

(2003) 04 AP CK 0043
In the Andhra Pradesh High Court
Case No : Writ Petition No. 10884 of 2000

Mirza Ramza Ali

APPELLANT

Vs

Commissioner, Prohibition and Excise and Another

RESPONDENT

Date of Decision : 16-04-2003

Acts Referred:

Andhra Pradesh Prohibition Act, 1995 — Section 13(2)
Motor Vehicles Act, 1988 — Section 51(2), 51(5), 51(5)

Citation : (2003) 3 ALD 700 : (2003) 3 ALT 562 : (2003) CriLJ 3613

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

Bench : Single Bench

Advocate : Hari Prasada Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner claims to be Branch Manager of M/s. Sri Ram Transport Finance Ltd., ("financier" for brevity). The financier appears to have given a loan to one Ch. Sarada ("hirer" for brevity) under an agreement dated 5-6-1996 ("hire purchase agreement" for brevity) for purchase of a goods vehicle, lorry bearing No. AP-26-T-2039. Under the hire purchase agreement, the hirer has to pay monthly instalments to the financier and it was covenanted that the hirer shall not transport any illegal and unauthorized goods. Clause 8 of the hire purchase agreement provides that ownership of the vehicle will remain with the financier unless and until the loan amount is repaid.

2. The vehicle in question was intercepted and checked by the Prohibition and Excise Inspector, Kovur along with his staff on 27-7-1996. The lorry was carrying 360 quarts of Indian made liquor (IML). Under a panchanama, the vehicle along with the contraband was seized and produced before the second respondent herein. The latter initiated proceedings u/s 13(2) of the A.P. Prohibition Act, 1995 ("the Prohibition Act").

3. The hirer, claiming herself to be owner, presented an application to the second

respondent requesting for release of the vehicle seized on 27-7-1996. By an order dated 1-10-1996, the request for release of the vehicle was rejected. The petitioner herein then filed a writ petition being W.P.No. 7163 of 1998 for release of the vehicle. This Court disposed of the said writ petition directing the Deputy Commissioner to release the vehicle to the financier on furnishing bank guarantee for value of the lorry and also giving an undertaking that the vehicle shall not be disposed of during the pendency of the confiscation proceedings. Accordingly, the financier furnished a bank guarantee for an amount of Rs. 1,25,000/-and the vehicle was released as an interim custody.

4. The second respondent issued a show cause notice to the financier on 8-9-1999 proposing to confiscate the vehicle and calling for objections. An explanation was filed stating that as per the hire purchase agreement, the transportation of illegal and unauthorized goods is not permitted and that the hirer used the vehicle for transporting IML without the knowledge of the owner and, therefore, the same should not be confiscated. By an order dated 14-10-1999, the second respondent rejected the explanation given by the petitioner and ordered confiscation u/s 13 (2) of the Prohibition Act.

5. Aggrieved by the order of the second respondent, the petitioner preferred an appeal u/s 13-C of the Prohibition Act. By an order dated 6-3-2000, the first respondent dismissed the appeal holding as under:

I have gone through the records placed before me including panchanama and FIR etc. The mediators report reveals that A1 Ch. Chandrasekhar son of Smt. Ch. Sharada, the owner of the vehicle was found transporting the contraband in the lorry and confessed that he had purchased the bottles (IML) in Madras City for selling the bottles at Nellore. This clearly shows that the vehicle has been used for illegal transportation of contraband. Merely entering into a paper agreement does not absolve the appellant from the responsibility of ensuring that it should not have been carrying/transporting illegally in the lorry. A huge quantity of 360 quart bottles of IML were being transported in the lorry. No material evidence is placed before me to deviate from the findings of the Deputy Commissioner of Prohibition and Excise, Guntur.

6. The financier assails the order of the second respondent as illegal, unjust and arbitrary violating Article 19(1)(g) of the Constitution of India.

