

(1984) 02 DEL CK 0015

Delhi High Court

Case No: Civil Revision Appeal No. 206 of 1983

Sohan Bir Singh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision: Feb. 13, 1984

Citation: (1984) 1 Crimes 889 : (1984) 26 DLT 5

Hon'ble Judges: Jagdish Chandra, J

Bench: Single Bench

Advocate: Ramesh Chandra, Bharati Anand, S.M. Suri and I.U. Khan, for the Appellant;

Judgement

Jagdish Chandra, J.

(1) Car bearing registration No. DHC-5479 belonging to one S. P. Suri was stolen. Car bearing registration No. UTX-1579 was, however, recovered from the possession of accused-petitioner Sohan Bir Singh and was taken into possession vide recovery memo dated 7.3.1980 from a workshop in Modi Nagar where it was lying for overhauling. This recovery had been effected on the basis of disclosure statement alleged to have been made on 6.3.1980 by co-accused Ram Kishan & Kishan who stated before the police while in custody that the car stolen from Jorbagh was being plied by petitioner Sohan Bir Singh after putting thereupon a fictitious registration No. UTX-1579.

(2) The petitioner Sohan Bir Sing was discharged on 25.2.1982 on the ground that the car recovered bore a number different from the one which was alleged to have been stolen and further that no one cared to prove that the numbers were changed. The following are the particulars of the car recovered from the petitioner :-

Registration No. UTX-1579 Engine No. CFC-703 Chassis No. 111-89328

These numbers are mentioned in the aforesaid recovery memo.

(3) There is a registration certificate which shows the transfer of car UTX-1579 in favor of the petitioner by Virender Singh s/o Kadam Singh and in this registration

certificate the particulars of the car are as under :-

Registration No. - UTX-1579 Old No. - DLJ-1569 350 Engine No. - OEC-703 Chassis No. - 111-69328 The date of transfer in favor of the petitioner - 15-9-1979

(4) The particulars of the stolen car are as follows :-

Registration No. - DHC-5479 Engine No. - Oem 02851 Chassis No. - 111-269927 The date of registration in favor of Oriental Fire and General Insurance Co. - 27-6-1974

(5) The learned magistrate who discharged the petitioner as also the learned Additional Sessions Judge vide his order dated 18-4-1983 did not order the delivery of the car subject-matter of the criminal case to anybody after the discharge of the petitioner as accused but ordered whereby parties were left free to seek their rights in respect of the said car in a civil court. It is against the aforesaid order of the learned Additional Sessions Judge that the petitioner Sohan Bir Singh has now come up in revision before the High Court.

(6) The contention of the learned counsel for the petitioner is that admittedly this car was recovered from his possession and so normally it ought to be returned to him especially when, as observed by the learned magistrate, no one cared to prove that the numbers of the car were changed. The learned counsel has invited my attention to the certificate of registration in favor of the petitioner in whose favor the car was transferred on 5-9-1979 by its previous registered owner Virender Singh s/o Kadam Singb. This certificate of registration pertains to car bearing registration No. UTX-1579; Engine No. OEC-703 and Chassis No. 111-69328. The learned counsel further contends that in the recovery memo the engine number had been mentioned as CFC-703 which is only the result of some confusion on the part of the officer preparing recovery memo as it is only a little different from engine No. OEC-703 mentioned in the aforesaid certification of registration in favor of the petitioner. Regarding the chassis number the learned counsel also points out that in respect of the same also there appears to be only a clerical mistake inasmuch as in the recovery memo the chassis number is mentioned as 111-89328 whereas in the aforesaid certificate of registration it is mentioned as 111-69328, there being only a clerical error in respect of only one figure. For these reasons he submits that this car was recovered not only from the possession of the petitioner but the petitioner is also the owner thereof for which reasons the car in question ought to have been restored to the petitioner under S. 452 of the Code of Criminal Procedure and that consequently the orders on that point passed by the two courts below were patently erroneous and resulted in miscarriage of justice. Section 452 Cr. P. C. reads as follows :-

"Order for disposal of property at conclusion of trial :

(1) When an inquiry or trial in any Criminal Court is concluded the Court may make such order as it thinks fit for the disposal,, by destruction, confiscation or delivery to

any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2)An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3)A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in Ss. 457, 458 and 459.

