
(2004) 03 PAT CK 0030
In the Patna High Court
Case No : Cr. Misc. No. 757 of 2003

Mohan Singh, R. Prasad @ Rakeshwar Prasad and Ajay
Kumar Sinha

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-03-2004

Acts Referred:

Citation : (2004) 03 PAT CK 0030

Final Decision : Allowed

Judgement

Mridula Mishra, J.—All the three Petitioners namely 1. Mohan Singh Himmatsingka @ Mohan Himmatsingka, 2. R. Prasad alias Rakeshwar Prasad and 3. Ajay Kumar Sinha have come before this Court for quashing their prosecution in Complaint Case No. 353(C) 2001 as well as for quashing the order dated 5.10.2001 by which cognizance has been taken against them u/s 379 of the Indian Penal Code.

2. Petitioner No. 1. is the Managing Director of Phooltas Autos Limited, Petitioner No. 2 is the Manager, Phooltas Autos Limited and the Petitioner No. 3 is an employee of the said company.

3. Complainant Sanjeev Kumar Singh filed Complaint Case on 16.7.2001 against these Petitioners and one Tulsi Paswan, Sub-Inspector of Police, Maheshkhunt alleging therein that the complainant had taken delivery of Tata Diesel Truck from M/s Phooltas Autos Limited in 1997 under hire purchase after payment of initial amounts. The complainant had repaid a sum of Rs. 2,19,080/- under receipts granted. In December, 2000 Petitioner No. 2 and 3 took Rs. One lac each and issued provisional receipt towards payment of hire charges. On 15.5.2001 the complainant was handed over the provisional receipts and a letter dated 15.5.2001 was also given showing outstanding dues Rs. 480/- only. A reminder letter was also sent on 15.6.2001 demanding outstanding dues of Rs. 480/- only. It is alleged that on 7.7.2001 all the accused persons named in the complaint petition forcibly took away the truck to Patna and finally the complainant found

the truck at Deedarganj workshop of Phooltas Autos Limited.

4. In the complaint case offence alleged under Sections 379, 380, 392 and 120B of the Indian Penal Code (hereinafter referred to as the I.P.C.). The Chief Judicial Magistrate, Khagaria after proceeding u/s 202 Code of Criminal Procedure took cognizance against the Petitioners only u/s 379 of the Indian Penal Code.

5. Learned Counsel appearing on behalf of the Petitioners submitted that no offence is made out against the Petitioners on the basis of the allegation made in the complaint petition and their prosecution is an abuse of the process of the Court. The facts which has been brought before this Court is that the complainant intending to purchase a truck chassis manufactured by Telco Limited approached Telco Limited through its Bureau of Hire-purchase credits for financing the same. On 1.2.1997 the complainant entered into a hire purchase agreement. As per the hire purchase agreement the complainant was to pay 35 monthly hire charges. The first month's hire charges was Rs. 11,426/-. In the balance 34 charges were Rs. 10,400/- each. Hire charges were to be paid by first date of every succeeding calendar month and failure to pay in time would entail over-due compensation. This agreement also provided that in case there was any default in payment Telco Limited or its nominee would have the right to re-possess the vehicle. The hire purchase agreement has been annexed as Annexure-3 to this petition. It has also been stated that till the final payment of the entire amount, as per the agreement, the true owner of the vehicle remained Telco Limited and the complainant was merely a (sic-bailee?) thereof.

6. Since the complainant was proved to be a chronic defaulter in payment of hire charges repeated requests were made to the complainant for payment of amount. On 7.6.2001 the total liability towards monthly hire charges was Rs. 2,96.124/-. Accordingly Telco Limited authorised its representatives to re-possess the vehicle in question and on 7.6.2001 the vehicle was re-possessed and parked at the Maheshkhunt Police Station with due information to the Officer Incharge in that regards. The vehicle was thereafter taken to work-shop of Phooltas Auto Limited and finally it has been auction sold by Telco Limited.

7. Learned Counsel appearing for the Petitioner has further submitted that even if the facts alleged in the complaint are accepted; the Telco Limited was authorised as per agreement to re-possess the truck and by re-possession of the truck no offence or wrong has been committed.

8. The complainant was made opposite party No. 2 in this petition. The notice. was issued to opposite party No. 2 which, returned with this note that the opposite party No. 2 is dead. By order dated 10.11.2003 the name of Oppsite party No. 2 was deleted from the record and the case was ordered to proceed only against opposite party No. 1.

9. Counsel for the State is present and he was heard.

10. Counsel for the Petitioner has placed his reliance on two decisions of the

Supreme Court in the case of Charanjit Singh Chadha and Others Vs. Sudhir Mehra, and in the case of Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, The facts of the case in these two decisions are same to the facts of this case and fully covered by the decision reported in 1991 (7) S.C.C. 147 which are as follows:

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 re-possession of goods as per the term of the agreement may not amount to any criminal offence. The agreement specifically gave authority to the Appellants to re-possess the vehicle and their agents have been given the right to enter any property or building where the motor vehicle was likely 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.

11. The facts of the present case are fully covered by this decision. In this case also there is a Clause in agreement that in case of default, the company will have right to re-possess the vehicle. Such act on the part of the owner/financer will not be a criminal, offence.

12. In the facts and circumstance of the case, the criminal proceeding initiated against the Petitioners as well as the order taking cognizance dated 5.10.2001 is clearly an abuse of the process of the Court and as such the criminal proceeding must be quashed. In the well settled principle of law it is a fit case where the criminal proceeding should be quashed. The dispute raised by the complainant is purely of a civil nature even assuming the fact stated to be substantially correct.

13. Accordingly this application is allowed and the order taking cognizance dated 5.10.2001 passed by the Chief Judicial Magistrate; Khagaria in Complaint Case No. 353(C)/2001 is hereby quashed.