

(2009) 02 BOM CK 0087
In the Bombay High Court
Case No : Criminal Application No. 69 of 2002

Jivan Vinayakrao Baride

APPELLANT

Vs

Dinesh Ramdulare Gupta

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 153(3), 154, 156(3), 397, 482
Penal Code, 1860 (IPC) — Section 218, 418, 420, 467, 468

Citation : (2009) 3 ALT(Cri) 14 : (2009) CriLJ 2540 : (2010) 6 RCR(Criminal) 287

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : S.B. Bhapker, for the Appellant; A.P. Shaha and Mukul Kulkarani, R.R. Mane, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This, application is filed, challenging, the impugned judgment and order dated 7-11-2001 passed by the Additional Sessions Judge; Parbhani in Criminal Revision No. 113/2001.

2. The present, applicant filed Regular Criminal Case No. 76/2001 against the respondent No. 1 under Sections 418, 420, 468, 471 and 218 of the Indian Penal Code on 15-6-2001 before the Judicial Magistrate. First Class, Purna praying therein to direct the police of Purna Police Station to investigate and register the crime u/s 153(3) of Criminal Procedure, Code and to submit the charge-sheet within stipulated period in the Court.

3. Background facts of the case are as under:

It is the case of the complainant/applicant herein that the complainant was intending to purchase vehicle of Mahindra and Mahindra Company. The respondent No. 1, being the Manager of the Finance Company, has assured to hand over jeep on hire-purchase on repayment of some equal installments at the

rate of 11.18%. Accordingly, the respondent No. 1 approached the complainant at Purna and assured to hand over the vehicle.

4. When respondent No. 1, met the complainant at Purna and assured to hand over the vehicle, at the same time on 27-8-1997 the complainant paid cash amount to Rs. 90,000/- in presence of witnesses i.e. Shri. Joshi Ratnakar Ramrao, Kailash Rustumrao Ingole and Ravi Gangadharappa Bichade. The said amount of Rs. 90,000/- was accepted by the respondent No. 1/accused and the vehicle was handed over to applicant by way of taking signature on blank proforma of agreement. The vehicle bearing No. MH-22/7597 was handed over to the applicant. It was the case of the complainant/applicant that while taking signature of the complainant, the respondent No. 1/accused was very well knowing that he has taken signatures of complainant and Kailash Ingole. He has intentionally taken the signatures of the applicant on blank agreement with intent to deceive and/or cheat the complainant. So also at the same time, the accused has taken 36 blank cheques from the complainant, only having signature of complainant over it, having no date or figure in the hand writing of complainant. This was so done, by the respondent No. 1/accused only with intent to deceive complainant and to cause him irreparable loss with an intent to cause wrongful gain to the respondent No. 1/accused.

5. It was the case of the complainant that the insurance of vehicle, prepared by complainant, is dated 27-8-1997 and agreement is shown by accused on dated 11-10-1997. The xerox copy of agreement as well as xerox copy of insurance were annexed with the complaint by the complainant. Vehicle was registered with R.T.O. Office on 1-9-1997. It was the case of the complainant that these facts disclose that there was no agreement practically on 11-10-1997. The respondent No. 1/accused has taken signatures of applicant over blank proforma agreement with an intent to fill-up the blank as per his whims. Though the agreement shows initial payment as nil, the complainant has paid Rs. 90,000/- towards initial payment and on the other hand the respondent No. 1/accused has shown initial payment of Rs. 62,250/- dated 30-8-1997 vide receipt No. 2400 with receipt No. RML 2400. According to the complainant, this indicates that an incorrect and false agreement was prepared by the respondent No. 1/accused with intention to cheat/deceive the applicant and cause him irreparable loss.

6. Though the payment of Rs. 90,000/- was made by the complainant before the agreement/contract No. ML 331, the respondent/accused dishonestly concealed the fact that the applicant has paid Rs. 90,000/- and issued receipt of Rs. 62,250/- only. Not only this, he has mentioned in Clause 3 of the agreement that no any initial payment was made by the complainant.

7. It was the case of the complainant that after registration of vehicle, many times complainant/applicant approached to respondent No. 1 and requested for receipt of Rs. 90,000/- and copy of agreement. However, neither the copy of agreement nor initial receipt of Rs. 90,000/- was given to the complainant/applicant. Lastly back dated receipt of initial payment dated 30-8-1997 and

xerox copy of agreement was sent by the accused through R.P.A.D.