(4)Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5)In this section, the term "property" includes, in the case property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise

".

(7) On the other hand, Mrs. Bharti Anand, learned counsel representing the State emphasises that these proceedings are quite independent of the criminal proceedings which resulted and terminated in the discharge of the petitioner on 25-2-1982 in the court of the magistrate and so the disclosure confessional statement dated 6-3-1980 made by petitioner's co-accused Ram Kishan though not admissible in the criminal proceedings against the petitioner was admissible in the proceedings in hand. She has cited some authorities upon this point and the same are M/s Dhanraj Baldeokishan through its partner Dhanraj and another, v. The State, SandSmt.Bal Kaur v. The State of Himachal Pradesh 1976 CrL. J. 1928. When the co accused admitted that the car stolen from Jorbagh was being plied by the petitioner in Modi Nagar after changing the number thereof, this factor assumes significant importance as against the claim of the petitioner for the restoration back of the car in question. It is also worthwhile to note that even though the criminal case was registered as far back as 7-3-1980 regarding the theft of this car, the petitioner kept quiet for a considerable time thereafter and it was only for the first time on 1-3-1982 that he made an application before the magistrate concerned for giving this car to him on super Dari and, as contended by the learned counsel for Sushil Kumar respondent No. 3, the petitioner took advantage only of the order of

discharge passed by the magistrate on 25-2-1982 and thereafter made the application for super Dari in respect of this car on 1-3-82. So, even though when property is seized from an accused person and he is acquitted or discharged, the property should ordinarily be returned to him but this rule is not an absolute one and admits of exceptions under the circumstances of each particular case. Smt Bal Kaur v. The State of Himachal Pradesh, (supra) and [Muthiah Muthirian Vs. Vairaperumal Muthirian,](#) are the authorities in support of this proposition of law. In both these authorities S. 517 of the earlier Code of Criminal Procedure, 1898 corresponding to Section 452 of the new Code of Criminal Procedure, 1973 was under consideration. The former authority laid down as follows :

"When property is seized from a person and he is acquitted at the trial, the property should ordinarily be returned to him. But this cannot be taken as hard and fast rule and it must depend upon the circumstances of each case and the accused cannot claim as of right the return of the article seized from his custody or possession. Therefore, the Court will have to inquire u/s 517 to see whether a case is made out for confiscation of the article though the accused is acquitted."

(8) The latter authority has observed as under:-

"In normal circumstances, on acquittal or discharge, the property would be returned to the person from whom it was seized. But when there are circumstances showing that the culprit has not claimed the property as his specifically and when there are also no grounds to hold that the property could belong to him, and the question of ownership has not been gone into in the judgment and decided one way or the other and the discharge or acquittal is based upon inadequacy or doubtfulness of the proof offered, it would be unreasonable to return the stolen property to the accused person."

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Thus, even though the petitioner claims the restoration of the car in question not only for the reason of its having been seized from him and his having been discharged from the criminal case of theft, as also on the ground of alleged ownership thereof, the aforesaid points regarding admissibility and relevance of the disclosure statement dated 6-3-1980 made by petitioner's co accused Ram Kishan to the police as also the petitioner not putting-forth his claim to the car for quite a long time, go to make up circumstances which render it unreasonable to return this car to the petitioner merely because it had been seized by the police from his possession. Under these circumstances, there appears to be no justification for any interference by the High Court in the concurrent direction of the two courts below for getting the rights of the parties adjudicated upon in a civil court in respect of the car in question. The revision petition is, Therefore, dismissed. Till the decision of the matter decided by the civil court of competent jurisdiction the bond executed by respondent No 3 Sushil Kumar in his capacity as super Dari shall continue.