7. Learned Counsel for the petitioner, Sri A. Hari Prasada Reddy, submits that as per the hire purchase agreement between the petitioner and the hirer, the financier is deemed to be the owner of the vehicle and as there is no involvement of the financier in the alleged excise offence in transporting liquor, the lorry in question is not liable for confiscation. He placed reliance on the judgments of this Court in *The Asia Pacific Investments Trust Ltd. Vs. Ac, Excise and Prohibition, Hyderabad and Others*, , *K. Sidda Reddy v. B. Rangaswamy Naidu* 1981 (2) AnWR 406 and *Apple Credit Corporation Ltd. v. State of A.P.* 2002 (1) ALT (Crl.) 206 (A.P.).

8. Learned Asst. Govt. Pleader for Excise, Ms. Ramani, submits that the petitioner being the financier has to be considered as the owner of the vehicle only for the purpose of hire purchase agreement subject to the provisions of the Motor Vehicles Act, 1988 ("the M.V.Act" for brevity). For all purposes, the petitioner cannot be deemed to be the owner of the vehicle. For the purpose of Section 12 of the A.P. Prohibition Act, 1995 ("the Prohibition Act"), it is irrelevant as to who is the owner of the vehicle. If the vehicle is used for committing an offence under the provisions of the Prohibition Act, the same is liable for confiscation u/s 13(2) of the said Act. She placed reliance on the judgment of the Apex Court in *Ganga Hire Purchase Pvt, Ltd. v. State of Punjab and Ors.*, 1999 (9) Supreme 397, in support of her contention.

9. Two questions would arise for consideration. First question is whether the petitioner can be deemed to be the owner of the vehicle for all purposes in relation to exercise of right and discharge of duties? Second question would be whether in the facts and circumstances of the case, the order of confiscation is justified?

First question

10. For resolving the controversy as to who is the owner of the vehicle which was financed by a finance company and covered by hire purchase agreement, it is necessary to refer to certain provisions of the M.V. Act. Section 2(30) defines "owner" as to mean a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is subject matter of hire purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under the agreement. By reading the definition, it becomes clear that even where the motor vehicle is subject matter of hire purchase agreement, the person in possession of the vehicle under the agreement alone can be treated as owner of the vehicle and not the financier who financed for the purchase of the vehicle.

11. Chapter IV of the M.V.Act deals with registration of motor vehicles. Section 40 requires every owner of a motor vehicle to cause the vehicle to be registered by a registering authority in whose jurisdiction such owner has a place of residence or business where the vehicle is normally kept. Under the proviso to Sub-section (1) of Section 41, a motor vehicle can be registered jointly in the names of more persons than one.

12. Section 51 of the M.V. Act is very relevant for the purpose of this case. The same contains special provisions regarding motor vehicles which are subject to hire purchase agreement, hypothecation agreement etc. Sub-section (1) of Section 51 stipulates that where an application for registration of motor vehicle which is held under a hire purchase agreement, the registering authority shall make an entry in the book of registration regarding the existence of such agreement. As per Sub-section (2) of Section 51, where a registered motor

vehicle is transferred and the transferee enters into hire purchase agreement with any person, the registering authority shall on receipt of an application from the party may again make an entry as to the existence of the agreement in the certificate of registration under intimation to the original registering authority. Any entry made under Sub-sections (1) and (2) of Section 51 to the effect that a motor vehicle which is subject matter of hire purchase agreement can be cancelled by a registering authority on proof of termination of the said agreement by the parties concerned on an application made to the original registering authority. The cancellation of an entry commonly called "endorsement" of hire purchase/ hypothecation can be made on a written consent of the person whose name has been specified in the certificate of registration and the person with whom the registered owner has entered into an agreement. Sub-section (4) of Section 51 read with Sub-section (1) makes it abundantly clear that even where the motor vehicle is held under hire purchase agreement, it is only the name of hirer, who is registered as owner and not the financier. When a hire purchase agreement governs the use of motor vehicle, the registering authority only makes an entry in the certificate regarding the existence of such agreement. Here, we may conveniently extract Sub-sections (1) to (5) of Section 51 of the M.V. Act as under.

51. Special provisions regarding motor vehicle subject to hire purchase agreement, etc :--(1) Where an application for registration of a motor vehicle which is held under a hire purchase, lease or hypothecation agreement (hereafter in this section referred to as the said agreement) is made, the registering authority shall make an entry in the certificate of registration regarding the existence of the said agreement.