8. On perusal of the receipt of only Rs. 62,250/- the complainant had been to accused for seeking his explanation, as to why in spite of payment of Rs. 90,000/- receipt of only Rs. 62,250/- was issued. The complainant was deceived by accused on account that he will adjust the amount on next installments, which he has not done.

9. As per agreement the complainant was requested to pay 36 installments each of Rs. 11,759/-,-inclusive of interest. While calculating installments, interest was not calculated at the rate of 11.18%. The vary calculation was incorrect and the document showing the calculation was preparation of false document, knowingly prepared by the respondent/accused with the knowledge that by way of asking such installments when initial payment is already paid and when that much amount ought to be deducted. The respondent No. 1/accused again asked 36 installments. According to the complainant, the act of accused asking further 36 installments in nothing, but preparation of false document and cheating with the knowledge that the act of accused will cause wrongful loss on the said transaction to which cheating is attracted. According to the complainant, by preparing such documents and preparing false transaction, the accused has committed an offence punishable u/s 418 of I.P.C. The accused has taken 36 blank cheques from the complainant of Puma Nagari Sahakari Bank. The said cheques were blank without dates. However, same were signed by the applicant. The complainant further disclosed in the complaint that while calculating the finance amount and interest, the principal amount was expected to the sanction as price of vehicle was Rs. 3,17,000/- {In fact Rs. 3,17,000/- minus Rs. 90,000/- total Rs. 2,27,000/- was the actual amount due towards complainant). According to the complainant, there was no need of 36 cheques to be taken from the complainant. It is the case of the complainant that the respondent/accused by calculating of accounts as total repayment of Rs. 4,23,000/-, has prepared the document dishonestly with intent to cause wrongful loss to complainant.

10. It is the case of the complainant that the cheque payment of Rs. 1,56,383/- and cash Rs. 3,12,000/- was paid to the accused. This payment was above and over price of vehicle including interest thereon and nothing was remained to be paid by the complainant to the accused.

11. On 10-5-2000 the complainant received telegram from the accused that Rs. 1,19,000/- are due towards the complainant which should be paid by 15-5-2000. On 11 -6-2000 the accused had been to the complainant at Puma along with 5 to 6 unknown Gundas and at the point of threat of dire consequences, forcibly snatched the vehicle and taken the same from the custody of complainant. According to the complainant, this act of accused was nothing but rtbody.

12. On 15-5-2000 the application was moved by the complainant before District Consumer Redressal Forum. The District Consumer Redressal Forum delivered the judgment in favour of the complainant and held that false accounts are

prepared by the accused company.

13. It is the case of the complainant that from the date of agreement i.e. 27-8-1997 till 11th June; 2000 i.e. till the copy of statement of account submitted by the accused shows that right from the date of agreement series of criminal acts are committed by the accused/respondent No. 1 in series of transaction with complainant with an intent to cause wrongful loss to complainant accused and to have wrongful gain to accused and it's company. Hence, the complainant filed the complaint for commission of offence for the period from 27-8-1997 up to 28-9-2000 by the accused. It is the case of the complainant that the acts of the accused are liable to attract conviction under the provisions of penal law.

14. The complainant further stated in the complaint that the forcibly taking of jeep from the custody of the complainant and selling it without consent of the complainant, knowingly, that on the date of robbery of jeep, he was not expected to sell it as he has no authority to do so, as he was knowing that there was no dues from the complainant, these acts of accused constrained to lodge the complaint and construed cause of action to the complainant.

15. According to the complainant, on 28-10-1999 a notice is issued by a company to the complainant alleging that dues of Rs. 1,06,502/- and interest at the rate of 36% per month. While issuing this notice, the accused was aware that issuance of such notice is nothing, but preparation of false document by the accused for which he was not entitled. It is further case of the complainant that the statement of account submitted by the accused before the consumer forum, has shown additional finance charges of Rs. 68,444/- and repossession charges of Rs. 22,250/-. According to the complainant, in fact vehicle was not handed over to the complainant, so there cannot be repossession charges. Such by way of all series of acts, complainant was deceived by the accused and intentionally put into the wrongful loss.

16. The complainant in complaint lastly prayed that the Court should take cognizance of the complaint and P.S.I. Purna Police Station be directed to investigate the offence u/s 156(3) of Cr.P.C. and submit the charge-sheet within stipulated period.

