
(1991) 04 OHC CK 0029
In the Orissa High Court
Case No : Criminal Appeal No. 62 of 1984

B. Venkata Ramana

APPELLANT

Vs

V. Bhadrappa and Others

RESPONDENT

Date of Decision : 02-04-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 379

Citation : (1991) 2 OLR 9

Hon'ble Judges : L. Rath, J

Bench : Single Bench

Advocate : R.K. Patra, for the Appellant; A. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

L. Rath, J.—The appellant on whose complaint the respondents faced trial u/s 379/34 IPC has come before this Court challenging the judgment of acquittal. It is his case that he was the owner in possession of a pick-up diesel van bearing registration No. ORK 3201 having purchased the same at a price of Rs. 33,000/- from the Secretary, Seva Samaj, Rayagada on 28-12-1977, the sale agreement being Ext. 1. For the purpose of making the purchase .he had obtained a loan of Rs. 30,000/- from Viswapnya Finance Corporation, Kakinada of which the respondent No. 1 is the partner and the respondent Nos. 2 and 3 are the brokers. The loan was re-payable in 30 installments . He had already repaid more than half of the amount and was plying the vehicle as a contract carriage. I he vehicle had been made off-road since 14-1979 as needing some repairs and had been kept in the vacant space of the original accused No. 1 who died before framing of charge, with his permission. But the vehicle was taken away by the respondents which he discovered on 6-2-1980. His information lodged at the police station on 7-2-1980 having not borne any fruit, he himself made a search for the vehicle and came to know that on 4 2-1980 the respondents had taken away the vehicle. On 20 2-1980 he discovered the vehicle in the premises of the Finance Corporation. As the vehicle was refused to be handed back to him, he

lodged the complaint under Secs 379 & 406 read with Sec, 34 IPC, since the police had not taken any action. In the trial that ensued, the defence stand was that Viswa Priya Finance Corporation was the owner of the vehicle and the appellant was the hirer. The transaction was covered under a hire purchase agreement Ext. A/10. The appellant had expressed inability to repay the installments and had surrendered the vehicle. The learned Magistrate came to hold that apart from the question of validity of the hire purchase agreement there was also no question of the respondents to have been acting dishonestly and being of that view dismissed the complaint.

2. Mr. R. K. Patra, the learned counsel appearing for the appellant, has urged that the respondents only financed by way of loan but the title and possession of the vehicle always remained with him and as such taking away the vehicle squarely constituted the offence of the theft. A few facts are necessary for appreciation of the case. The hire purchase agreement was executed on 5-12-1977 and the loan amount was advanced on the same day. The vehicle was purchased on 28-12-1977 as per Ext. 1. Ext. A/10 in its Clause VI and condition Nos. 4 and 5 of the agreement stipulated the appellant's concession to the owner's right of lien to the vehicle and his right to re-possess the same as also to the position that he shall be the bail of the financier and shall not have any property or interest as purchaser therein until he had exercised option to purchase as provided in the agreement and terms thereof as also to the further condition that the financier may terminate with or without notice the contract of hiring and may forthwith re-take and recover possession of the vehicle. It is however the submission of Mr. Patra that since the vehicle was purchased on 28-12-1977 whereas the money had been advanced on 5-12-1977, the financier could not be the owner of the vehicle and in effect the appellant was the owner.

3. The submission of Mr. Patra is not correct. As was explained in Sundaram Finance Ltd. Vs. State of Kerala and Another, a hire purchase agreement may assume different forms and one of the forms is where a transaction is made when the goods are purchased by the customer, i.e. in the present case the appellant, who in consideration of executing a hire purchase agreement and allied documents remains in possession of the goods subject to liability to pay the amount paid by the financier obtains a hire purchase agreement which gives him a licence to seize the goods in the event of the failure by the customer to abide by the conditions of hire purchase agreement. The Court also observed that the true effect of a transaction may be determined from the terms of the agreement considered in the light of the surrounding circumstances and that in each case the Court has, unless prohibited by the statute, the power to go behind the documents and determine the nature of the transaction whatever may be the form of the documents. A question similar to the present one was considered in Criminal Revision No. 288 of 1986 (Bankanath Pradhan v. Ratikanta Mohapatra (decided on 20-4-1990) wherein the question was regarding the custody of the vehicle which had been purchased under a hire purchase agreement. Referring to various decisions of the Supreme Court as also this

Court, it was held that the financier remains the owner of the vehicle and is entitled to custody. Similar conclusion was also reached in 31 (1989) OJD 30 (Criminal) (Sri Ph. Arunachalam v. State of Orissa). In the agreement Ext. A/10, the financier has been described as the owner whereas the appellant has been described as the hirer. In view of such fact, the clauses of the agreement as has been referred to above would without ambiguity go to show that whatever may be the inter se rights between the parties as regards the vehicle, the respondents could avail of a plea of bona fide exercise of right in respect of the vehicle and that no criminal prosecution would lie. Such a matter was also discussed in Sardar Trilok Singh and Others Vs. Satya Deo Tripathi,) where, in almost similar circumstance, their Lordships held that the launching of the criminal prosecution by the purchaser as against the financier is misconceived and is an abuse of the process of the Court which deserves to be quashed as the dispute raised is one purely of civil- nature. In the present case merely because the proceeding was not quashed at the initial stage, but reached the stage of completion, the inherent infirmity of the proceeding is not wiped out and hence the decision reached by the learned Magistrate that the respondents exercised a bona fide claim of right and that they had no dishonest intention so as to invite a conviction u/s 379 read with Section 34 IPC cannot be faulted with. In that view of the matter the appeal has no merit and is dismissed.