
(1989) 02 AHC CK 0086
In the Allahabad High Court

Gurmez Singh

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 03-02-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 457, 482
Penal Code, 1860 (IPC) — Section 395, 406, 420

Citation : (1989) CriLJ 973

Hon'ble Judges : S.I. Jafri, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.I. Jafri, J.—This petition u/s 482, Cr. P.C. has been preferred by Gurmez Singh, therein seeking to quash the orders dt. 28-11-1987 and 6-1-1988 passed by Judicial Magistrate, Pilibhit and 4th Addl. Sessions Judge, Pilibhit respectively disallowing the prayer to release the Truck U.P.I. 4821 in favour of applicant Gurmez Singh.

2. It is the admitted position in the instant case that the Truck No. U.P.I. 4821, was given to Gurmez Singh applicant on 2-3-1985 on hire-purchase basis-financed by National Finance Company, Civil lines, Station Road, Pilibhit and an agreement was executed between the parties on 2-3-1985, stipulating therein that the applicant Gurmez Singh shall continue to pay regularly 36 monthly installments each installment consisting of Rs. 3550/- to the aforesaid Company.

3. In order to perceive as to what had been agreed between the parties in the aforesaid agreement, I would like to place certain significant terms as below. In para 4 of the aforesaid agreement, it was given out that without prejudice to the other rights of the owners under this agreement, the owner may terminate, with or without notice, the hiring of the Motor Vehicle, and forthwith retake and recover possession of the same (a) If any monthly hire, or a part thereof or any other dues, as per terms and conditions of this agreement are in arrears and remain unpaid for a period of seven days after the due date due for the

payments for any reason whatsoever. In para 5 of the aforesaid agreement it is stipulated that in the event of the hiring being terminated by the owners on account of breach of any terms and conditions as from 4(a) to 4(i) above and the hirer is called upon to restore possession of the Motor vehicle to the owners, and the hirer fails to give possession of the Motor Vehicle or creates any opposition to its repossession, and thus keeps the Motor vehicle in adverse possession, he shall be liable both, criminally and civilly and pay double the amount of average monthly hire stipulated in this agreement for the period he remains in adverse possession of the Motor vehicle, after the termination of the hiring without any prejudice to the owner's right of repossession.

4. In the light of the above agreement, it crystallises that applicant had himself agreed to the effect that in case of default in any of the installments, he would be liable to deliver back the truck without any obstructions or hindrance to the owner.

5. I have heard the learned Counsel for both the parties. I have also carefully perused the counter-affidavit, rejoinder affidavit and supplementary affidavit filed in the above petition.

6. From a careful reading of the above documents, it surfaces that Daljeet Singh, in the capacity of his being a partner in National finance Company-respondent No. 2 in the instant petition, lodged a report at police station Sungarhi District Pilibhit on 20-11-87 alleging that Gurmez Singh, applicant had surrendered the Truck U.P.I. 4821 out of his free-will to him on 24-5-87 on account of his having failed in paying the installments in accordance with the terms agreed between the parties and as the aforesaid truck was in a most rickety and worsted condition, it was given for repairs to Balbir Singh, the partner of the aforesaid National Finance Company. The truck was completely renovated and when it was stationed at the partner's shop for being painted at bye-pass road, Gurmez Singh arrived there at about 3-30 p.m. on 20-11-1987 and on the pretext of having a trial of the truck of driving it, he persuaded Balbir Singh to part with the keys of the Vehicle. Thereafter, Gurmez Singh- started the aforesaid truck and sped away. When Gurmez Singh did not return with the truck for sometime, Daljeet Singh searched for the truck and Gurmez Singh but they were nowhere traceable and, consequently, the report aforesaid was lodged at the police station. It also finds mention in the aforesaid report lodged at the police station that considering the aforesaid conduct of Gurmez Singh, he (Daljeet Singh) apprehends that he (Gurmez Singh) had disposed of the truck by cheating him.

