

(2007) 06 JH CK 0040

In the Jharkhand High Court

Case No : Cr.M.P. No. 581 of 2004

Anand Kumar @ R. Anand, Manoj Kumar @ Manoj Kumar Sah
and P.K. Jha @ Prasann Kumar Jha

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 15-06-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 392

Citation : (2007) 2 BLJR 2409 : (2007) 4 JCR 309

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Advocate : R. Mukhopadhyaya, for the Appellant; Manoj Kr. Sah, for Opposite Party No. 2 and , Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Petitioners have prayed for quashing the entire criminal proceeding pending against them in the court of the Chief Judicial Magistrate, Godda vide P.C.R. Case No. 691 of 2003 and also the order dated 24.02.2004 passed in the case by the learned court below, whereby cognizance for the offences u/s 392 of the I.P.C. was taken against the petitioners.

2. The main ground advanced in support of the prayer is that the case against the petitioners has been filed by the complainant entirely on false and frivolous allegations and by suppressing material facts that the vehicle, in question, was purchased under a Hire Purchase Scheme financed by M/s. Ashok Leyland Finance Ltd., Dhanbad on the terms and conditions stipulated in the Hire Purchase Agreement dated 31.05.2002 and re-possession of the vehicle by the financier on account of failure of the complainant to pay the monthly installments towards repayment of the loan amount, could at best be a civil dispute and cannot under any circumstance invite any criminal liability against the petitioners and therefore, the continuance of the criminal proceeding against the petitioners would amount to abuse of the process of the Court.

3. Heard the learned Counsel for the petitioners and the learned Counsel for the Opposite Parties.

4. For better appreciation of the grounds, reference to the facts, leading to the present application, may be had.

The case was registered against the petitioners on the basis of the complaint filed by the Opposite Party No. 2, Santosh Kr. Bhagat before the learned court below on 08.12.2003, alleging, therein that he had purchased a Mahindra Passenger Carrier Van from the dealer, namely, M/s. Himatsingka Brothers (accused No. 1) on 13.05.2002. The finance for the purchase of the vehicle was extended by M/s. Ashok Leyland Finance Ltd., Dhanbad under a Hire Purchase Agreement. Under the terms of the Hire Purchase Agreement, the complainant had obtained a total sum of Rs. 2,25,000/- from the financier and the complainant was required to repay the loan amount together with the interest accrued thereon by way of monthly installments of Rs. 11,500/- from the date of purchase till 01.05.2004. The complainant claims that he had paid the regular monthly installments till 29.10.2003 but due to financial problems, he could not pay the installments in the subsequent month of November, 2003. The complainant alleges that without any prior notice whatsoever, all the accused persons approached him at Gandhigram in the district of Godda and forcibly snatched away the vehicle alongwith its keys from the complainant, claiming that the nature of service provided by the financier, being arbitrary and illegal, petitioners are liable to face trial for the offence u/s 392 I.P.C. The complainant adds that he is entitled to the return of the vehicle or the refund of the entire amount paid by him alongwith interest accrued thereon besides a cost of litigation of Rs. 5,000/-.

5. Learned Counsel for the petitioners while elaborating the grounds explains that the petitioner Nos. 1 and 2 that admittedly the complainant had purchased the vehicle from the authorized dealer, namely, M/s. Himatsinghka Brothers, Dumka (accused No. 1), the total cost of the vehicle was Rs. 3,80,186/- and part of the price was financed by M/s. Ashok Leyland Finance Ltd., Dhanbad to the complainant under a Hire Purchase Agreement signed and executed by the complainant on 31.05.2002. Under the terms of the Hire Purchase Agreement, the complainant was merely the hirer while the owner of the vehicle was the financier. Referring to Annexure-2, which is the receipt in respect of the purchase of the vehicle from M/s. Himatsinghka Brothers, learned Counsel explains that the receipt clearly stipulates that purchase of the vehicle was under the Hire Purchase Agreement with Ashok Leyland Finance Ltd., Dhanbad. Learned Counsel adds further that admittedly, the complainant had obtained a loan of Rs. 2,25,000/- from the financier, which he was to repay alongwith interest accrued thereon in monthly installments of Rs. 11,500/- and the entire dues were to be cleared by 01.05.2004. Admittedly the borrower, namely, the complainant paid the installments till the month of October, 2003, where after he failed to make any payments whatsoever and thereby rendered himself liable for the breach of

contract and under the terms of the Hire Purchase Agreement, the financier had absolute authority to repossess the vehicle on the failure of the borrower to pay any single installment. Learned Counsel explains further that the financier had taken repossession of the vehicle from the complainant and a written intimation dated 08.12.2003 to this effect was also given to the complainant calling upon him to pay off the overdues amounting to Rs. 46,201/- at the earliest. Instead of paying the dues, the complainant preferred a case before the Consumer Forum on the same grounds, alleging improper service on the part of the financier and claiming return of the vehicle and in the alternative, to refund the sum of Rs. 3,81,000/- alongwith interest @ 16 per cent per annum besides litigation cost of Rs. 5,000/-. Learned Counsel explains further that the dealer from whom the vehicle was purchased, was already paid the price and had no further concern with the complainant or with the financier since the date of purchase and delivery of the vehicle to the complainant. Learned Counsel explains further that since after the date of purchase, whatever relations subsisted was between the complainant and the financier only by virtue of the Hire Purchase Agreement executed by and between them and, therefore, impleading the dealer as accused No. 1 in this case is without any basis and wholly misconceived and with intent to apply undue pressure upon the dealer with mala-fide intentions. Learned Counsel adds that even otherwise the entire transaction between the complainant and the financier could at best invite a civil dispute and civil liability but under no circumstances, can the same invite any criminal liability against any of the present petitioners. Learned Counsel adds that in absence of its essential ingredients, the offence u/s 392 I.P.C. is not made out at all and the learned court below having failed to appreciate the facts and circumstances in proper perspective, had wrongly proceeded to take cognizance against the petitioners merely on the basis of wild, vague and imaginary allegations on the complainant.