17. The Judicial Magistrate, First Class, Purna on the bases of complaint of the complainant directed the Police Station Purna to register the F.I.R. u/s 154 of Cr.P.C. against the respondent No. 1/accused under Sections 418, 420, 468, 471 and 218 of Indian Penal Code and to investigate the same u/s 156(3) of Cr.P.C. and to submit report till 20th July, 2001.

18. It is the case of the complainant that in pursuance of order dated 15-6-2001 passed by the learned Judicial Magistrate, First Class, Puma, the FIR was submitted against the respondent No. 1 on 2-7-2001, registering the crime against the respondent No. 1. The investigation was to be in motion by the Police Station Purna.

19. The respondent No. 1/accused filed Criminal Revision No. 113/2001 in the Sessions Court, Parbhani against the applicant u/s 397 of Cr.P.C. for quashing the proceedings filed before the learned J. M. F. C, Purna and directions to close the file by stopping investigation.

20. The respondent No. 1/accused also sub-mitted application for stay at Exh. 5 on 12-6-2000. The ex parte interim stay was granted in favour of respondent No. 1/accused.

21. It is the case of the applicant that the respondent No. 1/accused did not made the State or Police Station Purna as party to the Criminal Application No. 113/2001 before the Sessions Court, Parbhani. The Sessions Court granted interim stay to the order passed by the J.M.F.C., Purna. On 7-11-2001 the Additional Sessions Judge, Parbhani quashed and set aside the order dated 15-7-2001 passed by the J.M.F.C. Purna below Exh. 1 in Regular Criminal Case No. 76/2001 holding that R.C.C. No. 76/2001 pending before the Court of J.M.F.C., Purna as well as Crime No. 69/2001 registered at Purna Police Station stand quashed. Hence, this application is filed by the present applicant, challenging the order passed by the Sessions Judge, Parbhani.

22. This application was heard for admission on 30th January, 2002 by this Court. Notice before admission was issued to the respondent returnable on 7-3-2002. Rule was issued in the matter. Today the matter is for final hearing.

23. The learned Counsel appearing for the applicant submitted that the impugned order passed by the Revisional Court is uncalled, unwarranted, the same is arbitrary, without application of mind and against the provisions of Section 397 of Cr.P.C., the Revisional Court exceeded its jurisdiction, the revision u/s 397 is not maintainable as the order passed by the J.M.F.C., Purna is interlocutory, even the powers under revision are limited than the powers u/s 482 of Criminal Procedure Code. It is further argued that the Revisional Court has acted in excess of powers available to him u/s 397 of Cr.P.C. while allowing the revision. It is further argued that the J.M.F.C., Purna has rightly issued the process against the respondent No. 1 in the capacity of Manager of Ashok Leyland Finance Company who has committed the offence and needs investigation and trial under Sections 418, 420, 468, 471 and 218 of Indian Penal Code. It is further argued that the Revisional Court has committed error in observing in para No. 11 of its judgment that the respondent is being prosecuted in his personal capacity, on a contrary record reveals that respondent is added as a accused in his Managerial capacity of Ashok Leyland Finance Company and therefore, the complaint is very well maintainable against him. It is further argued that the Revisional Court has also committed error in para 14, holding that admittedly no complaint has been lodged by the present petitioner to the police and directly filed before J.M.F.C., Purna. According to the learned Counsel, the recitals of the complaint In paras 11 to 18 clearly speaks that, that the applicant has lodged report, not only before the Police Station Purna, but also to District Collector, District Superintendent of Police Parbhani and therefore, the

findings recorded in para 14 are without application of mind, perverse and contrary to the record.

24. It is further submitted that the findings of the Revisional Court that the dispute is of civil nature and controversy in hand is covered by the judgment of Hon'ble Apex Court, in the case of Triloksing v. Satyadev reported in Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, , is no more good law and same is overruled by Supreme Court in subsequent decisions reported in Kamaladevi Agarwal Vs. State of West Bengal and Others, . It is further submitted that the pendency of civil action or dispute in civil nature cannot be basis for quashing the proceedings. It is further submitted that this Court's Full Bench decision reported in Anil B. Nadkarni and Others Vs. Amitesh Kumar, Dy. Commr. of Police, Worli Div., Mumbai and Others, held that the High Court in exercise of powers u/s 482 of Cr.P.C. should not embarked upon any Inquiry and should exercise power sparingly. It is further argued that the powers of Revisional Court u/s 397 cannot be said to be higher than the powers of this Court u/s 482 of Cr.P.C. in the matter of quashing the proceeding.