7. On receipt of the aforesaid report, a case under Sections 406/420, I.P.C. was registered at the police Station Sungarhi District Pilibhit vide Crime No. 247 of 1987, against applicant Gurmez Singh. Thereafter, investigation followed and the aforesaid Truck was found abandoned the same day near Bareilly Road ahead of Jahanabad tri-junction by the Police during the course of investigation and it was taken into possession by the police as case property.

8. During investigation, applicant Gurmez Singh and opp. party Daljeet Singh respondent 2 moved their respective applications u/s 457, Cr. P.C. before the Judicial Magistrate Pilibhit, Seeking the return of the truck to their respective possession. The aforesaid Judicial Magistrate upon a consideration of the submissions advanced by both the parties, directed the interim release of the aforesaid Truck in favour of respondent Daljeet Singh on 28-11-87 by a composite order and the prayer for release of the truck on behalf of Gurmez Singh was disallowed, while releasing the aforesaid truck in favour of Daljeet Singh, the learned Magistrate imposed a condition that the truck shall be released to Daljeet Singh subject to his furnishing two sureties of Rs. 1,00,000/- each and an undertaking in the like amount to the effect that he will not dispose of the truck without obtaining prior permission of the court and further on demand by the court, he shall produce the same before the court.

9. Aggrieved by the aforesaid order of the learned Judicial Magistrate, applicant Gurmez Singh whose application for release of Truck in his favour, had been disallowed, preferred a revision before the learned Sessions Judge, Pilibhit, vide Revision No. 126 of 1987 and upon a consideration of the entire facts and circumstances of the case, the learned Sessions Judge upheld the order passed by the learned Magistrate and dismissed the aforesaid Revision of Gurmez Singh, vide his judgment and order dt. 6-1-1988.

10. On his being unsuccessful in the lower appellate's court as well, the applicant Gurmez Singh preferred this application u/s 482, Cr. P.C. seeking to quash the aforesaid orders passed by Judicial Magistrate, Pilibhit and the learned Sessions Judge, Pilibhit and further praying that the aforesaid Truck U.P.I. 4821 may be released in his favour.

11. It is contended by the learned Counsel for the applicant that the instant case is of a civil nature and the Criminal Courts have no jurisdiction to try the case. It is further contended by the learned Counsel that no offence under Sections 406/420, I.P.C. is made out from the allegation as set out by the prosecution and further that the truck ought to have been released in applicant's favour inasmuch as the registration certificate of the vehicle stood in the name of Gurmez Singh applicant. It is also contended by the learned Counsel that the applicant has also paid Rs. 1,40,000/- towards installments to the National Financing Company during the period commencing from 18-2-1987, In order to buttress his contention that the case is of civil nature, the learned Counsel has placed reliance on *Sardar Trilok Singh and Others Vs. Satya Deo Tripathi*, wherein the sum and substance of the case are that a complaint was filed by the purchaser of the Truck on hire-purchase basis against the financing Company in the Court of Judicial Magistrate, consequently the Judicial Magistrate summoned Trilok Singh and others, partners of the aforesaid Financing Corporation u/s 395, I.P.C. Trilok Singh and others moved an application in the High Court u/s 482, Cr. P.C. to quash the criminal proceedings in question initiated against them but the same was disallowed and the High Court refused to quash the said proceedings.

On being unsuccessful, Trilok Singh and others preferred an appeal in the Hon''ble Supreme Court seeking that the complaint filed by Sachdev Tripathi, purchaser of the Truck against them, be quashed. Hon''ble Supreme Court set aside the order of the High Court as well as of the j Magistrate and quashed the criminal proceedings initiated by the Purchaser against Trilok Singh and others holding that the allegations involved in the case, can properly and adequately be decided in Civil Court. It was observed that on the face of the complaint petition itself, the highly exaggerated version given by the respondent that the appellant went armed with deadly weapons to his house and committed the offence of dacoity in taking the truck, was so very unnatural and untrustworthy that it could not take the matter out of the realm of civil dispute.

