
(1995) 02 P&H CK 0143
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 432-SB of 1992

Ganga Hire Purchase (P) Ltd.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 03-02-1995

Acts Referred:

Customs Act, 1962 — Section 115, 115(2)
Hire Purchase Act, 1972 — Section 2
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 60(1),
60(2), 60(3)
Opium Act, 1878 — Section 11
Punjab Excise Act, 1914 — Section 78, 78(1)

Citation : (1995) 2 ILR (P&H) 174 : (1995) 2 RCR(Criminal) 446

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : G.S. Grewal, for the Appellant; T.P.S. Mann and G.S. Gill, Asstt. A.G.,
for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—This is an appeal by Ganga Hire Purchase (P) Ltd., Jalandhar (here-in-after to be described as the Appellant) directed against the order passed by the Additional Sessions Judge, Ludhiana, dated October 24, 1992. By virtue of the impugned order, learned trial Court directed that the truck in question be confiscated to the State of Punjab and for Appellant to produce the said truck in Court on the date fixed.

2. Brief resume of the relevant facts can well be made. On the night intervening September 13-14, 1988, a police party headed by SI Malkiat Singh held a picket at the road crossing of village Kohara. At about 11.30 P.M. the truck in question came from the side of Chandigarh. With the help of torch light a signal was given to it for halting. Initially the driver of the truck slowed the speed but when it reached near the police party it took the speed. The truck was chased. Under the cover of darkness occupants of the truck made good their escape. The truck was

checked and it was found to be loaded with 110 bags, each containing 40 Kgs. of crushed poppy heads. Sample was taken from each bag of 250 gms. After completing other formalities, challan was filed in the Court.

3. After trial of the case, learned Addl. Sessions Judge, Ludhiana, acquitted accused Chuhan Singh and Darshan Singh on July 31, 1992. Accused Nirvail Singh was discharged.

4. Notice was issued to the accused as well as to the Appellant as to if the truck is to be confiscated in terms of Sub-section (3) to Section 60 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (here-in-after to be described as the Act). The Appellant took up the plea-that the crushed poppy heads were not recovered from its possession. It was the owner of the truck and the same should not be confiscated. Learned trial Court,--vide impugned order repelled the plea of Appellant and directed that the truck in question be confiscated to the State of Punjab.

5. Aggrieved by the said order, the present appeal has been filed. Sub-section (3) to Section 60 of the Act holds the key to the main controversy raised and it reads as under:

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation under Sub-section (1) or Sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

The language of Sub-section (3) to Section 60 of the Act is plain and unambiguous. If any conveyance is used for carrying any narcotic drug or psychotropic substance, the same is liable to be confiscated. The only exceptions are that provided the owner of the conveyance proves (a) it was used without the knowledge and connivance of the owner himself, his agent, if any and the person-in-charge of the conveyance and (b) each of them had taken all reasonable precautions against such use.

7. The first and fore-most important question, thus, that crops for determination is as to whether the Appellant can be described to be the owner of the truck in question for the purposes of the present Act. The expression "owner" or "ownership" has not been defined in Act No. 61 of 1985. Learned Counsel for the Appellant had drawn my attention to the definition of "owner" and to buttress his arguments, he urged that the truck in question had been given to the accused on hire purchase agreement and that under Hire Purchase Act, 1972, the Appellant must be taken as the owner.

8. The expression "owner" has been defined u/s 2(f) of the Hire Purchase Act, 1972 and reads:

"owner" means the persons who lets or has let, delivers or has delivered possession of goods, to a hirer under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the owners rights or liabilities under the agreement has passed by assignment or by operation of law.

The argument so much thought of by learned Counsel for the Appellant would cut little ice because the expression "owner" as defined under the Hire Purchase Act, 1972 would only be valid for purposes of the said Act. It will have no application for the word "owner" as used in Act No. 61 of 1985. The expression "owner" in the given facts can only be interpreted. A real, satisfactory and comprehensive definition of "owner" would be difficult to be attempted. It is because of obvious difficulties in consequence of changing situations bearing with alternative circumstances that arrive. In essence, the right of ownership may be conveniently arranged under three heads, namely, possession, enjoyment and disposition. In Osborn's Concise Law Dictionary, VIIth Edn., "ownership" has been explained in the following words:

The right to the exclusive enjoyment of a thing. Strictly it denotes the relation between a person and any right that is vested in him. Ownership is absolute or restricted. Absolute ownership involves the right of free as well as exclusive enjoyment including the right of using, altering, disposing of or destroying the thing owned....Restricted ownership is ownership limited to some extent....where property is charged with the payment of a sum of money...."

9. In the present case the Appellant is not the hirer and it gave the truck in question to the accused. Some of the accused were registered owners of the same. Certain restrictions had been imposed by virtue of hire-purchase agreement but they were subject to payment of the entire money. The domain over the truck was with those accused, who had taken it on the basis of the hire-purchase agreement. Thus, for the purpose of Sub-Section 3 to Section 60 of the Act, Appellant could not be taken to be owner of the property.

