
(1987) 08 AP CK 0019

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 10 of 1986

Dinesh Auto Finance

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 03-08-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100, 94

Citation : (1987) 08 AP CK 0019

Hon'ble Judges : Panduranga Rao, J;K. Amareswari, J

Bench : Division Bench

Advocate : M. Surya Gupta, for the Appellant; Public Prosecutor and K. Parvathasam, for the Respondent

Judgement

Amareswari, J.—The petitioner is M/s. Dinesh Auto Finance, represented by its Proprietor. They filed this Criminal Revision against the order of the First Additional Metropolitan Sessions Judge, Hyderabad dated 3-1-1986 directing search and seizure of the property in exercise of power conferred under Ss. 94 and 100, Cr.P.C.

2. The lorry ATT 6438 was purchased by the complainant Hussain Shareef (the 2nd respondent in the Criminal Revision Case) by taking a loan from the Financiers under a hire purchase agreement dated 6-4-1984. The 2nd respondent gave a complaint to the Chaderghat Police Station on 6-12-1985 that the lorry which was parked in front of the Crown Steel Iron Works was stolen by some unknown persons on 1-12-1985. The complaint was registered as Crime No. 309/85 and is under investigation. The complainant then filed a petition in Crl. M.P. No. 2248 of 1985 stating that he learnt that the lorry was illegally kept in the premises of Hyderabad Spun Pipe Industries, Uppal Industrial Area, Hyderabad, that some of the spare parts have been removed and that the Dinesh Auto Financiers were trying to remove the parts of the Lorry and therefore a search warrant be issued for search and seizure of the Lorry. In this Petition M/s. Dinesh Auto Financiers was made a party.

3. The learned Magistrate dismissed the said application holding that the vehicle is subject to a hire purchase and the receipt dated 1-4-1985 filed by the complainant himself shows that he is due in a sum of Rs. 47,137/- to the financiers and since the petitioner is a defaulter, the financiers has a right to take possession of the vehicle. On these findings, he dismissed the petition saying that it is not a fit case directing for production of property.

4. Aggrieved thereby, the complainant filed a revision before the First Additional Metropolitan Sessions Judge, Hyderabad. Curiously, in this petition, the financiers was not impleaded as a party. The only respondent is the State of Andhra Pradesh.

5. In the Revision Case, the Police have filed a report that the complainant has defaulted in payment of the amount and the financiers after waiting for 6 months took possession of the lorry and kept it in Hyderabad Spun Pipes Factory and the investigation so far made revealed that it is of civil matter.

6. The learned Sessions Judge while holding that the financiers took possession of the vehicle as the complainant contravened the hire purchase agreement, held that the financier cannot take law into his own hand and seize the vehicle without the consent of the complainant. In this view, he allowed the revision petition, setting aside the order of the Magistrate and directed production of the vehicle in the Court.

7. It is the validity of this order that is challenged in the present revision.

8. The Revision came up in the first instance for hearing before our learned brother Radhakrishna Rao, J. The learned Judge referred it to a Bench as it involves a question of general importance.

9. The impugned order is passed in exercise of the power u/S. 94 of the Criminal Procedure Code. Section 94 is as follows :-

"94. (1) If a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies, or that any such objectionable article is deposited in any place, he may by warrant authorise any police officer above the rank of a constable -

(a) to enter, with such assistance as may be required, such place,

(b) to search the same in the manner specified in the warrant,

(c) xx xx xx xx".

It is seen from this Section that the Magistrate is authorised to issue a warrant only when he had reason to believe that any place is used for the deposit or sale of stolen property after conducting such enquiry as he thinks fit. The words "has reason to believe that any place is used for deposit or sale of stolen property"

