
(2010) 11 AHC CK 0333
In the Allahabad High Court
Case No : Criminal Revision No. 2032 of 2003

Ashok Leyland Finance Limited	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 394, 411

Citation : (2011) 1 ACR 1162 : (2011) 1 ADJ 61 : (2011) CriLJ 2011

Hon'ble Judges : Ashok Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ashok Srivastava, J.—This revision has been filed by the revisionist feeling aggrieved by the order dated 8.4.2003 passed by Special Judge (Dacoity Affected Areas), Jhansi.

2. The property in dispute is a motor vehicle which is a jeep having its Registration No. UP-93 H 2870. This jeep is the case property of Case Crime No. 529/03 u/s 394/411 I.P.C., PS. Nawabad, Jhansi. It appears that during the course of investigation, the said vehicle was recovered by the police. The opposite party No. 2, Kamlesh Kumar Dubey, and the revisionist applied to the learned lower Court for custody of the vehicle during pendency of the case. After hearing both the parties and the State, the learned lower Court was of the opinion that opposite party No. 2 is entitled to the custody of the vehicle and, therefore, he released the vehicle to the custody of opposite party No. 2 on certain terms and conditions. Feeling aggrieved by this order, the present revision has been filed.

3. When this revision was listed for hearing, no one was present even in the revised from the side of opposite party No. 2. Learned Counsel for the revisionist and learned A.G.A. were present who were heard in detail.

4. It is the admitted case that the vehicle in question is the case property of Case

Crime No. 529 of 2003. It is also admitted that opposite party No. 2 is the registered owner of the vehicle but his ownership is not absolute. From the perusal of the Hire Purchase Agreement, it is evident that opposite party No. 2 had taken a loan of about 2 lacs from the revisionist and he purchased the said vehicle from this loan. From the perusal of the registration certificate it is clear that the registration certificate was subject to Hire Purchase Agreement with Ashok Leyland Finance Ltd. This fact has been clearly mentioned by the R.T.O. concerned at the foot of the registration certificate. The learned lower Court has mentioned in its impugned order that opposite party No. 2 had paid a sum of Rs. 2,11,100/- to the Finance Company. It has been further mentioned that the said company has not given a receipt for a sum of Rs. 25,000/- which was actually paid by opposite party No. 2 to the revisionist. On the other hand it was contended before the learned lower Court from the side of the revisionist that a sum of Rs. 36,000/- is due to be paid to the revisionist from the side of opposite party No. 2. The learned lower Court has specifically mentioned in his order that all these facts are admitted. Despite he released the vehicle to the custody of opposite party No. 2 only on the basis that opposite party No. 2 is the registered owner of the said vehicle. It appears that the learned Judge did not peruse the entire registration certificate with caution. Probably he forgot to see the endorsement made on the said registration certificate by the R.T.O. that this registration certificate was subject to the Hire Purchase Agreement which is indicative of the facts that ownership of the said vehicle was subject to the terms and conditions agreed into between the hirer and owner. It also appears that he did not care to take notice of the fact contained in the agreement that it was the revisionist who was the owner of the said vehicle and opposite party No. 2 was only a hirer as per terms and conditions. He should have taken notice of the fact that registration certificate produced before him was not absolute in favour of opposite party No. 2 but it was a conditional certificate and the conditions were contained in the relevant Hire Purchase Agreement.

5. During the course of argument from the side of the revisionist my attention has been drawn towards the judgments reported in

(i) Manipal Finance Corporation Ltd. v. T. Bangarappa and Anr.

(ii) Charanjit Singh Chadha v. Sudhir Mehra LXIII 2001 ACC 691 SC;

(iii) M/s. B.C.L. Financial Services Ltd. Vs. State of Maharashtra and others,

(iv) Ashok Leyland Finance v. State of Rajasthan 1996 RCC 151 and copy of the judgment dated 28.11.2000 passed in Criminal Revision No. 345 of 1996, Sundaram Finance Ltd. v. Mohd. Abdul Wakeel and Anr., given by the High Court of M.P. at Jabalpur. My attention has been drawn towards the various portions of these judgments.

6. In Charanjit Singh Chaddha's case (supra) the Apex Court has said that "the hire purchase agreement in law is an executory contract of sale and confers no right in rem on hirer until the conditions for transfer of the property to him have

been fulfilled." In this context the Apex Court has further held that "the repossession of goods as per the term of the agreement may not amount to any criminal offence." If we appreciate the spirit of the law laid down by the Apex Court in Manipal Finance Corpn. Ltd. 's case (supra) it will be found that it is the finance company who is the real owner and entitled to the possession of the property, as it advanced loan to the hirer, till the terms and conditions of the Hire Purchase Agreement are complied with in all respects. Similar opinions have been expressed by the Nagpur Bench of Bombay High Court and High Court at Jabalpur in M.P.

7. Keeping in view the above position of law, it is evident that when the order impugned was passed by the learned lower Court, the revisionist was the real owner of the vehicle in question and, therefore, by not releasing the same to the custody of the revisionist, the learned lower Court has committed an illegality. Therefore, the said order cannot be allowed to sustain and it should be quashed.

8. The revision is allowed. The impugned order dated 8.4.2003 is quashed and set aside. The learned lower Court is directed to take back the possession of the vehicle and release it to the custody of the revisionist and if need be assistance of the police may be taken.

This order will not prejudice the civil rights of the parties, if any.

The learned Judge is directed to release the vehicle, after its requisition, to the custody of the revisionist on such terms and conditions as he thinks fit. This exercise should be completed within a period of 60 days from the date a certified copy of this order is produced before him.