
(2024) 12 JH CK 0057
In the Jharkhand High Court
Case No : Writ Petition (Cr.) No. 849 Of 2023

Amar Prakash

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 16-12-2024

Acts Referred:

Indian Penal Code, 1860 — Section 323, 406

Citation : (2024) 12 JH CK 0057

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Rahul Dev, Bipin Bihari, Bhaskar Trivedi, Priyanshu Nilesh, Ragini Ojha, Manish Kumar, Sumit Prakash

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. This petition has been filed for quashing of the entire criminal proceeding including the order taking cognizance dated 22.6.2023 passed in Complaint Case No.531 of 2023 dated 01.06.2023 whereby the learned court has been pleased to take cognizance under sections 323 and 406 of the Indian Penal Code, pending in the court of learned Judicial Magistrate 1st Class, Ramgarh.

2. The complaint case was filed alleging therein that the respondent no.2 was offered by the authority of Choramandalam to purchase a vehicle for which he has to pay the installment after a gap of three months and if he will get any problem then he may be given time as he was the old customer of Choramandalam. It is alleged that respondent no.2 refused to borrow the loan and to take vehicle which is old on finance. He stated that on 29.11.2022 he was led at Chatra and two vehicles were provided him on finance via registration nos. JH13H0224 and JH13H0506. The said vehicles were in damage condition and several parts were damaged. To repair the vehicle he has to bear a cost of Rs.14,00,000/-. He informed the authorities of the said company about

expenses, then they provided time to earn thereafter the officers were transferred from there. It is further alleged that the authorities had visited Patratu to meet him and they stated that their predecessors have given him the vehicle at very easy process. Further, if he wanted to run the vehicle then he must have to pay Rs.1,00,000/- of each vehicle then they will not disturb him. Thereafter, the complainant made an application for providing time to pay the installment as a lot of expenses were made in repairing of vehicles and he was given time till 2023. On failure of installment of March, 2023 accused created hurdle at his house and demanded cheque with assurance that when the amount will be deposited in his account that will be reimbursed but the cheque were dishonoured without his consent. He paid only two installments of both vehicles by taking loan. The complainant further alleged that on 31.05.2023 accused seized his two vehicles and directed to pay installment then the vehicles will be released. Thereafter an amount of Rs.50,000/- was snatched from him stating that said amount has been caused in searching the vehicles and also stated that he has no proof of the amount he has given and the complainant was assaulted and abused by the men of the accused persons.

3. Learned counsel for the petitioners submits that the petitioners happened to be employees of Cholamandalam Investment and Finance Company Limited. He submits that two vehicles have been purchased by the respondent no.2 and pursuant to the request made by the respondent no.2 the finance agreement was executed between Cholamandalam Investment and Finance Company Limited and the respondent no.2 contained in Annexure-4. He submits that after entering into the agreement the said company financed Rs.44,95,300/- for purchasing of two vehicles bearing registration nos.JH13H0224 and JH13H0506. The loan was sanctioned on 30.11.2022 for the same amount and the installment was fixed at Rs.1,04,600/- per month but the payment was not made and in view of that, by way of Annexure-5 dated 29.04.2023 the said company made a notice upon the respondent no.2 to pay the installments otherwise, the vehicles will be re-possessed in light of Clause-(ii) of the loan agreement. He submits that in spite of that, respondent no.2 has not taken any steps and as such, the said company has informed the concerned police station about the steps being taken for re-possession and pursuant to that the re-possession has been made and after re-possession the police was intimated about the same. He submits that only two installments have been said to be paid later on, however, the account was already declared N.P.A as by that time, five EMIs were due. He further submits that in the meantime, respondent no.2 has also filed two cases before the District Consumer Forum for the same allegation for compensation. He submits that in view of that, if the case is made out, that is for deficiency in service, however, criminal case has been lodged and in view of that, this petition may kindly be allowed.

4. Mr. Manish Kumar, the learned counsel appearing on behalf of the respondent State submits that intimation to the police is there however the learned court on the complaint has been pleased to take cognizance.

