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Court : Rajasthan

Decided On : Mar-04-1986

Reported in : 1986(1)WLN456

Judge : Gopal Kishan Sharma, J.

Appeal No. : S.B. Cr. Misc. Petition No. 664 of 1985

Appellant : Dhanna Ram and anr.

Respondent : State

Judgement :

Gopal Kishan Sharma, J.

1. The dispute relates to the delivery of truck No. RJV 4641 One Gumana Ram, non-petitioner No. 2 entered into higher purchase agreement with the Rajasthan Financial Corporation for the purchase of the above truck and the Rajasthan Financial Corporation had advanced a loan of Rs. 1,67,434/- The said Gumanaram sold the said truck to Dhahnaram and Lichama Ram and Gumanaram received a sum of Rs. 53,566/- from Dhannaram and Lichama Ram and it was agreed between the parties that Dhanna Ram and Lichama shall pay the instalments to the Rajasthan Financial Corporation and Gumanaram shall have no right what so ever so far as the truck is concerned. In case, of default of payment of instalments of the Rajasthan Financial Corporation by Dhannaram,

and Lichama Ram, Gumanaram was given a right to seize the truck After the said agreement and sale of the truck in favour of Dhannaram and Lichama Ram; they paid a sum of Rs. 81,200/- to the Rajasthan Financial Corporation as instalments, but further thereafter they made some defaults in payment of the instalments to the Rajasthan Financial Corporation. The truck was seized and a report was lodged with the Jawaharnagar Police Station with the allegation that on 16-11-1985 when Bhanwarlal had gone with the truck Gumanaram, Jeewana and two other persons came in jeep and gave out that they were the persons of Rajasthan Financial Corporation and asked Bhanwarlal to take the truck to Rajasthan Financial Corporation. When Bhanwarlal reached Ghat-gate, Gumanaram took away the truck. The case was registered and during the investigation the truck was seized by the police

2. Two applications for the release; of the truck were filed, one by the petitioners and the other by non-petitioner No. 2 Gumanaram and the learned Additional Chief Judicial Magistrate, Court No. 7, Jaipur City, Jaipur under his order dated November 25, 1985 ordered that because Gumanaram is the registered owner of the truck under the agreement under which he sold the truck to Dhannaram and Lichama Ram, he should be given the delivery of the truck on furnishing supardagi in the sum of Rs. 3 lacs and a surety in the like amount, the aforesaid order of the learned Additional Chief Magistrate has been challenged in this petition. On the last date when the case come up before me, I wanted that the truck should remain in the custody of some independent person and Shri K.N. Shrimal was appointed as Receiver of the property on payment of fee mentioned in the order. The order of this court has been complied with and now the truck is in the custody of Shri K.N. Shrimal, Advocate. It was also ordered that the notice be given to the Rajasthan Financial Corporation who is interested in the delivery of the truck because there were some outstanding against the loan advanced by it. Inspite of notice which according to Mr. Dhankar has been served on it at Sikar, none has appeared.

3. The facts narrated above will make it clear that so far as Gumana Ram is concerned, he had sold the truck in dispute to the petitioner and has received a sum of Rs. 53,563/- or Rs. 53,566/-. Therefore nothing remains to be paid to him and the instalments are to be paid by the petitioners to the Rajasthan Financial

Corporation. It was said that after above referred agreement was entered into between the parties, the petitioner have paid instalments of Rs. 80,300/- plus Rs. 10,000/- (Rs. 90,300/-). Thus the petitioner in all paid Rs. 90,300/- plus Rs. 53,566/-. Thus the amount comes Rs. 1,49,966/-. Mr. Dhankar undertakes to pay the balance of the amount to the Rajasthan Financial Corporation or to enter into agreement with the Rajasthan Financial Corporation to pay instalments provided Gumanaram given no objection certificate to that effect. Generally the delivery of the truck is given to the person who is registered owner of the same, but in the facts and circumstance of the case, a departure can be made from the general rule. In the instant case so far as Gumanaram is concerned he has sold the truck and has received price which was paid, and thereafter, the instalments were to be paid to the Raj. Financial Corpn. by the petitioners, they paid instalments for Rs. 90 300/- Under these circumstances, it is a fit case to make a departure from the general rule that the delivery should be given to the registered owner of the vehicle. But at the same time the interest of Gumanaram is also to be safe guarded. It is he, who enters into the higher purchase agreement of the truck is alone liable to the Rajasthan Financial Corporation to pay the balance of the amount. I, therefore, order that the truck shall be delivered to the petitioners, or both or either of them on furnishing a surety in the sum of Rs. 1,50,000/- to the satisfaction of the Additional Chief Judicial Magistrate Court No. 8 Jaipur City, Jaipur to the effect that as & when called upon they will produce the truck before him or else indemnify the State Government to the extent of Rs. 1,50,000/- it is also directed that Gumana Ram shall give no objection certificate to the Rajasthan Financial Corporation Sikar to the effect that he has no objection if fresh agreement for the balance amount as stated above is entered with the petitioners Dhannaram and Lichama Ram and the liability of Gumanaram be discharged. Such no objection certificate is to be given within two weeks. If the no Objection certificate as aforesaid is furnished the petitioners will enter into agreement with the R.F.C. within a period of four months thereafter latest. Gumanaram will be entitled to take the delivery of the truck from the petitioners without any further orders from any court, provided the petitioners do not pay all outstanding to the RFC within a period of one month, and do not assure of a fresh arrangement as aforesaid with the R.F.C. Shri Shrimal will give that truck to the petitioner.

