

Sharif Mohammed Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Mar-21-2003

Reported in : 2003CriLJ2911

Judge : M.R. Verma, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Section 457

Appeal No. : Criminal Revn. No. 21 of 2003 and Cr. M.M.O. No. 1 of 2003

Appellant : Sharif Mohammed

Respondent : State of H.P.

Advocate for Def. : C.B. Singh, Asstt. A.G.,; K.D. Sood and; Aneesh Garg

Advocate for Pet/Ap. : Kuldeep Singh, Sr. Adv. and; Jyotika, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M.R. Verma, J.

1. Since both these petitions arise out of a common order and raises same questions of law and facts, therefore, are being disposed of by this common order.

2. Brief facts leading to the presentation of these petitions are as follows. Admittedly, Bus No. HP 32-3786 was owned by the petitioner. He entered into an agreement with respondent No. 2 (in Cr. M.M.O. No. 1 of 2003, hereafter referred to as 'respondent No. 2') on 9-7-2002 agreeing to sell the Bus to respondent No. 2 for a consideration of Rs. 7,25,000/-. On execution of the said agreement, the Bus was handed over by the petitioner to respondent No. 2 and out of the agreed sale consideration a sum of rupees two lacs was received by the petitioner on the same day. Regarding the remainder, suitable conditions were made in the agreement. One of the conditions in the agreement was that in the event of default in payment of the sale consideration as agreed to by respondent No. 2, the petitioner would be entitled to take possession of the Bus. It is not in dispute that pursuant to the alleged breach of the agreement, the petitioner took over the possession of the Bus which led respondent No. 2 to lodge FIR No. 29/ 2003 dated 27-1-2003 under Section 382 of the Indian Penal Code. In the said FIR, the Bus was seized by the police. The petitioner moved an application i.e. Cr. M.A. No. 24-4 of 2003, under Section 457 of the Code of Criminal Procedure (hereafter referred to as 'the Code') for the release of the Bus along with the documents in the Court of Additional Chief Judicial Magistrate, Sundernagar on the grounds that he is the registered owner in possession of the vehicle and since the investigation in the case is complete, therefore, the vehicle be released to him on such terms and conditions as may be deemed fit and proper by the Court. Respondent No. 2 also applied for the release of the Bus along with documents etc. vide Cr. M.A. No. 23-4/2003. It is averred in the application moved by respondent No. 2 that the RC of the Bus in question is in the name of the petitioner who vide agreement dated 9-7-2002 sold it to him for Rs. 7,25,000/-and the Bus was handed over to him and out of the settled sale consideration, he paid rupees two lacs to the petitioner in cash and the remaining amount of Rs. 5,25,000/- was agreed to be paid as per conditions contained in the agreement. It has further been claimed that he has not committed any breach of the conditions of the agreement between the parties and the Bus was being plied by him. However, the petitioner took possession of the Bus along with its documents and cash Rs. 2800/- from the driver and conductor of respondent No. 2 at Kanaid forcibly and fraudulently. It is further averred that the investigation in the case is complete and the Bus is no more required by the

Investigating Agency for any purpose and since the Bus was in the lawful custody of the petitioner, therefore, it be released to him subject to such terms and conditions as may be imposed by the Court.

3. The learned Additional Chief Judicial Magistrate, after taking into account the rival contentions of the parties and the material whatever was placed before him and the police report, ordered the release of the Bus along with its documents etc. to respondent No. 2 on 'Spurdari' on furnishing a bond to the tune of rupees eight lacs with one surety in the like amount subject to the further conditions that he would not alienate/dispose of the Bus to another person and would not change or tamper with its components and will produce the same when so directed by the Court. Thus, the application of respondent No. 2 for release of the vehicle was allowed and that of the petitioner was dismissed. Being aggrieved, the petitioner in these petitions has assailed allowing of the application of respondent No. 2 and dismissal of his application for release of the Bus.

4. I have heard the learned counsel for the petitioner, the learned Assistant Advocate General for the respondent, State and the learned counsel for respondent No. 2 and have also perused the records.

5. It may be pointed out at the very outset that it is admitted case of the parties that initially the Bus was owned and possessed by the petitioner who vide agreement dated 9-7-2002 agreed to sell the Bus to respondent No. 2 and the terms and conditions of the agreement as contained therein are not disputed.

6. The sum and substance of the terms and conditions of the agreement between the petitioner and respondent No. 2 may be summarised as follows :

(1) That the agreed sale consideration was settled at Rs. 7,25,000/- out of which a sum of Rs. 2,00,000/- was acknowledged to have been received by the petitioner and possession of the Bus was delivered to respondent No. 2.

