
(1991) 09 AP CK 0033
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3592 of 1989

L. Gotham Chand

APPELLANT

Vs

The District Judge and Others

RESPONDENT

Date of Decision : 13-09-1991

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 44(2C), 44(2E)
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 2(19), 31A(5)

Citation : (1992) 1 ALT 514 : (1992) 1 ALT 489 : (1992) 1 AnWR 188 : (1992) 1 APLJ 266

Hon'ble Judges : Sardar Ali Khan, J; Bhaskar Rao, J

Bench : Division Bench

Advocate : A.T.M. Rangaramanujam, for the Appellant; Govt. Pleader for Forests for Respondents 1 to 3, for the Respondent

Judgement

M.N. Rao, J.—Section 2(19) of the Motor Vehicles Act; 1939 reads:

""owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the Vehicle under that agreement."

Section 44 of the A.P. Forest Act, 1967, lays down a detailed procedure for seizure of property liable to confiscation. Section 44(2-C) says that if the "owner" of the vehicle used in the commission of a forest offence proves to the satisfaction of the authorised officer that the vehicle was used "without his knowledge or connivance or the knowledge or connivance of his agent" and that all reasonable and necessary precautions against the use of the vehicle were taken, the authorised officer shall not pass the order of confiscation. Section 44(2-E) enables "any person aggrieved" by the order of confiscation to file an appeal to the District Court having jurisdiction over the area in which the property has been seized.

2. In the present writ petition car bearing registration number T.M.W. 2601 was seized on the intervening night of 11 /12-4-1988 on the allegation that it was involved in illicit transport of 544 K.Gs., of red sanders. It was alleged that the persons in the car bolted away when the vehicle was intercepted by the Forest Officials. The authorised officer issued a publication in the newspapers calling for objections and as no one had filed any objections, passed an order confiscating the vehicle. The writ petitioner claiming himself to be a financier under a hire purchase agreement dt.10-11-1987 in respect of the vehicle, filed an appeal before the District Court, Cuddapah. The learned District Judge dismissed the appeal, inter alia, holding that the petitioner cannot claim himself to be the owner of the vehicle in view of the definition of "owner" u/s 2(19) of the Motor Vehicles Act. Challenging the same this writ petition was filed.

3. In *Lakshmaiah v. State of A.P.* 1979 (1) ALT 201 Punneya, J. held:

"Under Section 2(19) of the Motor Vehicles Act of 1939 owner means that person in possession of the vehicle under the hire purchase agreement. In view of the definition u/s 2(19) the first petitioner is the owner of the vehicle and the 2nd petitioner cannot be deemed to be the owner of the vehicle. If the 2nd petitioner has got any rights under the said agreement, he can proceed against the 1st petitioner."

A different view was taken by Rama Rao, J. in *State Bank of India v. State of A.P.*, CrI. R.C.No. 499/84 dt. 15-10-1985 (APHC) wherein the learned Judge observed:

"The context and set up of the provision for Section 49 in conjunction with Section 44(2-C) indicate that either the full fledged owner or a person having interest in the nature of proprietary interest or ownership are entitled to move under the said provisions as the case may be, and exclude the claim at the instance of the creditors, either secured or unsecured."

The Karnataka High Court in a case arising under the Customs Act reported in *Gundu Govind Dumale v. Collector of Customs* 1980 KarLJ 308 the full report of which is found in *Hire Purchase Cases*, Vol. II page 245, held:

"In the case of a vehicle that is subject to hire purchase, the registered owner of the vehicle is only a hirer of the same, and its real owner is only the financier of that vehicle. The hirer does not become the owner till he pays all the instalments and the purchase price, though he is recognised as its registered owner in the record of the authorities functioning under the 1939 Act. While the hirer is under no obligation to purchase a vehicle, he becomes its owner on payment of all the instalments, exercises the option to purchase and pays the purchase price to the real owner of the vehicle. The mere user or the recognition by the authorities under the 1939 Act, does not by themselves make him the owner of that vehicle."

4. As different and apparently conflicting views were expressed by two learned single Judges of this court, I am of the view that the matter requires to be

decided by a Division Bench.