

Sanjay Kumar Vs. State of H.P. and ors.

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Court : Himachal Pradesh

Decided On : Mar-06-2006

Reported in : 2006(3)ShimLC340

Judge : K.C. Sood, J.

Appellant : Sanjay Kumar

Respondent : State of H.P. and ors.

Disposition : Petition allowed

Judgement :

K.C. Sood, J.

1. Under challenge in this petition is the order of learned Judicial Magistrate, Court No. 3, Shimla dated July 14, 2004. By this order, the vehicle, subject-matter of dispute, was seized by the Police in a case under Section 379 of the Indian Penal Code, was directed to be released to Ram Pal Chauhan, respondent No. 3, in exercise of the jurisdiction under Section 457 of the Code of Criminal Procedure and the application of Sanjay Kumar, the petitioner, for release of the vehicle, was rejected.

2. Aggrieved, Sanjay Kumar is in this petition under Section 482/ 397/401 of the Code of Criminal Procedure read with Article 227 of the Constitution.

3. Brief facts leading to the seizure of the vehicle by the Police and its subsequent release to Ram Pal Chauhan are:

4. Prem Singh Thakur, respondent No. 3, was the original owner of Bus 'Swaraz Mazda'. Sanjay Kumar, the petitioner, entered into an agreement with Prem Singh Thakur for the purchase of the vehicle. As per the agreement, the total sale consideration was fixed at rupees 5 lacs out of which the petitioner paid rupees 1.50 lacs and the balance amount of rupees 3.50 lacs was agreed to be paid in 21 installments for which cheques were given to Prem Singh Thakur. One of the conditions of the sale was that the petitioner was to pay the entire balance amount within a period of two years. The possession of the Bus was handed over to Sanjay Kumar. Prem Singh Thakur also executed General Power of Attorney in the name of Sanjay Kumar copy of which is annexed as Annexure-P2 with the petition. Thus, the original owner of the vehicle handed over the possession of the Bus in question to the petitioner on June 7, 2001 and authorized him to ply the said vehicle. The petitioner was also made liable to pay the taxes and any fines imposed on this vehicle and to act as owner of the vehicle for nil purposes. The petitioner was also required to pay the insurance and other charges. It was stipulated that in case the petitioner fails to pay the balance amount of the sale consideration to Prem Singh Thakur within a period of two years, then Prem Singh Thakur would be entitled to take back the possession of the vehicle and the agreement would be treated as 'cancelled'. This agreement was executed on June 7, 2001. General Power of Attorney was also executed by Prem Singh Thakur on the same day which authorized Sanjay Kumar to ply the vehicle and do all things necessary on behalf of the original owner relating to this vehicle. At the time of the sale agreement, the vehicle was under hypothecation with Ashok Leyland Finance Limited and the petitioner was authorized to make payments of the balance amount of loan taken by Prem Singh for the purchase of the vehicle.

5. On June 26, 2004, respondent No. 2 Ram Pal Chauhan lodged a First Information Report with Police Station, Boileauganj regarding the theft of the vehicle in question under Section 379 of the Indian Penal Code.

6. According to the petitioner, Prem Singh had asked the petitioner to pay the remaining amount to his Financer, i.e. Ashok Leyland Finance Limited. To enable him to pay the amount to the Financer, the petitioner took loan of rupees 2.70 lacs from M/s; Syal Leasing Limited through its Shimla Branch on April 16, 2004 out of which rupees 2.50 lacs were paid to the original Financer Ashok Leyland Finance Limited on April 16, 2004. This payment was acknowledged by the Financer by a receipt Annexure-P5.

7. Prem Singh Thakur, after having received the entire sale consideration of the sale amount of the vehicle in question as per agreement, gave an affidavit to the petitioner acknowledging the receipt of the installments as also receipt of rupees 2.65 lacs on April 12, 2004, Annexure-P3. It is the further case of the petitioner that Prem Singh did not transfer the vehicle to the petitioner on one pretext or the other and put him off from time to time. The petitioner, however, remained in lawful possession of the vehicle and paid all the dues and taxes to the various authorities including insurance amount. He also repaired and maintained the vehicle.

8. Prem Singh Thakur, according to the petitioner, fraudulently and with malafide intention, in collusion with respondent No. 2 Ram Pal Chauhan, to defraud the petitioner, clandestinely transferred the ownership of the vehicle in the name of Ram Pal Chauhan on June 22, 2004 even though the possession continued with the petitioner.

