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*R.N.R.*

*Before Mehinder Singh Sullar, J.*

**RAJ KUMAR,—Petitioner**

*versus*

**VIKAS GAUTAM AND OTHERS,—Respondents**

**C.W.P. No. 265 of 2009**

29th November, 2010

*Code of Criminal Procedure, 1973—Ss.91 and 451—  
Petitioner taking loan from finance company for purchase of a  
truck—Hire-purchase agreement—Petitioner paying installments  
regularly—Company forcibly snatching truck from possession of  
petitioner—Petitioner filing criminal complaint—Whether petitioner  
entitled to possession of truck during pendency of criminal*

*proceedings—Held, yes—Respondents cannot legally be permitted to take law into their hands—Petition allowed, case remitted to trial Magistrate to decide application u/s 91 read with S.451 Cr.P.C. afresh.*

*Held*, that the trial Magistrate has slipped into a deep legal error in this relevant context. As is evident from the record that this Court granted an opportunity to the petitioner to file the application. It is not a matter of dispute that the petitioner had borrowed a loan from respondent No. 5, *vide* agreement dated 16th October, 2002. According to the petitioner, he has already paid the due installments, but still the respondents have illegally and forcibly snatched his Truck. Hence, the factual matrix is not in dispute. Once, the Truck in question was forcibly snatched by the respondents from the possession of the petitioner, in that eventuality, petitioner is entitled to its restitution.

(Para 9)

*Further held*, that once it is clear that the respondent has forcibly snatched the Truck from the possession of the petitioner, then naturally he is entitled to its possession during the pendency of the criminal proceedings. The mere fact that the Truck was sold cannot possibly be allowed to stand in the way of administration of criminal justice and the indicated illegal action of the respondents cannot be appreciated and encouraged in any manner. The Criminal Courts are not helpless in this context.

(Para 10)

Yogesh Chaudhary, Advocate, *for the petitioner*.

Rahul Garg, Advocate, for Ashwani Talwar, Advocate, *for respondent Nos. 1 to 4*.

Sidharth Sarup, Deputy Advocate General, Haryana.

**MEHINDER SINGH SULLAR, J. (ORAL)**

(1) The matrix of the facts, which needs a necessary mention for a limited purpose of deciding the core controversy involved in this revision petition and emanating from the record, is that, petitioner-Raj Kumar, son of Sadhu Ram, had borrowed a loan from M/s Ashoka Leyland Finance

Company Limited (now merged with Indusland Bank Limited)-respondent No. 5, for the purchase of chassis of a Truck, by virtue of loan agreement dated 16th October, 2002. After getting its body manufactured and fitted it on the chassis, the petitioner started plying the Truck. According to the petitioner, he regularly paid the due installments of loan to respondent No. 5 in time.

(2) The case of the petitioner further proceeds that on 28th January, 2005, his Truck was booked for its destination to Nepal. On 29th January, 2005, as soon as, he along with his Truck reached near the village Mohri, District Ambala, in the meantime, Ravi Kumar Gupta (respondent No. 3), Manager of Ashoka Leyland Finance Company stopped the Truck and 5-6 other *gundas*, who were covering their faces, armed with Revolver and other deadly weapons, appeared at the spot as well. They illegally and forcibly snatched the Truck of the petitioner at the instance of respondent Nos. 1 to 3 and parked it in the premises of respondent No. 4. The matter was reported to the police of Police Station, Shahbad. As the police did not take any action against the accused, therefore, the petitioner filed a complaint, which was referred to the police by the Magistrate, under Section 156 (3) Cr.P.C., by virtue of which, a criminal case was registered against the accused, *vide* FIR No. 219 dated 24th July, 2005, by the police of Police Station, Shahbad District Kurukshetra. Subsequently, the police submitted the cancellation report against the accused before the Magistrate.

(3) Aggrieved by the action of the police, the petitioner filed a protest petition (complaint) before the Court, in which, respondent Nos. 1 to 3 were stated to have been summoned to face trial under Sections 392, 506 and 120-B IPC. It was claimed that the FIR has not yet been cancelled, the accused have not been discharged and the criminal proceedings are still pending against the accused. Although, the Truck was a case property, but it was not taken into possession either by the police or the Court, which necessitated the petitioner to file an application in this relevant behalf. The same was not decided and it was subsequently withdrawn by the petitioner on the ground that he has already moved a petition under Section 482 Cr.P.C. in the High Court, for the required relief. The petition under Section 482 Cr.P.C. was disposed of by this Court with liberty to the petitioner to file fresh application in this relevant connection.

(4) Consequently, the petitioner filed the application under Section 91 read with Section 451 Cr.P.C., for production and releasing the Truck on superdari, which was dismissed by the trial Magistrate, by virtue of impugned order dated 8th December, 2008

(5) The petitioner did not feel satisfied and filed the instant petition for setting aside the impugned order. That is how, I am seized of the matter.

(6) After hearing the learned counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, to my mind, this petition deserves to be accepted in this context.