25. It is further submitted by the learned Counsel for the applicant that the Supreme Court in the case of M. Krishnan Vs. Vijay Singh and Another, , held that quashing the complaint merely on the ground that the dispute was of civil nature, proceedings cannot be quashed. It is further argued that the revisional powers of quashing the proceedings are limited. The learned Counsel further relied on the judgment of this Court reported in Barbeil Khimji Shah Vs. State of Maharashtra and Another, . The sum and substance of the argument of the learned Counsel for the applicant is that the complaint cannot be quashed merely on the ground that dispute was of civil nature, criminal remedy is not barred nor the complaint is estopped from seeking criminal prosecution. The learned Counsel further placed reliance on the judgment of Supreme Court reported in AIR 2007 1349 and submitted that the bank or finance company cannot seize or take away the vehicle from the owner by using the force. According to him, if there is default of payment, even then the vehicle cannot be taken forcibly by finance company without following legal means. It is further submitted that the recovery agency acting on behalf of finance company is not entitled to take law in hand by taking back the possession of the vehicle by force from the owner on the ground of default in payment.

26. The learned Counsel further submitted that the remedy of criminal proceedings is very well maintainable in spite of civil remedy available to the party when the contents of the complaint, prima facie disclose the offence. It is further submitted that the revisional Court was not Justified in exercising its revisional powers. Therefore, the learned Counsel submitted that the application deserves to be allowed.

27. The learned Counsel for the respondent No. 1 submitted that the applicant had obtained motor vehicle on hire purchase from the present respondent No. 1, agreement in writing was executed between both the parties incorporating

therein all the agreed terms and conditions.

It is further submitted that upon default by the present applicant, the vehicle was seized by the respondent No. 1 on 11-6-2000 and sold in auction to recover the amount.

The learned Counsel further submitted that feeling aggrieved by the action of recovery, the present respondent filed a complaint before the District Forum, Nanded under Consumer Protection Act. The complaint of the applicant was allowed by the Consumer Forum vide judgment and order dated 11th April, 2001. The present respondent No. 1 preferred the appeal before State Commission, challenging the judgment and order passed by the District Consumer Forum. The State Commissioner stayed the order passed, by the District Consumer Forum.

The learned Counsel further submitted that as the order of the District Forum was stayed by the State Commission on 15-5-2001, the present applicant filed criminal complaint against the respondent No. 1 before the J.M.F.C., Purna. The learned Counsel further submitted that the complaint was filed after one, year from the date of seizure of the vehicle and also after the order of District Forum was stayed by the State Commission. According to the learned Counsel for the respondent, purpose for filing the complaint by the applicant was only to pressurize the respondent No. 1. It is further submitted that the complaint filed by the present applicant was prolix and contained all the possible allegations that the complainant could make against the present respondent. It is further argued that though one of the grievance of the present applicant was about seizure of vehicle by the present respondent No. 1, the trial Court vide its order in R.C.C. No. 76/2001, no directions to register the FIR for the offence about the seizure of vehicle or any other facts alleged. According to the learned Counsel, the present applicant remained content with the order passed by the learned trial Court in R.C.C. No. 76/2001 whereby FIR was directed to be registered for the offences only under Sections 418, 420, 468, 471 and 218. The applicant did not felt aggrieved by non-issuance of directions for registering FIR for offences related to offer (sic) alleged facts. The respondent No. 1, being aggrieved by the order of learned trial Court passed in R.C.C. No. 76/2001, so far as it directed to register FIR and initial investigation for offences under Sections 418, 420, 468, 471 and 218, preferred Criminal Revision Application. According to the learned Counsel for the respondent No. 1, whether the alleged facts regarding seizure of vehicle constitute any offence or not, was not the subject-matter at issue before the Sessions Court and as such it also cannot be the subject-matter at issue in this proceedings initiated u/s 482 of Criminal Procedure Code whereby the only order passed by the Sessions Court is challenged.

