

Shafaqat Ali Sheikh vs Union Territory Of J&K And Others on 26 April, 2022

Author: Rajnesh Oswal

Bench: Rajnesh Oswal

HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU

Reserved on 13.04.2022
Pronounced on 26.04.2022

WP(C) No. 1014/2021(0&M)

Shafaqat Ali Sheikh

.....Appellant(s)/Petitioner(s)

Through: Mr. Ajay Gandotra, Advocate

Vs

Union Territory of J&K and others

..... Respondent(s)

Through: Mr. Arvind Khajuria, Advocate for No.4

Mr. Rajnish Singh Parihar, Advocate for No.
5

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. At the very first instance, learned counsels appearing for the respondents submitted that the present writ petition is not maintainable, as such, arguments advanced by the learned counsel for the parties were heard.

2. In this writ petition, the petitioner has prayed for the following reliefs:

(a) "Writ of Certiorari quashing Communication No. 310720210429 dated 31.07.2020 of respondent No. 6, by virtue of which, the claim of the petitioner registered under No. MOT09560940 against Policy of Insurance has been declined based upon the alleged violation of section 39 or section 43 of Motor Vehicle Act.

(b) Writ in the nature of Mandamus directing Respondent No. 5 and/or respondent No. 6 to indemnify the total loss of vehicle (own damage) and for the liability which the petitioner may suffer under the provisions of Motor Vehicles Act/Employees Compensation Act viz. loss of third party owing to respondent No. 5 having not adhered to and complied with the requirement of such section (1) and (6) of section 41 of the Motor Vehicle Act.

(c) Writ in the nature of Mandamus directing Respondents No. 1, 2 and 3 to cancel the Trade Certificate of Respondent No. 5, for it having illegally and unlawfully retained the amount paid by the petitioner for Temporary and Permanent Registration of vehicle as well as Token/Road Tax and other fee admissible under Motor Vehicle Act before taking delivery of vehicle uptill 26.12.2019 some time after the vehicle met with an accident at 7:45 AM dated 26.12.2019.

(d) Writ in the nature of Mandamus commanding respondent No. 1 to 3 to impose penalty upon respondent No. 5 as per mandate of sub clause (2) of section 192(B) of Motor Vehicle Act and for registration of F.I.R. under relevant provisions of penal law against directors and incharge of respondent No. 5 and investigation whereof by Crime Branch.

(e) Writ in the nature of Mandamus directing respondent No. 4, the company registered under companies Act to withdraw the dealership of respondent No. 5 for it having act against the trade to the disadvantage of the legal rights of petitioner."

3. It is stated that the petitioner had purchased a vehicle (Bolero SLX) for an amount of Rs. 8,50,542/- from the respondent No. 5 after having availed loan to the tune of Rs. 6.50 lacs from the J&K Bank Branch Binoon, Kishtwar. It is stated that the respondent No. 5 was required to register the vehicle before delivery and even to insure the vehicle before the delivery, therefore, Rs. 95,400/- for obtaining insurance policy and Rs. 30,000/- for fee of RTO was also paid. The vehicle was insured with the respondent No.

6. It is stated that the insured vehicle of the petitioner suffered total loss/damage in an accident that took place on 26.12.2019 at Thathri, District Doda, when it fell down from National Highway approximately 300 ft. in Chenab River resulting into injuries and death of the occupants. It is stated that the petitioner after the occurrence took place, lodged a claim with the respondent No. 6 towards the damage of vehicle and loss of human life, but the respondent No. 6 vide its letter dated 31.07.2020 declined to settle the claim due to the reason that the vehicle was not duly registered as on the date of loss and also conveyed to the petitioner that the temporary registration of vehicle was after the time and date of occurrence of accident, as the Tax was also not paid at the time of loss.

4. It is stated that the respondent No. 5 claimed to have possessed valid Trade Certificate as mandated under Rule 35 of the Rules framed under the Motor Vehicle Act and therefore was not bound to deliver the vehicle to the petitioner without registration whether temporary or permanent, however, delivered the vehicle on 11.11.2019 after receiving the entire amount in advance over and above the cost of vehicle from petitioner and petitioner received the delivery of the vehicle believing that the amount so received for registration of new vehicle has been transmitted to the office of respondent No. 3, wherefrom the vehicle was required to be registered.

5. It is stated by the petitioner that he was shocked to know that the vehicle was not duly registered with respondent No. 3 and also the tax was not paid for registration of the said vehicle, whereas it is very much clear from the transaction made by the petitioner with the respondent No. 5 that he paid every amount asked for, to respondent No. 5 as requisite fee for the registration of the vehicle with the office of the respondent No. 3 and even the petitioner paid the tax amount to respondent No. 5

on 11.11.2019 which it seems was not paid/deposited by respondent No. 5 with respondent No. 3 till 26.12.2019.

6. The contention of the petitioner in the present writ petition is that the amount had been received by the respondent No. 5 from the petitioner at the time of handing over the possession of the vehicle was illegally retained by the Director of the respondent No. 5 till 26.12.2019 whereas it was legal and statutory duty of the respondent No. 5 to deposit the said amount with the respondent No. 3 on the very date of the delivery of the vehicle to the petitioner as per the mandate of the Act and the rules framed there under, therefore, the Trade Certificate of respondent No. 5 is required to be cancelled by the registering authority.

7. It is also stated by the petitioner that the plea of respondent No. 6 of being not liable to indemnify the petitioner as stated in communication dated 31.07.2020 is legally unsustainable because there was no laxity, legal or otherwise on the part of the petitioner.

8. Mr. Gandotra, learned counsel for the petitioner argued that as the respondent No. 5 has not complied the statutory requirements, the writ petition is maintainable.

9. Learned Counsels for the respondent Nos. 4 and 5 argued that the writ petition has been filed for settlement of private disputes as such the same is not maintainable.

10. The whole dispute in the present writ petition is with respondent No. 5 and

6. The respondent No. 4 is the manufacturer of the vehicle whereas respondent No. 5 is the seller of the vehicle and the respondent No. 6 is the insurance company. The respondent Nos. 4, 5 and 6 are the private entities and even the nature of the reliefs as prayed for by the petitioner in paras

(a), (b) and (e) of the prayer part fall within the realm of adjudication of private disputes for which the present writ petition is not maintainable. So far as reliefs (c) and (d) are concerned, from the record, it is not evident that the petitioner has approached the respondent Nos. 1 to 3 for the reliefs as prayed for in paras (c) and (d) of the prayer. Even the legal notice dated 15.12.2020 is addressed to private entities i.e. respondent No. 5 with a copy to the respondent Nos. 1 and 2 and in the said notice, it has been stated that if the petitioner is not reimbursed for the loss suffered by him, then he will seek the registration of criminal case under the relevant provisions of law and besides initiating proceedings for revocation/cancellation of Trade Certificate of M/s Shuhul Automobile Private Limited, if need arise. The petitioner has nowhere approached the respondents 1 to 3 for redressal of his grievance, if any.

11. In view of all what has been discussed above, this Court is of the considered opinion that the present writ petition is not maintainable, as such, the same is dismissed. The petitioner is left free to avail the appropriate remedies as available under law.

(Rajnesh Oswal) Judge JAMMU 26.04.2022 Rakesh Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No