(2) The remaining payment of Rs. 5,25,000/- was to be made/adjusted as follows :

(i) respondent No. 2 was to pay the amount due to the financier up to 9-7-2002;

(ii) respondent No. 2 was to clear the liabilities including penalty, if any, up to 9-7-2002 on account of claim of R.T.O. and S.T.A.;

(iii) respondent No. 2 was also to pay a sum of Rs. 18,000/- on account of token tax and any other amount payable to Motor Registering Authority, Gohar on account of token tax, penalty or any other demand.

(3) The payments made by respondent No. 2 on account of (i) to (iii) above, were to be adjusted against the remaining sale consideration of Rs. 5,25,000/-. The payment of the remaining amount after retaining a sum of Rs. 20,000/- was to be made by respondent No. 2 within one month of the execution of the agreement. The retained sum of Rs. 20,000/- was to be paid at the time of transfer of registration certificate.

(4) It has also been provided in the agreement that in the event of respondent No. 2 paying the due instalments to the financier the liability of the petitioner would be only to the extent of the amount settled to be paid till 9-7-2002 and the liability to pay the remaining amount will be that of respondent No. 2.

(5) In case the amount payable to the petitioner after adjustment of payments against (i) to (iii) above and retaining a sum of Rs. 20,000/- to be paid at the time of transfer of registration within one month, the agreement was to be treated as cancelled and the petitioner would take possession of the Bus.

7. It is, thus, evident from the above admitting conditions of the agreement that possession of the Bus had been handed over to respondent No. 2 on the date of execution of the agreement and in the event of his making default in the payment/adjustments as agreed to, the petitioner had a right to take possession of the bus.

8. It is not in dispute that the bus was taken from the possession of respondent No. 2 by the petitioner and a criminal case has been registered against the petitioner. The police took possession of the bus from the petitioner as an accused. The registration certificate of the bus is in the name of the petitioner. Respondent No. 2 claimed release of the bus on the strength of the said

agreement between him and the petitioner whereas the petitioner claimed release of the bus to him being registered owner and breach of agreement by respondent No. 2.

9. Be it stated that to be the registered owner of a vehicle or to be in possession thereof at the time of seizure, are important factors to be kept in view by the Magistrate while deciding the rival claims of two parties for release of seized property under Section 457 of the Code. However, none of these factors is the sole deciding factor. The real test to decide the question will be as to who is the person entitled to possession of the seized property. Thus, the seized property can be released only to the person who has the lawful or rightful title to hold the property. In this regard the Magistrate has to come to a prima facie conclusion and not to decide the question of title as a civil Court.

10. The learned Magistrate dealing with the question as to which one of the petitioner and respondent No. 2 is entitled to possession of the bus in question vide the impugned order came to the conclusion that after adjustments of admitted payments made by respondent No. 2 as per the agreement and after taking into account the disputed payment of Rs. 60,000/- against receipt placed on record, respondent No. 2 has paid the entire payable amount as per the agreement to the petitioner. On the basis of this conclusion he found respondent No. 2 entitled to the possession of the bus and accordingly released the same to him on 'Supurdari' subject to the conditions to ensure production and safety of the bus.

11. The petitioner in his application has not referred to the payments made by respondent No. 2 on account of taxes, penalty and token tax as per the terms and conditions of the agreement. Payment of Rs. 60,000/- vide a receipt has been disputed and not admitted. Thus, he has raised seriously disputed questions of fact to constitute breach of agreement by respondent No. 2 who claims to have liquidated the liability under the agreement between the parties. Such disputed question cannot be decided in an inquiry under Section 457 of the Code but can be adjudicated only by a competent Court of civil jurisdiction. The prima facie conclusion arrived at by the learned Magistrate on the basis of the material placed before him, particularly in view of the concealment of some payments having been

made by respondent No. 2 on account of taxes and penalty, cannot be said to be perverse or unlawful.

12. It may also be pointed out here that a seized property in a criminal case cannot be released in favour of the accused unless he has cleared himself of the accusations against him or at least he satisfies the Court that the accusations against him are unfounded and seizure is illegal. The petitioner in his application has nowhere claimed that he is innocent and the case registered under Section 382 of the Indian Penal Code is unfounded and the seizure of the bus is illegal. Therefore, the petitioner cannot be treated as the person entitled to the possession of the bus.

13. In view of the above discussion, there is no reason to interfere with the impugned order.

14. As a result, both these petitions merit dismissal and are accordingly dismissed.

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