9. After the transfer of the vehicle in question in the name of respondent No. 2, Ram Pal Chauhan lodged a false complaint with Police Station, Boileauganj on June 26, 2004 complaining the theft of his vehicle by the petitioner. Petitioner apprehending the arrest by the Police, filed an application for the grant of anticipatory bail before the learned Sessions Judge, Shimla who, vide his order dated June 28, 2004, 'Annexure-P7' passed an order that petitioner Sanjay Kumar shall hand over the custody of the vehicle to the Investigating Officer on June 28, 2006 itself. On such custody being handed over to the Investigating Officer, the petitioner was admitted to bail.

10. The Investigating Officer was directed by this order to keep the custody of the vehicle and not to deliver the same to any party without the orders of the

competent Court regarding its custody. The petitioner as also the complainant was given liberty to approach the concerned Magistrate for obtaining appropriate orders for the custody of the vehicle in question.

11. In terms of the orders of learned Sessions Judge, the petitioner handed over the custody of the vehicle to the Investigating Officer.

12. In view of the orders of learned Sessions Judge, both the petitioner and Ram Pal Chauhan approached the learned Magistrate Court No. 3, Shimla for the custody of the vehicle. It is in this background that the vehicle was directed to be released to Ram Pal Chauhan by the impugned orders.

13. Learned trial Magistrate in his orders noticed that the prosecution or the Investigating Officer had no objection for the release of the vehicle to the rightful/registered owner of the vehicle in question and released the vehicle to Ram Pal Chauhan as he was registered owner of the vehicle. So far the question of ownership of the vehicle was concerned, learned trial Magistrate left it to be decided by the Civil Court.

14. Section 457 of the Code of Criminal Procedure, provides for the custody of the property before the commencement of the trial and inquiry, which is seized by any Police Officer. Section 457 reads:

457. Procedure by police upon seizure of property.-(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, any such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring

any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

15. A perusal of the provision noticed above, shows that when seizure of the property in any case by the police is reported to the Magistrate, either by the Police or by any person entitled to property, the Magistrate is competent to pass order regarding custody of the property to the person entitled to such possession and if such person cannot be ascertained, then Magistrate may make an appropriate order regarding the custody and production of such property.

16. The jurisdiction of the Magistrate under Section 457 is limited to two alternatives, firstly, either to deliver the seized property to the person entitled to the possession or to make such order as he thinks fit and proper regarding the seized property. It may be noticed that Section 457 of the Code of Criminal Procedure does not say that the property has to be given to the person from whom such property is seized. A discretion is left with the Magistrate to decide the question about the person 'entitled to the possession'. It is only when a lawful or rightful title is not established that the Magistrate has to make an order in his discretion. In other words, it is imperative for the Magistrate to deliver the custody of the property, under Section 457 of the Code of Criminal Procedure, to the person who is entitled to the possession of such property. Simply because registration certificate of the vehicle is in the name of a particular party, if a vehicle is under an agreement is in custody of another person, then registered owner is not entitled to the possession of such property ipse dixit.

17. In the present case, Ram Pal Chauhan, respondent No. 2, has taken a stand that Prem Singh Thakur was the registered owner of the vehicle but he transferred, this vehicle in his name and that is how the vehicle came to be registered in his name. According to him, Prem Singh Thakur had executed a power of attorney in respect of the vehicle in the name of one Mahesh Kumar son of Shri Ram Pal Chauhan and the vehicle was sold by Mahesh Kumar to Ram Pal Chauhan. He paid rupees 2 lacs to Mahesh Kumar, attorney of Prem Singh Thakur. Out of this amount, rupees 1.50 lacs were paid to Mahesh Kumar by a cheque and balance amount was paid in the following manner:

(a) Rs. 31, 625/- as token tax;

(b) Rs. 14,280/- as penalty; as no token tax has been paid during the period from September 30, 2001 to June 30, 2004.

(c) Rs. 1.35 lacs. The balance amount, was paid to M/s. Syal Leasing Limited with which this vehicle was hypothecated at that point of time.

18. The vehicle was hypothecated with Syal Leasing Limited who demanded rupees 1,75,000/- as dues but the amount settled was rupees 1,35,000/- which was paid by him. Mahesh Kumar, according to Ram Pal Chauhan, handed over the possession of the vehicle on May 28, 2004. It is denied that the vehicle in fact was in possession of the petitioner. Ram Pal Chauhan says that as possession was delivered to him by Mahesh on behalf of Prem Singh Thakur. It is his case that this vehicle was stolen on June 25, 2004. He lodged the F.I.R. with Police Station, Boileauganj on June 26, 2004 in terms of F.I.R. No. 136 of 2004. According to him, his Driver informed him that the vehicle in question was forcibly taken when the Driver was taking his meals at Shogi.