5. Leaned counsel appearing on behalf of the respondent no.2 opposed the prayer and submits that two installments have been paid and inspite of that the vehicles have been taken away by the agent of the said company namely M/s G.S. Services. He submits that allegations are there and in view of that, the learned court has rightly taken cognizance.

6. In view of above submissions of the learned counsels appearing on behalf of the parties, the Court has gone through the materials on record and finds that admittedly loan of Rs.44,95,300/- was taken by the respondent no.2 for purchase of two vehicles by way of an agreement contained in Annexure-4. Clause-(ii) of the said agreement provides that if failure in payment of the EMI is there, the company can re-possess the vehicles and recover the liabilities. It is an admitted position that EMIs were not paid, however, the statement is made that two EMIs have been paid later on. Even if two EMIs are said to be paid later on, the said loan account was already declared NPA and further the respondent no.2 has already availed the remedy in the Foras by way of filing two consumer cases which further strengthens the case of the petitioner as respondent no.2 has already realized that if the case is made out that is deficiency in service and in view of that, he has filed later on two consumer cases which has not been denied by the learned counsel for the respondent no.2. In the case of Charanjit Singh Chadha and Others v. Sudhir Mehta, reported in (2001) 7 SCC 417 it was held that the element of sale fructifies when option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then had been hired. In view of the said law laid down by the Hon'ble Supreme Court in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is re-possessing the goods owned by him. In the case of Anup Sarmah v. Bhola Nath Sharma and Others reported in (2013) 1 SCC 400 at paragraph no.6, 7 and 8 of the said judgment, it has been held as under:

6. In Charanjit Singh Chadha v. Sudhir Mehra [(2001) 7 SCC 417 : 2001 SCC (Cri) 1557] this Court held that recovery of possession of the vehicle by the financier owner as per terms of the hire-purchase agreement, does not amount to a criminal offence. Such an agreement is an executory contract of sale conferring no right in rem on the hirer until the transfer of the property to him has been fulfilled and in case the default is committed by the hirer and possession of the vehicle is resumed by the financier, it does not constitute any offence for the reason that such a case/dispute is required to be resolved on the basis of terms incorporated in the agreement. The Court elaborately dealt with the nature of the hire-purchase agreement observing that in a case of mere contract of hiring, it is a contract of bailment which does not create a title in the bailee. However, there may be variations in the terms and conditions of the agreement as created between the parties and the rights of the parties have to

be determined on the basis of the said agreement. The Court further held that in such a contract, element of bailment and element of sale are involved in the sense that it contemplates an eventual sale.

"8. ... The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then had been hired." (Charanjit Singh Chadha case [(2001) 7 SCC 417 : 2001 SCC (Cri) 1557] , SCC p. 422, para 8)

While deciding the said case, this Court placed reliance upon its earlier judgments in Damodar Valley Corpn. v. State of Bihar [AIR 1961 SC 440] , Instalment Supply (P) Ltd. v. Union of India [AIR 1962 SC 53] (SCC p. 744, para 8), K.L. Johar & Co. v. CTO [AIR 1965 SC 1082] , (AIR p. 1090, para 17) and Sundaram Finance Ltd. v. State of Kerala [AIR 1966 SC 1178] .

7. In view of the above, the law can be summarised that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is repossessing the goods owned by him.

8. If the case is examined in the light of the aforesaid settled legal proposition, we do not see any cogent reason to interfere with the impugned judgment and order. The petition lacks merit and, accordingly, dismissed.

7. In view of the above judgments of Hon'ble Supreme Court the case of the petitioners is fully covered and further the petitioners happened to be the employees of Cholamandalam Investment and Finance Company Limited and the said company is not made accused and if such a situation is there, vicarious liability cannot be fastened against the employees of the company.

8. In view of above, entire criminal proceeding in connection with Complaint Case No.531 of 2023, pending in the court of learned Judicial Magistrate 1st Class, Ramgarh is hereby quashed.

9. This petition is allowed and disposed of.

10. It is made clear that so far as the pending consumer matters are concerned, that will be decided in accordance with law without prejudice to this order as this order has been passed only considering the criminal aspect of the matter.