simply because a property is found in possession of a thief would not justify the allowance of its retention by him. Instead the possession has to be relegated to the stage when the rightful possessor was so dispossessed by a wrongful and criminal act. In this regard, it need hardly be impressed that a purchaser of a property can pretend to have no better title than what its seller had. Once the source of possession is traceable to theft or other criminal act, then in whosoever's hand the property may have passed and however bona fide the last purchaser may be, the possession must be restored to the person from whom it was taken by the criminal act. The plea of a bona fide purchaser for consideration which is generally available in suits of specific performance, is misplaced in cases where possession under a purchase is ultimately relatable to a person who had acquired it by wrongful act.

14. Now in the present case, the facts as prima facie brought out in the investigation show that the car in dispute was taken into possession in the theft case registered at the instance of D. S. Dang at Police Station Tilak Marg. Harnarain alias Hardayal, is purported to have linked this car with that of Mr. Dang, and so was also the report of the Investigating Officer as submitted before Shri A. K. Srivastava, Metropolitan Magistrate. Even in the report submitted before Shri M. S. Mehta, there was mention of the case F.I.R. No. 146 of 1979 which was at the instance of Mr. Dang, Jai Chand, S.I., had not recommended the delivery of the car on 'superdari' to the petitioner. He had simply narrated the fact that the petitioner had claimed to possess a receipt under the agreement of sale of this

car. Mr. Mehta, therefore, should not have allowed 'superdari' to the petitioner without ascertaining as to who was the complainant in case F.I.R. No. 146 of 1979. In fact, he could have directed the application to be placed before the court trying cases of Police Station Tilak Marg. Later when he proceeded to cancel the 'superdari', it could be said that he could hear the petitioner. However, for this lapse, Mr. Dang to whom that investigation attributes this car, cannot be required to hand over possession.

15. Moreover, in case the petitioner has already settled the matter with Kashmiri Lal and relinquished his rights over the car, it is difficult to see how he can still claim to retain its possession.

16. Enlarged photographs of the existing chassis number of this car tend to show that figures '2' and '4' in the number 252489 have been somewhat dislodged from their original place. According to Mr. Dang, they have been replaced after erasing the figures '1' '4'. Similarly, it is pleaded from his side that the original engine number 168914 has been converted into 168814. There has, however, been no investigation by the police in this direction, and they have not examined any expert who can vouchsafe the same. It is, therefore, premature to form any opinion about them. No attempt besides has been made by the investigation agency to ascertain from the Premier Automobile Manufacturers whether any car with combination of engine No. P.A. 168814 and chasis No. P.A. 152589 had at all been manufactured and marketed by them. It could be a rare coincidence, if these numbers have been tampered, that any car with such combination was so marketed. In my opinion, it would be in the interest of justice for the investigation to hasten investigation in this regard, and ascertain whether there has actually been any tampering with the engine and chassis numbers, and whether a car of the present numbers was actually marketed by the manufacturers. When such investigation is completed, it will be open for the trial court to make such order as it may deem fit.

In the totality of the circumstances as already existing, I am not inclined to interfere. The petition is dismissed.

17. Petition dismissed.

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