28. According to the learned Counsel for the respondent No. 1, the order of Sessions Court is the subject-matter of challenge in the present proceedings initiated by the present applicant and as such, the scope of enquiry in the present proceeding is limited to offences under Sections 418, 420, 468, 471 and

218, at this stage, the scope of inquiry cannot be enlarged than what it was before the Sessions Court. According to the learned Counsel, the grounds or agreement of present applicant regarding the seizure of the vehicle cannot be considered at all in the present proceedings as they are not germane to the matter at issue. According to the learned Counsel for the respondent No. 1, the order and the reasoning of the Sessions Court whereby it is held that the relevant facts alleged (facts regarding fraud and checking) did not constitute any offence under Sections 418, 420, 468, 471 and 218, cannot be faulted on the ground that the other facts alleged (facts regarding seizure of vehicle) constitutes offence under some other sections.

29. In the alternative, Counsel submitted that even if the order of the Sessions Court is set aside, the result would be revival of order of trial Court which restricted to offences under Sections 418, 420, 468, 471 and 218. In the alternative, the learned Counsel further submitted that even the facts alleged regarding seizure of vehicle would not constitute any offence, in support of his contentions, he relied upon the judgment of Supreme Court in the case of Charanjit Singh Chada v. Sudhir Mehra reported in Charanjit Singh Chadha and Others Vs. Sudhir Mehra, : Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, . According to the learned Counsel for the respondent No. 1, in the instant case, the alleged facts regarding seizure of vehicle would not constitute any offence, also for the want of mensrea. According to the learned Counsel for the respondent No. 1, the written intimation given to the concerned police station about the seizure of the vehicle and as such, it cannot be said that the present respondent had intention to commit any offence. According to the learned Counsel, judgment relied by the applicant in the case of Manager, ICICI Bank Ltd. Vs. Prakash Kaur and Others, is not applicable in the instant case. In the said case the method of recovery adopted by the financier was deprecated, however, the acts of seizure of the vehicle by bank are not held to be constituted any offence. No ratio is laid down to the effect that the seizure in the given circumstances, constitutes any offence. On the contrary, in the said case criminal appeal preferred by the bank is ultimately allowed and the FIR/investigation were quashed considering offer by the bank to restore the recovered property. According to the learned Counsel, in the instant case also the amount of Rs. 1,65,000/- is already paid to the present applicant though as an outcome of civil litigation, under Consumer Protection Act. It may also be considered that the present respondent, who was working as a Manager with the Ashok Leyland Finance Company Ltd. at the relevant time, is now retired and not working with the company.

30. The learned Counsel further submits that so far the allegations about cheating and forgery were concerned, the learned Sessions Court was pleased to allow the revision application of the present respondent No. 1, primarily holding that dispute between the parties is of a civil nature and the facts alleged, even if presumed to be true, will not amount to any offence under Sections 418, 420, 468, 471 and 218. He further submitted that the Sessions Court rightly relied

upon the ratio laid down in the judgment of Supreme Court in the case of Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, and came to the conclusion that the alleged facts in the complaint does not constitute any offence.

31. He further submitted that the submission of the applicant that ratio laid down in Triloksing's case is overruled by the judgment cited in Kamaladevi Agarwal Vs. State of West Bengal and Others, is not correct position. The judgment in Trilok Singh's case is not even referred in the judgment in Kamaladevi's case, much less overruled. According to the learned Counsel, the ratio laid down in the cases of Trilok Singh and Kamaladevi are distinct from each others. In the case of Triloksing, it is held that the obtaining signature on the blank proforma of the agreement does not constitute any offence and the dispute is purely of a civil nature. Whereas in Kamaladevi's case, it is held that pendency of civil proceedings regarding the same subject-matter cannot be the sole ground for quashing the criminal proceedings. The alleged offending acts in the instant case and Trilok Singh's case on one hand and in Kamaladevi's case on other hand, are also distinct. The offending act alleged in the instant case as well as in Trilok Singh's case is obtaining signatures on the blank proforma agreement, whereas in Kamaladevi's case, the alleged offending act is forging the signature of the complainant on the dissolution deed, which was never executed by the complainant in that case.