12. I may advert to the pith and substance of what was held by the Supreme Court was to the effect that the dispute involved in the case was purely of a civil nature and criminal proceedings launched was an abuse of the process of the Court and the same deserved to be quashed,

13. A comparative study and scrutiny of the facts and circumstances involved in the case before the Hon. Supreme Court as well as before this Court in the instant case, go to show that the facts and circumstances and the nature of dispute involved in the present petition stand on a different footing and by no stretch of imagination, the facts in the case before the Supreme Court, can be applied to the facts of the instant case before this Court inasmuch as in the instant case a First Information Report was lodged on 20-11-87 at Police Station Sungarhi by the complainant Daljit Singh (Opp. Party 2 in the instant petition), who was one of the partners of National Financing Company in which, it was clearly alleged that the truck was surrendered to the complainant by Gurmez Singh on 24-5-87 out of his own free-will owing to his inability to pay regular installments in accordance with terms agreed between the Company and the accused. The truck had been surrendered to the complainant - in a most rickety and bad condition. Thereafter, the truck was given for repairs to Balbir repairs to Balbir Singh, a partner of the aforesaid National Financing Company. After the truck had been completely repaired and rennovated and while it was stationed at the painter's shop at bye-pass road, applicant Gurmez Singh arrived there at about 3-30 p.m. on 20-11-87 and on the pretext of taking a trial of the vehicle and by taking key from Balbir Singh, another partner of the National financing Company, he sped away the vehicle and when he did not return for quite sometime a search was made and ultimately a report was lodged the same day at Police Station Sungarhi by Daljeet Singh whereupon a case under Sections 406/420, I.P.C. was registered against the applicant. The Police during investigation found the truck abandoned on the road side near Bareilly road ahead of Jahanabad tri-junction, which the police seized and on concluding the investigation, the police submitted charge-sheet against the applicant Gurmez Singh under Sections 406/420, I.P.C.

14. It is worthy of notice that the allegations in the First Information Report also

disclose the offence of cheating besides criminal breach of trust. The aforesaid offence cannot be adjudicated upon in the Civil Courts and under the circumstances, it is only the Criminal Courts, which are competent to determine the allegations contained in the written report of the complainant submitted by Daljit Singh. Moreover, the Judicial Magistrate concerned after considering the allegations and the evidence submitted before him along with the charge-sheet had summoned the accused-applicant under Sections 406/420, I.P.C. on 24-6-1988.

15. In this view of the matter as propounded above, I am of the opinion that the case against the applicant under Sections 406/420, I.P.C. is liable to be adjudicated upon by Criminal Court inasmuch as the facts of the present case stand on a quite different footing than the facts disclosed in the case reported in *Sardar Trilok Singh and Others Vs. Satya Deo Tripathi*, , and as such, the case relied upon by the learned Counsel for the applicant is of no applicability to the facts of the instant case. The other case relied upon by the learned Counsel for the applicant is 1984 Cri LJ 290, *Dr. R. K. Jayaswal v. State of U.P.* It has been held in the above decision that the truck has to be released in favour of a person in whose name, the registration certificate stood in preference to the person claiming ownership on the basis of affidavit and other papers. In the above case, the truck had not been taken on hire-purchase basis but it was a dispute between two persons claiming ownership of the truck. Under the circumstances this case too is of no help to Gurmez Singh applicant.

16. On the other hand, the learned Counsel for the respondent Daljeet Singh has placed reliance on 1985 ALJ 214, wherein it was held that the agreement arrived at between the parties on hire-purchase basis, has to be acted upon for hire-purchase, if it did not contravene the provisions of the Contract Act. It was further submitted by the learned Counsel that in the present case besides the factum of possession, an element of cheating and criminal breach of trust also exists as the truck in question was surrendered to the respondent for non-payment of regular installments, in a most rickety condition and after the truck had been repaired and renovated during the period of about six months and when it was stationed at painter's shop, it was taken away by applicant Gurmez Singh by playing fraud on the respondent. It is further submitted by the learned Counsel for the respondent that the allegations in the First Information Report were found to be correct during the investigation and the Police had also submitted a charge-sheet in the Court of Judicial Magistrate, who after taking into account all the evidence on record, summoned the applicant-accused under Sections 406/420, I.P.C.