19. Prem Singh Thakur in his reply supports the case of Ram Pal Chauhan. According to Prem Singh Thakur, the petitioner failed to make any payment to him or paid any installment to Ashok Leyland Finance Limited. By a letter dated March 28, 2002, he was threatened by M/ s Ashok Leyland Finance limited that the vehicle would be seized if balance amount is not paid and he would be sued for the balance amount. Thereafter, he sent the petitioner to Chandigarh and payment of Rs. 2.50 lacs was made to M/s. Ashok Leyland Finance Limited by the petitioner. This amount was arranged from M/s. Syal Leasing Limited and the vehicle was released. However, a cheque of rupees 50,000/- issued by the petitioner to Ashok Leyland Finance Limited bounced and, therefore, Ashok Leyland took possession of the vehicle. It is denied that petitioner made any payment. After the vehicle was financed by Syal Leasing Limited, the petitioner did not deposit the installment amount and Syal Leasing Limited threatened to seize the vehicle. It is in this context that Ram Pal Chauhan paid rupees 1,35,000/- out of the outstanding amount of rupees 1,75,000/- to Syal Leasing Limited. Petitioner never intended to fulfill his part of the contract and he failed to make payments in

terms of the agreement. The cheques issued by him were dishonoured. In this background, Prem Singh Thakur took possession of the vehicle and sold it to respondent No. 2 Ram Pal Chauhan. Prem Singh Chauhan does not say when precisely he took possession of the vehicle.

20. This Court in Krishan Lal v. State of H.P. and Anr. 1994 Cri.LJ. 2539, held that where the parties had entered into an agreement, then agreement would be the basis to determine the rights and liabilities. It is also held that the registration certificate in the name of one of the parties cannot be the sole ground for the release of the vehicle to the registered owner when such vehicle, under an agreement, is in lawful custody of the other party. This position was reiterated by this Court in Vijay Vishal v. Inder Singh Kaundal and Anr. 2002 Cri. L.J. 1177, wherein it is observed that if registered owner parts with the possession of the vehicle under a sale agreement, in favour of the respondent, then it is the respondent who would be entitled to the custody of the vehicle even though registration certificate continues to be in the name of the seller.

21. In the present case, apart from the affidavit of Prem Singh Thakur that this vehicle was seized by M/s. Syal Leasing Limited, and he obtained the possession from Syal Leasing Limited, there is nothing on the record to show that the vehicle in question was released to Prem Singh Thakur by Syal Leasing Limited. In fact, this vehicle was hypothecated with Syal Leasing Limited in the name of Sanjay Kumar and not Prem Singh Thakur for which Mohan Singh stood guarantee and therefore, there was no question of Syal Leasing Limited releasing the possession to Prem Singh Thakur which also shows that the petitioner was in lawful possession of the vehicle. In fact there is no document to show that this vehicle was seized by Syal Leasing Limited from the petitioner. Transfer of the vehicle in the name of Ram Pal Chauhan by Prem Singh Thakur in a clandestine manner appears only to be a ruse to enable Ram Pal Chauhan to claim custody of the vehicle. Without further going into the merits, the facts of the case indicate that the vehicle in question at the time of alleged theft, was in possession of Sanjay Kumar and Ram Pal Chauhan was not given the possession of the vehicle by Prem Singh Thakur even though vehicle was transferred in the name of Prem Singh. It is significant that the Registration book admittedly remained with Prem Singh Thakur

even after agreement with Sanjay Kumar.

22. In the facts and circumstances of the case, the registration of the vehicle in the name of Ram Pal Chauhan is of no consequence for the release of the vehicle under Section 457 of the Code of Criminal Procedure. The 'present petitioner was entitled to the custody of the vehicle in question under Section 457 of the Code of Criminal Procedure.

23. In my opinion, the present petitioner is entitled to the custody of the vehicle in question under Section 457 of the Code of Criminal Procedure.

24. For the foregoing reasons, I am of the view that the impugned order is illegal and deserves to be set aside.

25. In result, the petition is allowed. The impugned order is set aside. It is directed that the custody of the vehicle in question be released to the petitioner Sanjay Kumar subject to his furnishing bonds in the amount of rupees 3.50 lacs with one surety of like amount to the satisfaction of learned trial Magistrate. This order will not be in the way of respondent Ram Pal Chauhan to approach the appropriate Civil Court impleading the present petitioner and Syal Leasing Limited as party to establish his title to the bus in question. On such suit being filed, the Civil Court shall decide the suit at its own merits in accordance with law uninfluenced by the observations made herein above.

No costs.

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