(2) Where the ownership of any motor vehicle registered under this Chapter is transferred and the transferee enters into the said agreement with any person, the last registering authority shall, on receipt of an application in such form as the Central Government may prescribe from the parties to the said agreement, make an entry as to the existence of the said agreement in the certificate of registration and an intimation in this regard shall be sent to the original registering authority if the last registering authority is not the original registering authority.

(3) Any entry made under Sub-section (1) or Sub-section (2), may be cancelled by the last registering authority on proof of the termination of the said agreement by the parties concerned on an application being made in such form as the Central Government may prescribe and an intimation in this behalf shall be sent to the original registering authority, if the last registering authority is not the original registering authority.

(4) No entry regarding the transfer of ownership of any motor vehicle which is held under the said agreement shall be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has

entered into the said agreement.

(5) Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfies the registering authority that he has taken possession of the vehicle owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgement due at his address entered in the certificate of registration) and notwithstanding that the certificate of registration is not produced before it cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement:

Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee;

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the remaining period for which the certificate cancelled under this sub-section would have been in force.

13. A reading of Sub-section (5) of Section 51 further makes it clear that the name of the financier cannot be shown as owner of the vehicle unless and until such person satisfies the registering authority that he has taken possession of the vehicle owing to default of the registered owner, in which event it is competent for the registering authority after issuing notice to the registered owner to cancel the certificate and issue a fresh certificate of registration in the name of the financier. Thus, for all purposes, a person who is in possession of the vehicle or hirer whose name is shown as registered owner can alone be treated as owner. The limited protection given to the owner is as contained in Sub-sections (2) to (5) of Section 51 of the M.V. Act. The position is not different even in the Hire Purchase Act, 1972.

14. By reason of clauses in the agreement, a financier is deemed to be the owner only for the purpose of hire purchase agreement and not for the purpose of the law under the M.V. Act. If the financier is deemed to be a registered owner, which is not the case under the M.V. Act, it would amount to holding the financier who obtains an entry in the certificate of registration regarding existence of the hire purchase agreement, responsible for all the acts of commission and omission in the use of motor vehicle. The financier would also be held responsible for the accident caused by the motor vehicle, for paying the motor vehicle tax, life tax, insurance etc., which is not the case here. The hire purchase agreement may even provide for a power to the financier to seize the vehicle in the case of default on the part of the hirer. The same does not in any manner result in cancellation of registration certificate unless and until the procedure

contemplated under Sub-section (5) of Section 51 is followed.

15. Some provisions of the A. P. Excise Act, 1968 ("the Excise Act") and the Prohibition Act may also be noticed. Section 45 of the Excise Act provides that whenever an excise offence is committed which is punishable under the Excise Act, intoxicant materials, still, utensil, implements or apparatus in respect of or by means of which such offence is committed, any intoxicant lawfully imported, transported or manufactured or possessed or sold along with any intoxicant, and the vehicle, vessels etc., used for carrying the intoxicants or packages are liable for confiscation. To the same effect is Section 12 of the Prohibition Act, which reads as under.

12. Things liable to confiscation :--Without prejudice to the powers of the Excise Officers u/s 46 of the Andhra Pradesh Excise Act, 1968, in any case in which an offence has been committed against this Act, the liquor by means of which the offence has been committed shall be liable to confiscation along with the receptacles, packages, coverings, animals, vessels, carts or other vehicles used to hold or carry the same.

16. Section 45 of the Excise Act or Section 12 of the Prohibition Act are not very much concerned as to who is the owner of the vehicle. The main stress is on the vehicle used to hold or carry the liquor. The moment a vehicle is used for carrying liquor it is liable for confiscation (when there was prohibition in force).

17. In *K. Sidda Reddy v. B. Rangaswamy Naidu* (supra), this Court considered the question as to who would be the owner of a vehicle under hire purchase agreement. Placing reliance on the decisions of the Mysore High Court in *Gopalan Nair v. Kelu* (1973) MLJ 336, and *Smt. Mahamaya Dasi Vs. Sanat Kumar Law and Others*, , it was observed as under:

.....in case of any transfer of any ownership in respect of that motor vehicle, the procedure is contemplated u/s 31 of the Motor Vehicles Act, and till any such transfer of ownership is entered in the certificate of registration, one has to take it that the person in whose favour such a certificate of registration is issued by the Motor Transport Authorities is the owner and such a person is entitled to remain in possession of the vehicle. Non-compliance of certain provisions of the Motor Vehicles Act, sometimes makes the owner responsible. In those circumstances it would be ordinarily prudent and in consonance with the provisions of the Motor Vehicles Act, to allow such a motor vehicle to remain in possession of such a person in whose name the certificate of registration stands.

