

Rakesh Kumar Vs. State and anr.

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Court : Jammu and Kashmir

Decided On : Apr-15-2004

Reported in : 2004(3)JKJ581

Judge : S.K. Gupta, J.

Acts : Code of Criminal Procedure (CrPC) , Svt. 1989 - Sections 516A and 517

Appeal No. : 561-A Cr.P.C No. 55/2003

Appellant : Rakesh Kumar

Respondent : State and anr.

Advocate for Def. : Aruna Thakur, GA and; Sandeep Singh, Adv.

Advocate for Pet/Ap. : K.K. Kundan, Adv.

Disposition : Petition dismissed

Judgement :

S.K. Gupta, J.

1. By means of this petition Under Section 561A Cr.P.C, the petitioner, Rakesh Kumar, seeks quashing of the order dated 17.04.2003 propounded by Chief Judicial Magistrate, Jammu, whereby the prayer of the petitioner for release of vehicle, Maruti Car bearing registration NO:JK03-3939, on superdnama, has been

declined.

2. Facts relevant for the disposal of this petition, extracted from the record, depicted in narration, are that on an application instituted by the petitioner seeking release of the vehicle on superdnama, the Magistrate sent for the police report and case file. On its perusal the learned Magistrate found that the said vehicle has been seized by Police Station, Gandhi Nagar, as a stolen property. This vehicle is claimed to have been purchased by the petitioner. Once the property has been found to be stolen property from the record of the police and the material collected during enquiry, the petitioner cannot be said to be a bonafide purchaser of the stolen property. He has to establish his claim in a civil court, independent of criminal proceedings. The Court has rightly declined the prayer of the petitioner for release of the vehicle, notwithstanding the claim asserted by the petitioner to be the purchaser of the said vehicle. From the record, the Magistrate further found that the petitioner cannot be said to have any claim for release of the maruti car on superdnama notwithstanding the illegal registration in his favour, and rejected the application. A direction has also been given with regard to the disposal of the property to the Investigating Officer, of course, after contacting the owner and the Insurance company and under law seek its auction.

3. Mr. Sandeep Singh, learned counsel appearing for the Insurance Company, submitted that he has made an attempt to move a motion for release of the seized vehicle on superdnama but the same was declined, as the matter was pending before High Court. He further pleaded that after the petition is disposed of, he may make another endeavour for the release of the vehicle, on superdnama, being insurer of the vehicle. Similarly, Mrs. Aruna Thakur, GA, who appeared for the State, submitted that once the material collected during investigation by the police, reveals that the vehicle seized is a stolen property, the petitioner cannot claim its release on superdnama merely on the assertion that he is a bonafide purchaser.

4. Undoubtedly, the object and scheme of the various provisions of the Code appear to be that where the property, which has been the subject matter of an offence, is seized by the police, it ought not to be retained in the custody of the court or of the police for any time longer than what is necessary. As the seizure of

the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is to restore the property to original owner after the necessity to retain it ceases. The petitioner, at this stage, cannot be said to be its owner when the Maruti Car, for the release of which the petitioner has asserted his claim, turns out to be a stolen property.

5. In the above view of the matter, I do not find any infirmity in the order impugned, resulting in abuse of process of law, necessitating interference of this Court.

6. In the result, the petition possesses no merit and is, accordingly, dismissed. Record be remitted back forthwith.

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