(7) What is not disputed here is that, the petitioner has borrowed a loan from respondent No. 5, for the purchase of chassis of the Truck in question and spent about Rs. 2,50,000 more from his own pocket on its body and made it road-worthy. The respondents were stated to have illegally snatched the Truck from him on 29th January, 2005, in the manner indicated here-in-above. The application under Section 91 read with Section 451 Cr.P.C. filed by the petitioner was dismissed by the trial Magistrate *vide* impugned order dated 8th December, 2008. The operative part of which is, as under :—

*“No doubt, the FIR under Sections 392, 506 and 120-B of the Indian Penal Code was registered against the accused persons on the complaint of Raj Kumar, but the police after thorough investigation have submitted the cancellation report. The accused have been summoned on the basis of protest petition filed by the complainant. At this stage, it is hard to tell whether the accused persons snatched the truck bearing No. HR-65-0475 forcibly and illegally and committed any offence. The said truck is not required by the court for any purpose. The application in hand under Section 91 read with Section 451 of the Criminal Procedure Code is misconceived and not maintainable. The case is being proceeded as the complaint case and both the parties are to prove their own case. Both the parties are claiming possession of the truck in question. But at this stage, it cannot be decipher, who is the lawful claimant. The truck has already been repossessed by the accused/respondent and sold by them. The truck cannot be called for under Section 91 of the Criminal Procedure Code. Further,*

*complainant filed an application dated 22nd January, 2007 for production of the truck which was withdrawn by the complainant on 23rd October, 2007. The criminal misc. petition No. 47759-M of 2007 was also filed by the complainant in Hon'ble the Punjab and Haryana High Court, which was got dismissed as withdrawn on 4th September, 2008. Moving the application for releasing Truck bearing No. HR-65-0475 before this Court and thereafter before the Hon'ble the Punjab and Haryana High Court is nothing, but the abuse of the process of the court and now again the complainant moved the application in hand. On this ground also complainant is not entitled to relief at this stage."*

(8) Meaning thereby, the main grounds, which appear to have been weighed with the trial Magistrate, in dismissing the application are that (i) it is yet to be decided whether the accused persons had snatched the Truck forcibly and illegally, (ii) the said Truck is not required by the court for any purpose, (iii) it cannot be decipher, at this stage, that who is the lawful claimant, (iv) CRM No. M-47759 of 2007 was dismissed as withdrawn and (v) moving the application for releasing the Truck before the trial Court and the High Court is nothing but the abuse of process of the Court.

(9) Having regard to the rival contentions of the learned counsel for the parties, here, to my mind, the trial Magistrate has slipped into a deep legal error in this relevant context. As is evident from the record that, this Court granted an opportunity to the petitioner to file the application. It is not a matter of dispute that the petitioner had borrowed a loan from respondent No. 5, *vide* agreement dated 16th October, 2002. According to the petitioner, he has already paid the due installments, but still the respondents have illegally and forcibly snatched his Truck. Hence, the factual matrix is not in dispute. Once, the Truck in question was forcibly snatched by the respondents from the possession of the petitioner, in that eventuality, he (petitioner) is entitled to its restitution.

(10) However, the celebrated argument of the learned counsel for the respondents that since the petitioner did not pay the entire loan amount, so the Truck was rightly taken into possession by them, is not only devoid of merit but misplaced as well. Assuming for the sake of arguments (though not admitted), if some amount of installments remains to be paid by the

petitioner, then the respondents have their efficacious civil remedy to recover the amount, as per agreement. But they cannot legally be permitted to take the law into their hands. Once, it is clear that the respondent has forcibly snatched the Truck from the possession of the petitioner, then naturally he is entitled to its possession during the pendency of the criminal proceedings. The mere fact that the Truck was sold, as urged on behalf of the respondents, cannot possibly be allowed to stand in the way of administration of criminal justice and the indicated illegal action of the respondents cannot be appreciated and encouraged, in any manner. The criminal Courts are not helpless in this context.

(11) An identical question arose before the Hon'ble Apex Court in case **Manager, ICICI Bank Ltd. versus Parkash Kaur and others**, (1). Having considered the provisions of hire purchase agreement, it was ruled that, "we are governed by the rule of law in the country. The recovery of loans or seizure of the vehicles could be done only through legal means. The Banks cannot employ gundas to take possession by force and the Bank should resort to procedure recognised by law to take possession of the vehicles, in cases, where the borrower may have committed default in payment of the installments, instead of taking resort to strong arm tactics of gundas." The above mentioned judgment is "*mutatis-mutandis*" is applicable to the facts of the present case and is the complete answer to the problem in hand. Therefore, I am of the view that the impugned order passed by the trial Magistrate, cannot legally be sustained.

(12) Moreover, the main criminal complaint and the cancellation report are still pending for the last about more than five years and the same have not yet been decided, for the reasons best known to the trial Magistrate.

(13) In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of fresh decision of the matter, the instant revision petition is hereby accepted. The impugned order dated 8th December, 2008 is set aside and the case is remitted back to the trial Magistrate, to decide the application under Section 91 read with Section 451 Cr.P.C. filed by the petitioner afresh, as expeditiously as possible, in the light of aforesaid observations as well as the main case, in accordance with law.

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**R.N.R.**