18. In *The Asia Pacific Investments Trust Ltd. v. Assistant Commissioner of Excise and Prohibition, Hyderabad* (supra), this Court was dealing with a question as to whether a motor vehicle under hire purchase agreement can be sold for recovery of excise dues payable by the hirer. This Court, placing reliance on the judgments in *Mrs. Massey's (1930) Limited v. C.R. Krishnaswamy Ayyar* AIR 1935 Madras 603, held that the financier is the real owner and, therefore, as long as the hire purchase agreement is in force, the same cannot be sold for recovery of

excise dues. This decision is distinguishable as it was not a case of confiscation of the vehicle for commission of excise offence.

19. In *Apple Credit Corporation Ltd. v. State of A.P.* (supra), this Court held that the financier can be given interim custody of the vehicle under hire purchase agreement pending criminal case. This case is also not of much assistance to the learned Counsel for the petitioner.

20. In *Ganga Hire Purchase Pvt. Ltd, v. State of Punjab and Ors.*, (supra), the Supreme Court was considering the question whether on account of hire purchase agreement, the financier can be held to be the owner within the ambit of Sub-section (3) of Section 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act"). It was contended that the financier continues to be the owner of the vehicle so long as the entire hire purchase money has not been paid and, therefore, unless and until the vehicle was used for carrying narcotics with the knowledge of the financier an order of confiscation could not have been passed. The submission was rejected. The Apex Court held as under:

.....The expression "owner" has not been defined in the NDPS Act. There is also no dispute that under the hire purchase agreement the title to the vehicle is retained with the appellant until and unless the entire hire purchase money is paid back. But if the contention of the appellant is accepted, then all the vehicles which have been purchased on hire purchase basis, cannot be confiscated notwithstanding the fact that the vehicles were found to be used for commission of offences under the NDPS Act in carrying narcotic and psychotropic substances. The very purpose for engrafting Sub-section (3) of Section 60 of the NDPS Act is to have it as a deterrent measure to check the offences under the Act in question which have been found to be dangerous to the entire society. In the absence of any definition of "owner" in the NDPS Act, it would be reasonable to construe that the expression "owner" must be held to mean the "registered owner" of the vehicle in whose name the vehicle stands registered under the provisions of the Motor Vehicles Act.

21. The first part of Sub-section (3) of Section 60 of the NDPS Act is in similar terms with that of Section 45 of the Excise Act and Section 12 of the Prohibition Act. In view of the decision of the Apex Court in *Ganga Hire Purchase Pvt. Ltd. v. State of Punjab and Ors.*, (supra), the view taken by the two learned Judges of this Court in the judgments referred to hereinabove that the financier under the hire purchase agreement is the owner, cannot help the learned Counsel for the petitioner.

Second Question

22. A Division Bench of this Court in *Shaik Gulam Rasool Vs. Government of A.P. and others*, , and two Full Benches in *P. Gokul Anand Vs. Commissioner of Prohibition and Excise*, , and *V. Narayana Rao Vs. State of A.P. and Others*, , have held that when the owner of the vehicle involved in the commission of excise

offence has no knowledge as to the involvement of the vehicle, the vehicle cannot be confiscated. It was further held that the burden lies on the owner of the vehicle to show that the vehicle was used in the commission of offence without his/her knowledge or connivance. In this case, as found by both the authorities, at the time of seizure, the son of the registered owner was found transporting the contraband in the lorry and he had confessed that he had purchased IML in Chennai for selling the same in Nellore. Therefore, the submission of the learned Counsel for the petitioner that the owner of the vehicle had no knowledge is devoid of any merits.

23. In the result, for the above reasons, the Writ Petition fails and is accordingly dismissed. There shall be no order as to costs.