17. It is further submitted by the learned Counsel that the truck in question is a subject matter of criminal proceedings and both the Courts below have rightly released the truck in the interim custody of the respondent Daljit Singh on his executing two sureties of Rs. one lac each with an undertaking in the like amount during the pendency of the trial,

18. There is substance in the contents of the learned Counsel for the respondent that the instant case partakes of Criminal nature and is liable to be adjudicated upon by a Criminal Court. I do not propose to go into the question and details beyond what has been pleaded in this petition preferred by the applicant, but in order to arrive at a just and proper finding as to whether the present case is of a civil nature or is liable to be adjudicated upon by a criminal court, this Court is under a duty to stray beyond the facts pleaded in the case and the materials on the record of this case.

19. It has been admitted by the applicant that he has been a defaulter in the payment of installments vide para 4 of the affidavit filed in support of the applicant's petition. Moreover, the applicant did not make any report countering the allegations in the First Information Report of the complainant. He has also not specifically contradicted the allegations of the complainant-opposite party 2 that the truck had been surrendered to Daljit Singh owing to applicant's inability in paying regular installments in specific terms nor is there any document on the record of this case vouching for the fact that the applicant had the truck in his possession and the report lodged against him, was a tissue of lies and as it appears from the record, he, directly approached the Court and moved application for release of truck in his favour. Further the recovery of the truck in abandoned state near the roadside on Bareilly Road ahead of Jahanabad, tilts the balance in favour of Daljit Singh as well as his case as set out in the First Information Report. To my mind, it would be a miscarriage of justice without going deep into the controversy to hold that the present case pertains to a nature liable to be adjudicated upon by the Civil Courts. Another striking feature in the case is that the truck was taken in possession by Daljeet Singh on 24-5-1987 from Gurmez Singh owing to his inability in paying regular installments and soon after it was given for repairs and up to 20-11-1987 which is the date of occurrence, applicant made no attempt to retrieve the possession of the aforesaid truck nor has he contradicted the allegations of the opposite party Daljeet Singh in specific terms, which speaks volumes for the bona fides and good intention of the applicant. I have gone through orders of both the Courts below and I find that the orders do not suffer from any infirmity and hence, both the orders are not liable to be interfered with by this Court.

20. I have given my thoughtful considerations to the submissions advanced by the learned Counsel for the Parties. I have also gone through the relevant materials on record. Upon a conspectus of the materials on record as well as what have been submitted by the learned Counsel for the parties, I feel no hesitation to hold that the subject-matter in the instant petition u/s 482, Cr. P.C. pertains to an offence of cheating besides the offence of criminal breach of trust inasmuch as the police had investigated the case and had submitted a charge-sheet in the court of Judicial Magistrate and finally the learned Judicial Magistrate after considering the evidence before him, had summoned the applicant as accused u/s 406/420, I.P.C.

21. I have also gone through the judgment and orders passed by both the Courts below and upon a consideration, I do not find that the orders passed by both the courts below have the taints of any infirmity and as such, no ground whatsoever has been made out as to render the aforesaid judgment and orders passed by both the Courts below, liable to be interfered with.

22. Under the circumstances as discussed above, there is no merit in this petition and it is liable to be rejected.

23. In the result, the application u/s 482, Cr. P.C. preferred by Gurmez Singh, applicant, is rejected as devoid of merit. The Judicial Magistrate concerned is directed to decide the case within three months from today in accordance with law without being prejudiced by the observations made in the body of the judgment.

24. Before taking leave of this case, I may quip that the above findings shall be treated as limited to the question, whether the Criminal Court is competent to adjudicate upon the controversy in the instant case and the trial court, while trying the present case shall not feel prejudiced by the observations if any, beyond the question pleaded in the instant petition.

25. Office is directed to send a copy of this judgment to the Court of Judicial Magistrate concerned within 10 days from today.