
(1995) 02 P&H CK 0095
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 878 of 1987

Didar Singh

APPELLANT

Vs

Shree Durga Finance Corp., Civil Lines, Jalandhar

RESPONDENT

Date of Decision : 21-02-1995

Acts Referred:

Citation : (1995) 2 RCR(Criminal) 262

Hon'ble Judges : T.H.B.Chalapathi, J

Advocate : K.B. Andley, S. Lal, Advocates for appearing Parties

Judgement

T.H.B. Chalapathi, J.

1. The truck bearing No. PUG9816 which was parked on a road at Phagwara was taken into possession by the police. Thereafter, both the petitioner as well as the first respondent, claimed the possession of the truck. The first respondent claimed it on the ground that he is owner of the truck because of the Hire Purchase Agreement. The first respondent has relied on Clause 1 of the alleged Hire Purchase Agreement dated 15.9.1992, whereas the petitioner is claiming the truck on the basis of the registration of the truck in his name. He has produced the certificate of registration which shows that the truck was registered in the name of Didar Singh son of Sadhu Singh. The registration of the truck was effected in the year 1979. There was an endorsement in the registration certificate that the truck was on hire purchase agreement with Shree Durga Financer Corporation w.e.f. 27.8.1980. Thus, it is clear that the truck was originally registered in the name of the petitioner. Even prior to 15.9.1982, the date on which the hire purchase agreement was executed, the truck was shown that it was under hire purchase agreement with Shree Durga Finance Corporation, The said endorsement was made on 27.3.1980. But, however, even under the hire purchase agreement, the hirer is entitled to be in possession of the truck. Clause 8 clearly stipulates that the possession of the truck will be with the hirer i.e. the petitioner herein though in his capacity as bailee. There is no doubt if there is any default in payment, the agreement gives right to the

Financer to take possession of the truck from first respondent but it cannot be said without any further proof that there was any default in payment of instalments by the hirer and the Financer took possession of the truck in exercise of his right under Hire Purchase agreement. The registered owner continues to be the petitioner herein. Simply because under the Hire Purchase Agreement, it is stipulated that the Financer will be the owner, it does not give him any right to get possession either from the police or from the District Magistrate. Section 25 of the Police Act applies to unclaimed property and while disposing of such property, the police officers shall be guided from such order as they shall be issued from the Magistrate of the District. Section 25 does not apply to where there are two rival claimants of the property. It is for the rival claimants to approach the court of law for resolving their disputes. Here is not a case in which the financier is taking possession of the truck as per the terms of the Hire Purchase Agreement. Since the truck was seized by the police when it was parked on a road, the Financer cannot claim possession of the truck by obtaining an order from the District Magistrate. It is not an unclaimed property so as to apply Section 25 of the Police Act. Under the provisions of the Motor Vehicles Act, owner means a person in whose name a motor vehicle stands registered, and in relation to Motor Vehicle which is the subject of a hire purchase agreement the person in possession of the vehicle under that agreement. Therefore, though under the Hire Purchase Agreement, the Financer is deemed to be the owner, for the purpose of Motor Vehicles Act, the owner means a person who is entitled to the possession of the vehicle. Admittedly, the hirer namely the petitioner is entitled to be in possession of the truck even under the Hire purchase Agreement. Therefore, he is deemed to be the owner of the truck under the Motor Vehicles Act which enables him to ply the vehicle on the road. In this view of the matter, I am of the opinion that the order of the learned District Magistrate is liable to be set aside,

2. It is submitted before me that the truck continues to be in possession of the petitioner as the police had given it to him on sapurdari. Therefore, no separate orders are necessary be passed with regard to the custody and possession of the truck in question. However, it is made clear that this order will not come in the way of first respondentfinancier either to recover instalments due from the petitioner or to exercise their option to recover the possession of the vehicle under terms of the Hire Purchase Agreement if the respondent is entitled to or to such other remedies to which he is entitled to under law.

3. The revision petition is disposed of accordingly.

JUDGMENT accordingly.