and "after such enquiry as he thinks fit" are of great significance. Under this Section, the Magistrate cannot pass an order as a matter of course. Two requirements are to be fulfilled. One is to make an enquiry in the manner he thinks fit and the second is on the basis of the enquiry he must have reason to believe that the property is a stolen property i.e., prima facie he must be satisfied that the warrant sought for is in respect of a stolen property and that prima facie grounds exist for issue of the warrant. In the present case, there is no such finding. On the other hand, the learned Sessions Judge observed that the financier has exercised his right to take possession of the vehicle under the terms of the hire purchase agreement. But the learned Judge held that the vehicle cannot be seized without the consent of the complainant. This view is wholly erroneous. Section 94 of Cr.P.C. has nothing to do with the rights of the parties. Under this Section, the only question to be considered is whether the property in respect of which a search warrant is sought to be is prima facie a stolen property or whether there are good grounds to believe that it is a stolen property. The learned Sessions Judge has not addressed himself to that question at all. The sine qua non for issuing the search warrant and production of the property is that the Magistrate must have reason to believe that the property is stolen property. Since there is no such finding, the order cannot be sustained.

10. Even on merits the complainant has no case. The lorry is admittedly the subject matter of a hire purchase agreement. There is an entry to that effect in the registration certificate. From the record it is seen that the financiers took possession of the vehicle on 29-5-1985. Two days later i.e., on 31-5-85 they sent a Telegram to the complainant calling upon them to make the monthly payments immediately and that they took possession of the lorry as heavy amounts were due. This clearly negates the version of the complainant that the property was stolen. On the same day the financiers also informed the Circle Inspector of Ramagopalpet that as the hirer failed to pay the monthly instalments, they have taken the vehicle which was hired out to the complainant. The copy of this was marked to Circle Inspector of Police, Uppal Police Station for information. On 1-6-1985 the financiers intimated the Regional Transport Authority, Secunderabad that the vehicle is not being used, as otherwise they may become liable for road tax. On 2-6-1985 the complainant gave a reply to the Telegram dated 31-5-85 admitting that the vehicle was seized for failure to pay the instalments, that he could not pay the amount though sufficient time was given to him and as a last chance he may be given 2 to 3 months time and that he will arrange to pay the money after receiving the Election bill from the Office of the Police Commissioner. The complainant further requested the financiers not to take any action and give some time as a last chance. On 2-12-1985 i.e., after 6 months the financiers addressed a letter to the Regional Transport Authority to issue a fresh registration certificate in their name. They also deposited the requisite fee of Rs. 150/-. This letter was acknowledged by the Transport Authorities on 3-12-1985. They sent a reply to the query put by the Commissioner of Police as to the circumstances under which they seized the

vehicle. Then they filed a suit O.S. No. 324 of 1986 on the file of the IIIrd Additional Judge, City Civil Court Secunderabad for recovery of Rs. 74,600/- towards instalments due. All these facts clearly show that the matter is of a civil nature and the financiers were bona fide exercising their rights under the agreement. There is no question of any theft of the property warranting an order u/s 94 of the Criminal Procedure Code.

11. It is true that the complainant is denying his liability. According to him, he paid the entire amount. But prima facie the receipts dated 4-9-1984, 30-3-1985 and 3-4-1985 filed by the financiers show that the complainant paid a total sum of Rs. 4,650/- only towards the hire amount, whereas the hire purchase agreement shows that he is due in a sum of Rs. 43,450/-. It is no doubt true that liability of the complainant and the rights of the financiers have to be established in the Civil Suit, but prima facie it is established that the financier exercised his powers under the terms of the contract. It is also pertinent to note in this connection that the Police have not filed the charge sheet so far and as per their report filed in the lower Court, they are of the view that no criminal liability is involved. In the circumstances, we find that the impugned order dated 3-1-1986 is wholly illegal and contrary to S. 94 and 100 Cr.P.C. It may be made clear in this context that this case does not pertain to delivery of property which is governed by the other Sections. It appears, that subsequent to the order of the Sessions Court, the vehicle was produced in the Court from the possession by the financier and the learned Magistrate by his order dated 10-1-1986 in CrI. M.P. No. 2248 of 1985 released the lorry in favour of the financier with a condition that he should produce the same as and when required.

12. In the result, the Criminal Revision Case is allowed and the impugned order is set aside.

13. We make it clear that any observations made herein shall not affect the merits of the case of the parties in the Civil Suit.

14. It is also open to the complainant to seek appropriate directions with regard to the possession of the vehicle in the Civil Court and the Court shall consider the matter on its merits.

15. Order accordingly.