

REVISIONAL CRIMINAL

Before S. S. Sandhawalia, J.

DEO DUTTA SHARMA,—Petitioner.

versus

MANOHAR LAL, ETC.,—Respondents.

CrI. Revn. No. 544 of 1973.

October 26, 1973.

Code of Criminal Procedure (Act V of 1898)—Section 516-A—Production before a criminal court of a motor vehicle seized by the Police during investigation of a case—Rival claims for the custody thereof—Whether to be expeditiously decided—Postponement of the decision of such claims—Whether amounts to erroneous exercise of judicial discretion—Holder of a certificate of registration and insurance policy of the seized motor vehicle—Whether prima facie entitled to the custody of the vehicle during the course of trial.

Held, that it is inapt to decline to decide the issue of custody of a motor vehicle which is produced before a criminal court either as the subject matter of an offence or as having been used for the commission of one, merely on the ground that some difficulty is involved in deciding the rival claims put forward by certain parties. Although a criminal court is not a forum for determining the complicated issues of title which must necessarily go ultimately for decision before a civil court. However, it is equally the duty of the criminal court in these matters to expeditiously decide as to who *prima facie* is entitled to possession and entrust the vehicle to such a claimant leaving the other parties to their civil remedies. It is an erroneous exercise of judicial discretion to casually postpone the issue of custody of a motor vehicle by the trial court till the final decision of a case which may take a long time. Save in exceptional circumstances the issue of the custody of the motor vehicle seized during investigation (with sufficient safeguard for its production during the course of trial) must be expeditiously decided.

Held, that it is evident from the mandatory provisions contained in Sections 22, 23, 24, 26 and 31 of the Motor Vehicles Act, 1939, that the certificate of registration is the primary if not conclusive evidence showing that the holder thereof is the owner of the motor vehicle specified therein. Equally axiomatic it is that a presumption of being in possession flows from the factum of rightful ownership. Therefore, the holder of the certificate of registration is entitled to claim in his favour the strongest presumption that he is the rightful owner in physical possession (either actually or constructively) of the motor vehicle. Unless there is the clearest and well-nigh conclusive evidence to the contrary to rebut this presumption, the

registered owner of a motor vehicle ought not to be denied his right to custody and possession of the same. What flows from the certificate of registration also applies, though with a slightly lesser force, to the certificate of insurance of a motor vehicle as well. Hence a claimant, who holds the certificate of registration of the motor vehicle as well its insurance certificate is *prima facie* entitled to its custody and he cannot be denied the custody of the vehicle during the course of the trial.

Petition under section 439 of Criminal Procedure Code for revision of the order of Shri N. S. Rao, Sessions Judge, Ambala, dated 5th May, 1973, affirming that of Shri B. R. Vohra, Judicial Magistrate 1st Class, Ambala Cantt., dated 31st March, 1973, rejecting the application and further ordering that the question of release of car to either party shall be decided at the time the final orders are passed in the main case.

Rameshwar Sharma, Advocate, for the petitioner.

S. K. Lamba, Advocate, for Advocate-General.

Y. P. Gandhi, Adocate, for respondent No. 1.

JUDGMENT

SANDHAWALLA, J.—This criminal revision raises rather significant issues pertaining to the merits of the rival claims for the custody of a motor vehicle which is produced before a Criminal Court either as the subject-matter of an offence or as having been used for the commission of one. Of late such questions arise with persistent frequency and, therefore, merit a close analysis.

(2) A case regarding the theft of the Motor-car No. DLK 1661 was registered at the town of Hapur in Uttar Pradesh. However, the vehicle above-said was found at and taken into possession in Ambala Cantonment by the police on 20th July, 1972, under section 550 of the Criminal Procedure Code. On the basis of the investigation that followed Manohar Lal and Piare Lal respondents have been sent up for trial on a charge under section 411, Indian Penal Code. At an earlier stage this vehicle had been given on Sapurdari to a resident of Ambala Cantt., on an application moved by Manohar Lal accused-respondent. The prosecution, however, secured the cancellation of the Sapurdari above-mentioned. It was thereafter that the present petitioner Shri Deo Dutta Sharma claiming to be the registered owner of the vehicle and also the holder of its insurance certificate moved an application for obtaining the custody of the motor-car but on the other hand Manohar Lal accused-respondent also

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made a similar prayer before the trial Court. The learned Magistrate adverted to the claims of the above-said two persons to custody and rejected both on the ground that difficult questions of law and fact were involved as each side was relying on certain documents in their favour. He further observed that the question of the release of the motor vehicle to either party would be decided at the time of the final decision of the criminal case. Aggrieved by the rejection of his application the petitioner then moved the learned Sessions Judge, Ambala, in revision who, however, summarily rejected the same with an observation that no fault could be found with the order of the trial Magistrate.

(3) With the rising inflation it has inevitably to be borne in mind that motor-vehicles now have become very valuable property—both as regards their cost and the use to which they are put. Indeed in cases of commercial vehicles the very livelihood of the owners depends on the employment thereof. Equally patent it is that motor-vehicles are best maintained in a running condition and a prolonged period of storage inevitably tends to deteriorate the machinery thereof and particularly the more vulnerable parts of the same. Again these vehicles are subject to easy pilferage of their parts and tampering with the same. The distressing fact has to be faced that the course of litigation inevitably tends to be tardy and the process of trial, appeal and revision even in a criminal case may well move into months, if not years. It is, therefore, inapt to decline to decide the issue of custody merely on the ground that some difficulty is involved in deciding the rival claims of the parties. Of course it is well-settled that the criminal Court is not a forum for determining the complicated issues of title which must necessarily go for decision before a Civil Court ultimately. However, it is equally the duty of the trial Court in these matters to expeditiously decide as to who *prima facie* is entitled to possession and entrust the vehicle to such a claimant leaving the other parties to their remedies within the civil law. I am hence inclined to hold that it is an erroneous exercise of judicial discretion to casually postpone the issue of custody of a motor vehicle by the trial Court till the final decision of a case which may still take a long time. Save in exceptional circumstances the issue of the custody of a motor-vehicle (with sufficient safeguards for its production during the course of the trial) must be expeditiously decided.