32. According to the learned Counsel for the respondent No. 1, the case laws relied upon by the present applicant i.e. M. Krishnan Vs. Vijay Singh and Another, and Barbeil Khimji Shah Vs. State of Maharashtra and Another, wherein it is held that, the Criminal proceedings cannot be quashed only on the ground that civil proceedings are pending, is not applicable in the present case. The criminal proceedings were quashed by the learned Sessions Court holding that the alleged offending acts do not constitute any offence under Sections 418, 420, 468, 471 and 218, relying on Triloksing's case. In the instant case, pendency of adjudication under civil proceedings is not the sole ground on which the criminal proceedings were quashed by the Sessions Court. The learned Counsel further submitted that the present applicant has failed to establish that the alleged facts regarding cheating or forgery constitute any offence under Sections 418, 420, 468, 471 and 218 or that the alleged facts about seizure of vehicle constitutes any other offence. Therefore, it is prayed that the order of the Sessions Court may be upheld by rejecting the application filed by the applicant.

33. On perusal of complaint as well as arguments advanced by the learned Counsel for the applicant, the broad outline of the contentions in the complaint and argument of learned Counsel for the applicant, is that the transaction was arisen out of hire purchase agreement. The rate of interest was agreed 11.18%. On 27-8-1997 Rs. 90,000/- in cash were paid to the Manager. Further, vehicle was handed over to the applicant and his signatures were obtained on blank proforma of agreement. It is further case of the applicant that intentionally signatures were taken on blank agreement with intention to deceive/cheat the

complainant. The said agreement was not having date or figure on it. According to the complaint and learned Counsel for the applicant, though the insurance of vehicle was taken on 27-8-1997 the agreement was shown to be executed on 11-10-1997. Vehicle was registered with R.T.O. office on 1-9-1997. It is further case of the complainant that though Rs. 90,000/- were paid in cash to the accused, the initial payment was shown as Rs. 62,250/-. According to the complainant, though Rs. 90,000/- were paid in cash, the initial payment of agreement was shown as Rs. 62,250/- which indicates incorrect and false agreement was prepared. According to the complainant, 36 blank cheques signed by the complainant, were taken by the accused towards installments of Rs. 11,759/- per month. According to the complainant, there was no need to take 36 cheques from the complainant. It is further case of the complainant that by preparing false transaction and document offence punishable u/s 418 of IPC has been committed by the accused person. It is further stated in the complaint that total repayment of Rs. 4,23,000/- is shown on the document, though the complainant was not supposed to pay Rs. 4,23,000/-. Therefore, according to the complainant, the accused persons have prepared false document, dishonestly with intention to cause wrongful loss to the complainant and wrongful gain to the accused persons. The complaint came to be lodged against the accused before the J.M.F.C. The J.M.F.C. directed to the police to investigate the offence u/s 156(3) of Cr.P.C. and after investigation on 2-7-2001 FIR came to be lodged.

34. The J.M.F.C. issued the process against the accused persons. Being aggrieved, the revision was preferred by the original accused.

35. The first contention of the learned Counsel appearing for the applicant is that, the powers of the Sessions Court u/s 397 are limited compared to Section 482 of Cr.P.C. In my view, there is no dispute about the powers of this Court u/s 482, which are wide enough compared to powers u/s 397 of Cr.P.C. The second point raised by flip learned Counsel is that the issuance of process is interlocutory order and so far revision u/s 397 is not maintainable. This point is no more resintegra and this Court has taken a view that revision is maintainable.

36. The real controversy in the present case is about whether the respondent has preferred false and forged document and further whether he has committed any offence u/s 418 and other Sections of IPC mentioned in the order of J.M.F.C.

37. It is admitted position that there was hire-purchase agreement between the parties. The copy of hire-purchase agreement is produced on record before the Courts below. The condition No. 9 of the first schedule of the said agreement clearly empowers the owner i.e. Ashok Leyland Finance Co. Ltd. to take possession of the vehicle, if the hirer fails to pay any installments within the stipulated time irrespective of the facts, as to whether any demand in respect thereof is made or not by the owner i.e. Financier. The condition No. 9 very well exists in the format of agreement even before the complainant put his signature thereon. The complainant, while putting his signature, was aware of condition No. 9 and therefore, he was also aware that he commits default in payment of

installment, the vehicle taken by him from the Ashok Leyland Company will be taken back from him by the said company in the event of his failure to pay any installments. The applicant/complainant had agreed to the terms and conditions of hire purchase agreement with open eyes. The complainant should not have signed the blank format or blank cheques as the case may be and it was open for him not to sign the blank format of hire-purchase agreement or handing over the blank cheques signed by him to the company. The point which is involved in this case i.e. taking signature on blank format of hire-purchase agreement and for non fulfillment of the condition therein of non payment of any installment would accrue right in favour of financier to seize the vehicle from the custody of the complainant, is no more res integra and is fully covered by the judgment of the Apex Court in the matter of Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, . The facts of the case in hand are almost identical with the above mentioned judgment of the Apex Court.

