

Joygopal Mondal and Others Vs. Pratima Mondal

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Court : Kolkata

Decided On : Mar-15-2012

Judge : Prasenjit Mandal

Appeal No. : C.R.R. No. 1423 of 2011

Appellant : Joygopal Mondal and Others

Respondent : Pratima Mondal

Judgement :

Prasenjit Mandal, J.

Challenge is to the Order No.19 dated April 20, 2011 passed by the learned Additional Chief Judicial Magistrate, Rampurhat in G.R. Case No.154 of 2010 arising out of Rampurhat PS Case No.35 dated February 19, 2010 under Section 379/411 of the Indian Penal Code thereby rejecting the prayer of the petitioner for return of the seized vehicle.

Upon perusal of the materials on record and on hearing both the sides, I find that two rival claims were made for return of the vehicle. The defacto complainant filed an application for release of the seized vehicle in her custody and the accused no.1 / petitioner herein also prayed for return of the vehicle in his favour. While disposing of the two applications, the learned Additional Chief Judicial Magistrate allowed the prayer of the defacto complainant and rejected the prayer of the petitioner. Being aggrieved by such order, this revisional application has been

preferred.

The defacto complainant filed a criminal case under Section 379/411 of the I.P.C. and in course of the investigation the concerned Investigating Officer seized the vehicle in question from the possession of the petitioner no.1. Trial has not as yet been started and the said criminal case is at the stage of investigation. So, disposal of the vehicle is to be done under the provisions of Section 451 of the Code of Criminal Procedure.

Admittedly, Smt. Kaberi Mondal (now deceased), wife of the petitioner no.1, was the registered owner of the vehicle in question previously. It is also an admitted fact that the said vehicle was in the possession of the defacto complainant and according to her contention, she had purchased the vehicle in question from the registered owner Kaberi Mondal (now deceased) and the vehicle in question had been registered with the concerned Motor Vehicle Department in her name.

The husband of Kaberi Mondal has contended that after the death of Kaberi Mondal, he and his two sons (minors), that is, the petitioners inherited the said vehicle in question and as such, he has prayed for return of the vehicle in question in his favour upon a bond as the vehicle was seized from him. According to him, some papers were forged and the Power of Attorney had been revoked.

From the materials on record, the learned Additional Chief Judicial Magistrate has concluded that as per materials on record, the vehicle was registered in the name of Pratima Mondal after purchase by her and she was plying the vehicle and thereafter, she lodged the said case under Section 379/411 of the I.P.C. against the accused persons. This case is now pending for investigation.

On the other hand, the learned Additional Chief Judicial Magistrate has also recorded that the case filed by the husband of Kaberi Mondal alleging forgery was sent to the P.S. under Section 156(3) of the Cr.P.C. and upon investigation police submitted a final report. The learned Additional Chief Judicial Magistrate directed for further investigation without accepting the report. The above facts are not in dispute and the learned Additional Chief Judicial Magistrate has recorded that Pratima Mondal possessed the vehicle during the lifetime of Kaberi Mondal and

after her death at least till revocation of the Power of Attorney by the accused no.1 as claimed by him. He has rightly recorded that these matters are to be decided and the appropriate orders for return of the vehicle shall be made after the conclusion of the trial, under Section 452 of the Cr.P.C.

For the time being, on being satisfied about the better title of the defacto complainant, he passed the orders for handing over the possession of the vehicle in question in favour of the defacto complainant.

Under the circumstances, I am of the view that the impugned order does not suffer from impropriety, incorrectness or illegality. So, there is no scope of interference with the impugned order.

The revisional application is devoid of merits and is, therefore, dismissed.

However, there will be no order as to costs.

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