
(1999) 05 AHC CK 0215

Allahabad High Court

Case No: Criminal Revision No. 280 of 1996

Shafiq Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: May 17, 1999

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 451
- Motor Vehicles Act, 1988 - Section 39, 57
- Penal Code, 1860 (IPC) - Section 348, 406, 506

Citation: (2000) CriLJ 1350 : (2000) 2 RCR(Criminal) 240

Hon'ble Judges: M.C. Jain, J

Bench: Single Bench

Advocate: Satish Trivedi, for the Appellant; Rahul Sripat, A.G.A., P.N. Tripathi and V.K. Chaturvedi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.C. Jain, J.

The dispute in the present revision relates to Jeep No. BLD 7325. Its interim custody was allowed by the Magistrate concerned in favour of the applicant Shafiq Ahmad, rejecting the application of the opposite party No. 2 Hakeemuddin. On a revision filed by him, II Addl. Session Judge, Azamgarh quashed the order of the Magistrate and permitted the interim custody of the Jeep in his favour (Hakeemuddin). The applicant Shafiq Ahmad has felt aggrieved thereby and has preferred this revision.

2. Relevant facts lie within a short compass. Shafiq Ahmad was the original owner of the Jeep in question. On his F.I.R. a case under Sections 406 : 506 and 348, I.P.C. was registered at P.S. Deogaon on 15-3-1992 against certain persons including Hakeemuddin. The allegations were that the said Jeep was hired by Hakeemuddin

and two others on 11-3-1992 in the evening at Lalganj Bus Station for Rs. 700/- for taking it to Mirzapur. Two persons sent by Hakeemuddin took the Jeep with driver to Mirzapur on 12-3-1992 at about 9 P.M. After some time when Shafiq Ahmad reached his house from Lalganj, women-folk of his house informed him that a letter had been received that the Jeep had met with an accident at Mirzapur. He reached Mirzapur and located Hakeemuddin along with his associates and Jeep as also the driver of the Jeep. Hakeemuddin demanded Rs. 70,000/- from Shafiq Ahmad or asked him to sign the papers to transfer the Jeep to him. Shafiq Ahmad refused to abide by his command, but under threats to his life, he was forced by Hakeemuddin to sign the papers for the transfer of the Jeep to him. He was then let off. He with his driver returned to his home and lodged the F.I.R. at P.S. Deogaon on 15-3-1992 whereupon case No. 29 of 1992 was registered and the police submitted charge sheet, inter-alia, against Hakeemuddin. During investigation, the Jeep had been recovered by the police from a place in District Mirzapur which is the subject matter of interim custody.

3. The learned counsel for both the parties have been heard at length and I have also perused the record of the Court below which has been summoned for the disposal of this revision. The argument from the side of the applicant Shafiq Ahmad is that the learned Addl. Sessions Judge exceeded his jurisdiction by reappraising the evidence to reverse the order of the learned Magistrate who had rightly released the vehicle in his favour. Reliance has been placed on the case of Subhash Chandra v. State of U.P. 1992 JTC 491 wherein it was held that the charge sheet having been filed on the prima facie proof of the allegations of the informant to be true, there could not be enough justification to release the vehicle in favour of the accused.

4. The submission from the side of the opposite party No. 2 Hakeemuddin is that actually he had purchased the Jeep from Shafiq Ahmad for a consideration of Rs. 70,000/- and the papers for the transfer and registration of the Jeep in his name were signed by Shafiq Ahmad and submitted to transport authorities on 29-12-1991. It was ultimately registered in the name of Hakeemuddin on 25-3-1992. The Jeep was in his custody when the police seized it during investigation of the case, the foundation of which was the false F.I.R. lodged by Shafiq Ahmad on 15-3-1992. Shafiq Ahmad did not file any appeal u/s 57 of the Motor Vehicles Act to challenge the registration of the Jeep in favour of Hakeemuddin. It has been urged that the learned Addl. Sessions Judge passed just and legal order reversing the order of the learned Magistrate and permitting interim custody of the Jeep in favour of Hakeemuddin.

5. I have considered and weighed the respective submissions advanced from the two sides. It is a significant aspect of the matter that admittedly at present opposite party No. 2 Hakeemuddin is the registered owner of the Jeep. As per Section 39 of the Motor Vehicles Act, 1988, no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place

or in any other place unless the vehicle is registered in accordance with the provisions of the Act. No doubt, the applicant Shafiq Ahmad was the original registered person of the Jeep in question, but the last registered person is opposite party No. 2 Hakeemuddin. The applicant, not being the last registered person in respect of the Jeep, would not be able to ply it keeping in view the provision of Section 39 of the Motor Vehicles Act. It would be a wholly awkward and illegal situation that despite the opposite party No. 2 Hakeemuddin being the last registered person of the Jeep, applicant Shafiq Ahmad is permitted interim custody of the same and plies it without the authority of the registered person-Hakeemuddin opposite party No. 2. Moreover, the applicant Shafiq Ahmad did not file any appeal u/s 57 of the Motor Vehicles Act to challenge the registration of the Jeep in favour of Hakeemuddin. It may also be stated as a passing reference that under the Motor Vehicles Act, it is the person whose name is recorded in the registration certificate who will be held liable for the breach of the Act and for payment of compensation arising out of an accident. Subhash Chandra's case, referred to above, relied upon for the applicant would not come to his rescue because there is no discussion with regard to the vital question as to in whose name the registration of the vehicle involved was. The mere fact that charge sheet has been submitted against the opposite party No. 2 Hakeemuddin by the police would not disentitle him from the interim custody of the Jeep, he being the last registered person of the same with effect from 25-3-1992, documents for which purpose had been submitted to the transport authorities on 29-12-1991 viz., even before the lodging of the F.I.R. by the applicant Shafiq Ahmad. It is settled principle of law that where the civil Court has not yet decided the dispute regarding the ownership of a vehicle, the best course is that the vehicle in question should be released in favour of one in whose favour the vehicle is registered with the transport authorities. A similar view was taken by this Court in an unreported case Cri. Misc. Application No. 8433 of 1989 Madhusudan Tiwari v. State of U.P., decided on 30-7-1991. SLP No. 4200 of 1991 taken against that decision to the Supreme Court was dismissed on 17-12-1991. The impugned order passed by the learned Addl. Sessions Judge in revision also stands fortified by an earlier decision of this Court in the case of Dr. R.K. Jaiswal v. State of U.P. (21) 1984 ACC 257.

6. The above discussion leads me to the conclusion that the impugned judgment passed by the learned Addl. Sessions Judge is eminently just and proper as also in consonance with the provisions of the Motor Vehicles Act. He has rightly permitted the interim custody of the Jeep in favour of the opposite party No. 2 Hakeemuddin u/s 451, Cr.P.C.

7. I, accordingly, dismiss this revision with a direction to the Lower Court to expedite the trial. The stay order dated 1-3-1996 is discharged. The impugned judgment dated 24-2-1996 passed by II Addl. Sessions Judge, Azamgarh in Criminal Revision No. 150 of 1995 shall be implemented.