6. Learned Counsel for the Opposite Party No. 2 on the other hand submits that even if the complainant had failed to pay the installment towards repayment of his loan to the financier, it gave no authority either to the financier or to the petitioners, who represented the financier and the dealer of the vehicle, to resort to forcible methods for taking repossession of the vehicle.

7. Considering the averments and the allegations in the complaint petition, the admitted facts are that with the finance obtained from the financier, namely, M/s. Ashok Leyland Finance Company Ltd., the vehicle was purchased from the dealer, namely, petitioner No. 1. The complainant had entered into a Hire Purchase Agreement with the financier in terms of which the ownership of the vehicle vested with the financier and the complainant was the hirer of the vehicle and the complainant had to repay the borrowed amount to the financier in fixed monthly installments. It is also admitted that the entire price of the vehicle was paid to the dealer, namely, the petitioner No. 1 where after the delivery of the vehicle was given to the complainant. It is also admitted that the complainant had though continued to pay the monthly amounts of payment towards repayment of loan to the financier but he had failed to pay the installment for the month of

November, 2003. It is also admitted that under the terms of the Hire Purchase Agreement, the financier had the authority to take repossession of the vehicle in the event of non-payment of any one installment by the borrower. It is also admitted that the financier had taken repossession of the vehicle from the complainant in terms of the Hire Purchase Agreement and intimation to this effect was given by the agent of the financier, namely, petitioner No. 2 though he has wrongly been described as the agent of the petitioner No. 1. The complainant has made a grievance over the manner in which the repossession of the vehicle was taken from him and in terms stated by him, "the Opposite Party suddenly appeared at Gandhigram and snatched away the vehicle, captured the key and took away the same in presence of witnesses". Though the words "snatched" and "captured" have been used to describe the manner, but it hardly suggests the use of any force against the complainant. Even otherwise, the description of the manner of taking repossession of the vehicle as stated in Para 3 of the complaint petition and reiterated by the complainant in his statement on solemn affirmation are vague and unspecific and a general accusation has been made against the "Opposite Parties", namely, the accused persons, including the firm, namely, M/s. Himatsinghka Brothers. It further appears from the contents of the complaint petition that the main grievance of the complainant is that for mere non-payment of a single installment for the month of November, 2003, the financier should not have taken repossession of the vehicle that too without giving prior notice to the complainant and his further grievance is that the financier ought to have considered his financial problems and given time to him for repaying the outstanding dues.

It also appears that for the same cause of action, the complainant had filed a case before the Consumer Forum, alleging fault in the services rendered by the financier.

8. Two things do stand out from the facts of the case. Firstly, that the dealer, namely, petitioner No. 1 Himatsinghka Brothers could have no concern whatsoever with the complainant or with the vehicle, since after the date when the vehicle was sold and price thereof was admittedly received by the dealer and possession of the vehicle was delivered to the complainant. It is not the case of the complainant that petitioner No. 1 was appointed as the agent of the financier either for the realization of the loan amount from the complainant or for taking repossession of the vehicle on behalf of the financier. Under such circumstances, impleading the dealer as accused-petitioner No. 1, is without any reasonable basis. The second aspect is the fact that the financier had taken repossession of the vehicle in exercise of its right under the terms of the Hire Purchase Agreement and an intimation of taking repossession of the vehicle with a direction to the complainant to pay off the outstanding dues and take back the vehicle, was given to the complainant by the representative of the financier. This implies that there was no dishonest intention on the part of the financier either for usurping the vehicle or for making any wrongful gain for itself.

9. In the case of Charanjit Singh Chadha and Others Vs. Sudhir Mehra, , while considering a similar situation, where repossession of the goods by the financier under a Hire Purchase Contract was taken, the Supreme Court has held that the recovery of possession of the goods by the financier as per terms in the Hire Purchase Contract, does not amount to criminal offence. It was also observed that when the hirer defaults in payment of the installment of the borrowed amount in respect of the amount/goods, the agreement specifically provided that the financier was entitled to repossess the goods in case of default and their agents were authorized to enter into the premises of the hirer for the purpose of taking repossession and the financier had actual possession of the vehicle, no offence was made out against the financier. The Supreme Court further observed that the act of the financier of taking repossession of the vehicle, which was earlier delivered to the hirer under the Hire Purchase Agreement, will not amount to theft as the vital element of "dishonest intention" is lacking. The essential element of "dishonest intention" to constitute an offence of theft cannot be attributed to a person exercising his rights under the agreement entered into between the parties as he may not have the intention of causing wrongful gain for himself or causing loss to the hirer.

10. It appears that besides filing a complaint in the Consumer Forum against the financier, the complainant/Opposite Party No. 2 was ill-advised to lodge a criminal proceeding by filing the instant complaint petition against not only the financier and the agent of the financier but also against the dealer from whom the vehicle was purchased although the dealer had no concern whatsoever with either the complainant or the vehicle since the vehicle was sold away by the dealer on receipt of payment of the entire price thereof.

11. For the reasons aforesaid, I find merit in this application. Accordingly, the prayer of the petitioners for quashing the entire criminal proceedings including the impugned order of cognizance for the offence u/s 392 I.P.C. is allowed. The entire criminal proceedings against the petitioners vide T.R. Case No. 509 of 2004 pending in the court of the Chief Judicial Magistrate, Godda including the impugned order of cognizance as passed in the aforesaid case is hereby quashed.