

(2016) 02 JH CK 0028
In the Jharkhand High Court
Case No : W.P.(Cr.) No. 344 of 2015

Bablu Kumar, Gautam Pandey, Akash Vijay Singh	APPELLANT
Vs	
State of Jharkhand & Others	RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 120B, 323, 379, 384, 406, 420

Citation : (2016) 164 AIC 705 : (2017) 1 JBCJ 241 : (2016) 2 JCR 493 : (2016) 2 JLJR 475

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : Aashish Kumar, Advocate, for the Appellant; Vinod Singh, S.C. (L&C) and Suchitra Pandey, JC to SC (L&C), for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This application has been filed for quashing the entire criminal case in connection with Katras (East Basuriya) P.S. Case No. 61 of 2015, dated 26.2.2015, corresponding to G.R. No. 928 of 2015 (arising out of Complaint Case No. 511 of 2015), instituted under Sections 323/379/406/420/384/120B of the I.P.C., pending before the learned Sub Divisional Judicial Magistrate, Dhanbad.

2. It is an admitted position that the complainant purchased a JCB 3 DX vehicle having registration no. JH-10AF- 8479 after taking loan from a private finance company namely, Shriram Equipment Finance Company Limited. It appears that the officers of the aforesaid finance company repossessed the aforesaid vehicle as per the terms and conditions of hire purchase agreement, because the complainant was not paying the instalments for returning the loan amount. It is alleged that on the date of repossession, the accused persons assaulted and demanded "Rangdari" from the complainant. Accordingly, a complaint case filed vide Complaint Case No.511 of 2015, which was sent to the concerned police station for institution and investigation of the case. Accordingly, Katras (East

Basuriya) P.S. Case No.61 of 2015 instituted.

3. It is submitted by the learned counsel for the petitioner that in view of the judgment of the Hon'ble Supreme Court in Charanjit Singh Chadha and others v. Sudhir Mehra, reported in (2001)7 SCC 417, no offence made out. It is further submitted that so far the allegations of assault and demand of "Rangdari" is concerned, there is no such allegations against these petitioners. Thus, the said offence also not made out against them.

4. On the other hand, Sri Vinod Singh, S.C.(L&C) assisted by Ms. Suchitra Pandey, JC to S.C.(L&C), submits that from the allegations made in the F.I.R., offence under Sections 323 and 384 of the I.P.C. made out, therefore, at this stage, the entire criminal proceeding cannot be quashed.

5. Having heard the submissions, I have gone through the record of the case. Admittedly, there is a hire-purchase agreement between the finance company namely, Shriram Equipment Finance Company Limited and the complainant. Petitioners are employees of aforesaid finance company. The hire-purchase agreement annexed with the present writ application. Paragraph no. 6(b) of the said agreement deals with repossession of asset, which runs as follow:

"(b) Repossession of Asset: To take possession of the hypothecated assets from where so ever it may be and remove the hypothecated asset including all accessories, bodywork and fittings and for the said purpose, it shall be lawful for Shriram or Shriram authorised representatives, servants, officers and agents forthwith or at any time and without notice to the Borrower(s) to enter upon the premises, or factory, office, garage or godown where the hypothecated assets shall be lying or kept and to take possession or recover or receive the same and if necessary to break open such place of storage. Shriram will be within its rights to use a tow-van to carry away the assets. Any damage to the land or building or factory, office godown or other equipment/assets kept there, caused by removal of the asset shall be the sole responsibility of the Borrower(s). Shriram shall be authorised to cause any operations involving the asset to be stopped in order to take possession of the hypothecated asset. Shriram shall not be liable for any damage or loss caused to the Borrower on account of the same."

6. Thus, as per the terms and conditions stipulated in the agreement, it is clear that if the loanee did not pay the loan amount or its instalments, it is open for the finance company to repossess the vehicle. The aforesaid repossession Clause of hire purchase agreement was interpreted by the Hon'ble Supreme Court in the judgment of Charanjit Singh Chadha and others v. Sudhir Mehra (Supra) and it has been held by their lordships at paragraph no.17 as follow:

"17. The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence. The agreement (Annexure P-1) specifically gave authority to the appellants to

repossess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire-purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. We, therefore, allow this appeal and set aside the impugned judgment. The complaint and any other proceedings initiated pursuant to such complaint are quashed."

7. Under the said circumstance, in view of the aforesaid judgment of the Hon''ble Supreme Court till the clearance of loan amount, the ownership of the vehicle rests with the finance company and in that view of the matter, no offence under Sections 379, 406 and 420 of the I.P.C. made out. So far the offence under Sections 323 and 384 of the I.P.C. is concerned, there is absolutely no allegation against these petitioners that they have assaulted the complainant and/or demanded "Rangdari" from him. Thus, in my view, the offence under Sections 323 and 384 of the I.P.C. also not made out against the petitioner.

8. In view of the discussions made above, I allow this application and quash the entire proceeding in connection with Katras (East Basuriya) P.S. Case No. 61 of 2015, dated 26.2.2015, corresponding to G.R. No. 928 of 2015(arising out of Complaint Case No. 511 of 2015), pending before the learned Sub Divisional Judicial Magistrate, Dhanbad.