10. Be that as it may be even if it be taken otherwise, the Appellant must satisfy the required conditions of Sub-section 3 to Section 60 of the Act. Reference was made to the decision in the case of State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another, . This was a case u/s 11 of the Opium Act as applicable to the State of Madhya Pradesh. It provided that a vehicle used for transportation of contraband opium "shall be confiscated". The truck therein had been taken on hire-purchase agreement from Azad Bharat Finance Company which applied for release of the same after acquittal of the driver. The Supreme Court held that provisions, as applicable to Madhya Pradesh, pertaining to Opium Act, as amended (as it stood at that time) were permissive and not obligatory. It is apparent from the plain language of the provisions of Opium Act that it was basically different from Sub-section 3 to Section 60 of the Act. No advantage can be taken by the Appellant, thus, on the strength of the decision in the case of State of Madhya Pradesh v. Azad Bharat Finance Co. (supra).

11. Section 78 of the Punjab Excise Act, 1914 also will be of no avail to the Appellant as would be clear from the relevant provisions of Section 78(1) of the said Act. This is being reproduced below for facility of ready reference:

(1) Whenever an offence punishable under this Act has been committed:

(a) XX XX

(b) XX XX

(c) XX XX

(d) XX XX

(e) every animal cart vessel or other conveyance used in carrying such, receptacle or package covering or articles as aforesaid:

shall be liable to confiscation:

Provided that when it is proved that the receptacle, animals or other articles specified in Clause (d) and (e) are not the property of offenders they shall not be liable to confiscation if the owner thereof established that he had no reason to believe that such offence was being or was likely to be committed.

12. On comparison, as one reads the same with Sub-section 3 to Section 60 of the Act, it would be clear that in the Punjab Excise Act, the relevant portion of which is reproduced above, there is no obligation for the persons seeking that vehicle be not confiscated that he must show that he or his agent had taken all reasonable precautions against such use.

13. Close to the provisions of Sub-section 3 to Section 60 of the Act is the language used in Sub-Section 2 to Section 115 of the Customs Act, 1962 which can also be noticed and which runs as under:

(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any and the person in charge of the conveyance or animal.

Provided that where any such conveyance is used for the carriage of goods of passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

4. Even herein the stringent provisions of Sub-section 3 to Section 60 are not similar. It appears that Sub-section 3 to Section 60 has been enacted primarily to stop illegal activities of transporting narcotic drugs and psychotropic substances. To give relief to such owners, who are innocent in the matter, a facility has been provided and an exception has been drawn. The exception must relate to

innocence not only of the owner but also of his agent and the person, who has been put in-charge of the conveyance. If one has to come within the exception i.e. Sub-section 3 to Section 60, he will have to prove not only his innocence but also that all such possible precautions against wrongful user of the vehicle had been taken by each person or persons. It would not be enough simply to allege that he had no hand in the illegal use. The enactment of the Legislature in this regard is purposeful. If that was not so, any person would allow the vehicle to be used by others for illegal purposes contemplated under the Act and still claim the vehicle.

15. Reference with advantage can well be made to the decision of Bombay High Court in the case of *Tata Engineering and Locomotive Co. Ltd. v. The Union of India* 1973 BLR 675. In the cited case the authorities had found that the truck was used for carriage of smuggled goods by the driver. It was held that the failure on the part of the owner to prove the absence of knowledge or connivance of the driver, on a plain reading of Section 115 of the Customs Act renders the truck liable to confiscation. I find no reason as to why the said ratio of the decision be not made applicable to the present case despite more stringent and clear provisions under the Act. There is nothing to show that the persons who were in-charge of the vehicle at that time had taken any precaution. It had been established that 110 bags, each containing 40 Kgs. of poppy heads were being transported in the truck in question. There is nothing to show that the persons in-charge and each of them had taken all reasonable precautions against such use. To that extent, vicarious liability has arisen.

16. In the case of *Punjab Kashmir Finance Pvt. Ltd. v. State* 1993 Cri. Lab. 498, the truck belonged to the Company and was given on hire. It was seized while carrying contraband material. It was held that the Company did not have the knowledge and ultimately orders of confiscating the truck were set aside. I find myself in respectful disagreement with the view taken in the aforesaid case because for the reasons recorded above. The Appellant can not take advantage of Sub-section 3 to Section 60 of the Act as it is not established that the agent of the Appellant or the person in-charge of the conveyance and each of them had taken all reasonable precautions against such use. When the language of the Section is clear and words plain, other interpretation will not be permissible. I find no reason to take a different view from the trial court.

17. For these reasons, the appeal, being without any merit, fails and is dismissed.