(4) In the present case it does not seem to be in dispute that the petitioner is a registered owner of the motor-car No. DLK 1661. The registration certificate enjoined by the provisions of the Motor Vehicles Act stands in his name. It is further the admitted position that the petitioner is the holder of the Insurance Policy covering the car in his own name. Not only that the petitioner has also supported his claim with an affidavit from the Managing Director of Messrs Pawar Motors and General Finance Private Ltd., wherein it is averred that the motor-car in question was sold earlier by the company above-said to the petitioner on hire purchase basis and the petitioner has since paid the full price of the car. It is evident that the previous registered owner has thus transferred the vehicle to the petitioner. The crucial issue, therefore, is whether on these accepted facts the petitioner should be held *prima facie* entitled to the possession of the vehicle.

(5) A reference in this connection may instructively be made to the mandatory provisions of the Motor Vehicles Act, 1939. Chapter III therein provides for the registration of motor vehicles and sections 22 and 23 impose a mandatory duty on the owner of a motor vehicle to have the same registered by the Registering Authority in the State in which such owner has residence or place of business before the vehicle can be allowed to be driven in any public place. Section 24 lays down the procedure for getting the registration above-said and section 26 provides that the vehicle must be produced before the Registering Authority in order to satisfy itself that the particulars regarding the motor vehicle and the claim to ownership are true. It is thereafter that a certificate of registration in form 'G' shall be issued in favour of the owner of the motor vehicle. Any transfer of ownership thereafter of the motor vehicle is then provided for in section 31 of the Act. This enjoins that the transferor shall report within 14 days of the transfer of the motor vehicle to the Registering Authority about this fact and equally the transferee is under an obligatory duty to report the transfer in his favour within 30 days of its transfer. Further it is provided that the transferee shall forward the certificate of registration to the Registering Authority in order that the particulars of the change of ownership should be entered in the certificate of registration. It is evident from these provisions that the certificate of registration is the primary, if not conclusive evidence, that the holder thereof is

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the owner of the motor vehicle specified therein. Equally axiomatic it is that a presumption of being in possession flows from the factum of rightful ownership. Therefore the holder of the certificate of registration is entitled to claim in his favour the strongest presumption that he is the rightful owner in physical possession (either actually or constructively) of the motor vehicle. Unless there is the clearest and well-nigh conclusive evidence to the contrary to rebut this presumption the registered owner of a motor vehicle ought not to be denied his right to custody and possession of the same.

(6) What has been said above in the context of the certificate of registration applies with a slightly lesser force to the certificate of insurance as well. Section 93 of the Act defines the certificate of insurance as also the authorised insurers and the succeeding section 94 lays down in mandatory terms the necessity for the insurance of a motor vehicle against third party risks before the vehicle is used by anyone in a public place. Section 103-A then provides for the mode of the transfer of the certificate of insurance in case the vehicle is lawfully transferred to another subsequently.

(7) In the present case the petitioner admittedly is the holder of the certificate of registration of the motor car. Equally so the certificate of insurance for the vehicle stands in his name. This apart the earlier registered owner has put in an affidavit that the car in question was duly transferred to the petitioner and the payment thereof has been fully made. As against this accused Manohar Lal had taken up some specious plea that he had purchased the car on instalment from one Chedu Lal. Who this Chedu Lal is and what right or title he had to the car or his capacity to transfer the same to the accused is not even remotely evident. I wonder how any such unsubstantiated plea can outweigh the patent *prima facie* value of the certificate of registration as also of the certificate of insurance held by the petitioner. I am hence of the view that the petitioner is clearly entitled to the custody of the vehicle during the course of the trial.

(8) The view above-said I am inclined to take on principle is equally well supported by authority. In *Matadin Sharma v. The*

King (1), where the trial Court had declined to release a truck under section 516-A of the Code of Criminal Procedure the revision was allowed by Meredith, J. with clear observations that it was not at all fair or just that the truck of a businessman should be detained in this way for nearly nine months merely for use as an Exhibit in the case. In a Division Bench judgment reported as *Sardar Singh Kohli v. M/s. Swastik Financial Corporation (P) Ltd., New Delhi* (2), the matter was considered in some detail and the following was observed:—

“The certificate of registration and road permits issued by the State authorities of Bihar in pursuance of the rules framed under the Motor Vehicles Act have a presumption that the holder of the certificate and the road permit was in possession of the vehicle.”

The Delhi High Court in *Chander Bhan v. State* (3) has also taken a similar view whilst observing that the owner of the vehicle should be allowed the custody of the same on *sapurdginama* with adequate security.

(9) I hold, therefore, that the trial Court has patently erred in the exercise of its discretion by postponing the issue of custody till the final decision of the case. Equally so it was not justified to refuse possession to the petitioner despite the fact that he was the registered owner and insurer of the car in question. Its fear of the car being not produced when needed as an exhibit also appears to be groundless on this record. I, therefore, set aside the order of the trial Court and direct that the vehicle be entrusted to the petitioner on his furnishing an adequate security to the satisfaction of the trial Court on his undertaking to produce the same before it when needed for the purpose of identification etc., in the course of the proceedings.

B.S.G.

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- (1) A.I.R. 1949 Patna 44.
 - (2) 1964 (2) Cri. L.J. 492.
 - (3) 1971 Cri. L.J. 167.