In the said judgement, the Apex Court has briefly narrated the facts as under:

The dispute between the parties related to the purchase of a truck by the complainant (respondent). A hire-purchase agreement was entered into between the respondent and a Finance Corporation accused (appellants). The loan was payable in monthly installments. According to the agreement, on default of any one installment the financier had the right to terminate hire-purchase agreement even without notice and seize the truck. The complainant's case was that only a blank form was got signed by him. His further case was that on default of the third installment the truck was forcibly seized and removed by the appellants. The respondent filed a complaint against the appellants in this connection for certain offences. After enquiry the Magistrate directed the issue of summons, the appellants moved an application u/s 482, Criminal P. C. Their case in the nutshell was that the respondent's case that they had committed any offence was absolutely false and the proceedings should be quashed.

The Apex Court in said decision in para 3 has observed that:

We are clearly of the view that it was not a case where any process ought to have been directed to the issue against any of the accused. On the well-settled principles of law it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power.

The Apex Court held that the criminal proceeding initiated was clearly an abuse of the process of the Court.

38. The submissions of the learned Counsel appearing for the applicant that the above mentioned judgment is overruled by the subsequent judgment, is required to be rejected. The learned Counsel has not placed anything on record or argued in support of his contention that the above mentioned judgment of the Apex Court has been subsequently overruled by the Apex Court.

39. Another point which is raised by the learned Counsel for the applicant is that

pendency of civil dispute, is no ground for quashing the criminal proceedings, required to be dealt with in the light of the observations of the Apex Court in the above mentioned judgment. The Apex Court in above mentioned judgment has almost dealt with identical facts and situation as the case in hand and therefore, it is not necessary to further comment on this point. The learned Sessions Court has not only considered the case on the ground that the point involved in the case is civil dispute, but apart from that the learned Sessions Judge has commented on the other aspects and came to the conclusion that no criminal offence is made out against the revision-petitioner/respondent herein.

40. The vehicle was seized from the custody of the applicant on 11-6-2000 and said was sold in auction. The said vehicle was seized because of the default made by the accused in payment as agreed in hire-purchase agreement.

The complainant approached the Consumer Forum, Nanded on 15-5-2001. The Consumer Forum entertained his application and amount of Rs. 1,65,000/- was directed to be paid to the complainant and accordingly, the respondent has paid the amount to the complainant.

There is substance in the contention of the learned Counsel for the respondent that the complaint was filed by the complainant after 1 year of seizure of vehicle which is hopelessly delayed. The learned Counsel for the respondent was right in submitting that the FIR is only under Sections 418, 420, 468, 471 and 218 and there is no any Section added by the learned Magistrate while issuing process, so far attracting the offence of seizure of vehicle and therefore, there is no question of considering any new point by this Court and the order passed by the J.M.F.C. while issuing process.

41. The Apex Court in another judgment in the case of Charanjit Singh Chadha and Others Vs. Sudhir Mehra, held as under:

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 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.

42. What follows from the two judgments of the Supreme Court referred

hereinabove is that if the case arises out of the hire-purchase agreement the financier has right to seize the vehicle in default of any installment by the purchaser of the vehicle. The Apex Court in Triloksing's case even has considered the identical situation as existing in the present case. In that case also the signatures were obtained on blank forms and on other several papers and forms had not been duly filled up. However, the Supreme Court held that no criminal offence can be attracted. Therefore, the above two observations of the Apex Court is complete answer to the controversy raised in this case.

43. The learned Counsel has referred some Supreme Court judgments to contend that pendency of civil dispute is no ground for quashing criminal proceeding, is not in controversy. However, the said judgments are not applicable in the facts situation of this case.

44. The other two aspects which are raised by the learned Counsel for the applicant that the revisional Court has wrongly recorded that the concerned Manager was made party in his personal capacity and the pendency of civil dispute is bar to entertain the criminal complaint, may be in addition to his findings on the aspect that in the fact situation of this case, no criminal offence is made out. In my considered view, even the findings recorded by the revisional Court are kept aside, the above mentioned two judgments are complete answer to the point raised in this application and therefore, the application deserves to be rejected. Rule is discharged. Application is rejected.