
(1999) 01 BOM CK 0025

In the Bombay High Court

Case No : Criminal Writ Petition No. 106 of 1998

M/s. B.C.L. Financial Services Ltd.

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 14-01-1999

Acts Referred:

Contract Act, 1872 — Section 10
Criminal Procedure Code, 1973 (CrPC) — Section 200, 457
Motor Vehicles Act, 1988 — Section 2(30)
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2000) 1 BomCR 334 : (1999) CriLJ 2305 : (1999) 3 MhLj 173

Hon'ble Judges : D.D. Sinha, J

Bench : Single Bench

Advocate : N.S. Badhe and V.K. Kolte, for the Appellant; Chawda, Assistant Public Prosecutor and R.L. Khapre, for the Respondent

Judgement

D.D. SINKA, J.—Heard Shri Badhe, learned Counsel for the petitioner; Shri Khapre, learned Counsel for respondent No. 3; and Shri Chawda, learned A.P.P. for respondent No. 1-State. The respondent No. 2 though served, none appeared for respondent No. 2.

2. This criminal writ petition is directed against common order dated 23-3-1998, passed by the learned 1st Judicial Magistrate, First Class, Court No. 2, Nagpur, below Exhibit-1, in Misc. Criminal Cases Nos. 30/ 1998, 31/ 1998 and 32/1998, whereby the trial Court allowed the Criminal Application No. 32/ 1998 preferred by Moreshwar s/o Baliram Khanorkar, (i.e. present respondent No. 3); and released the vehicle, in question, on Supratnama, in his favour.

3. It will be appropriate for me to consider few facts, which have given rise to the controversy, in question.

The petitioner is the finance company and doing the business of finance. On 10-10-1997, the respondent No. 2-Farukh Ahmed s/o Iqbal Ahmed Khan approached the petitioner and requested the petitioner to advance finance for

the "purposes of buying the vehicle, in question. The petitioner advanced loan to the respondent No. 2, to the extent of Rs. 3,95,000/-, with a condition that the respondent No. 2 should deposit Rs.-70,000/- with the office of the petitioner. The respondent No. 2, had deposited the amount of Rs. 70,000/- and, therefore, the petitioner-company had issued a cheque dated 18-10-1997 of Rs. 4,68,000/-, drawn on the Federal Bank Ltd., in the name of M/s. Jaika Motors Ltd., Nagpur, an authorised dealer of TATA SUMO vehicle. The said cheque was handed over to Jaika Motors Ltd., by the petitioner, towards the consideration of TATA SUMO vehicle. The respondent No. 2, has duly signed the relevant documents in the office of the petitioner, required for compliance of loan. The vehicle, in question, was registered with Durg R.T.O. (M.P.) on 15-12-1997, vide Registration No. MP-24 GC 0621. The respondent No. 2 supplied the xerox copy of the Registration Book of the vehicle, in question, issued by R.T.O., Durg to the petitioner. The vehicle was obtained by the respondent No. 2, under Hire Purchase agreement, executed by respondent No. 2 in favour of the petitioner. The respondent No. 2 was to repay the loan amount in 35 equal installments, however, the respondent No. 2 had only deposited Rs. 46,743/- in the office of the petitioner, towards the loan installments till December, 1997. Thereafter, the respondent No. 2 did not pay anything to the petitioner-company.

4. It appears that, in February, 1998, the vehicle was sold by respondent No. 2, to one Moreshwar Baliram Khanorkar, (respondent No. 3) after reregistering the vehicle, in question, at Shivani R.T.O.

5. The petitioner lodged a report on 25-2-1998 in the Sitabuldi Police Station, against the respondent No. 2; and accordingly the respondent No. 2 was arrested by the Police on 25-2-1998 itself; and the vehicle, in question, also was seized by them on 26-2-1998. However, the seized vehicle bears the Registration No. MP 22-B 6992 of Shivani R.T.O., and the offence u/s 420 r/w section 34 under Crime No. 122/98 came to be registered against the respondent No. 2.

6. The said vehicle from the date of seizure was lying in the Sitabuldi Police Station. The petitioner moved an application being Criminal Misc. Application Case No. 30/1998, u/s 457 of the Criminal Procedure Code, 1973, for custody of the vehicle. Similarly, the respondents Nos. 2 and 3 also moved an application for the custody of the vehicle, being Criminal Misc. Application Cases Nos. 31/1998 and 32/1998. Since the common question was involved in all these three applications regarding grant of custody of the vehicle, the trial Court, by passing the common order, impugned herein, allowed the application of the respondent No. 3, hence the present Criminal Writ Petition.

7. The Counsel for the applicant/petitioner contended that the respondent No. 2 obtained the finance from the petitioner-company, under Hire Purchase Scheme, for the purposes of purchasing the vehicle, in question. It is further contended that, under the Hire Purchase Scheme, though the vehicle is in possession of the hirer, the ownership of the vehicle always remains with the financier i.e. petitioner-company. It is submitted that, under the Hire Purchase agreement, the

hirer, i.e. the respondent No. 2, is under obligation to repay the entire loan amount, with interest as per the installments agreed between the petitioner and respondent No. 2. It is further submitted that, the Registration Certificate, issued by R.T.O. Durg clearly demonstrates that the petitioner had financed the respondent No. 2, for purchase of the vehicle, in question. The learned Counsel contended that, though the respondent No. 2 was the registered owner, legal owner of the vehicle was the petitioner and, therefore, it is the petitioner, who was entitled to get the custody of the vehicle. In order to substantiate this contention, the learned Counsel placed reliance on the judgment of the Karnataka High Court, reported in Shriram Transport Finance Co. Ltd. Vs. Khaishiulla Khan, , particularly, the observations made by the Karnataka High Court, in para 10 of its judgment, which reads thus :

"10. The solemn agreements entered into by the parties under which rights and obligations are created cannot be brushed aside simply because section 2(30) of the Act widens the meaning of the word "owner" to include the person in possession of the vehicle under the Hire Purchase agreement....."

The learned Counsel also places reliance on another ruling i.e. Manoj Kumar Sharma Vs. Sadhan Roy and Another, , particularly, in respect of the observations made in para No. 4 of the above referred judgment, which read thus :

"4. In the instant case, the trial Magistrate has taken cognizance of a case under sections 406/420, I.P.C. against the opposite parties on the allegation that though the opposite party No. 1 was yet to pay his dues to the petitioner he transferred the registration of the truck from his name to that of the opposite party No. 2 secretly and illegally by deleting the showing of the petitioner as financier and changing the registration number and they were trying to sell the truck to a third party. Such being the case, the principle enunciated by this Court in Gopiram's case 1991(1) Gau L.R. 59 [supra] would apply. At the moment it clearly appears that opposite party had the motive to deprive the petitioner from getting the money which was due by opposite party No. 1 on account of the hire-purchase. Therefore, in my own view, also it would not be judicious to give custody of the truck to opposite party No. 2 merely because she happens to be its registered owner. The petitioner is better entitled to get the custody during the proceedings of the case."

The learned Counsel contended that the trial Court while passing the impugned order did not take into consideration the contentions, raised and law, cited by the petitioner hence the learned Counsel contended that the impugned order is incorrect and not sustainable.

8. Shri Khapre, learned Counsel for the respondent No. 3 submitted that the trial Court has rightly granted the custody of the vehicle, in question, in favour of the respondent No. 3. It is further contended that, the respondent No. 3 is a bona fide purchaser of the vehicle, in question and purchased the same from present respondent No. 2. The respondent No. 3 has verified the documents, i.e.

Registration Certificate of the vehicle issued by R.T.O., Shivani, which does not bear any endorsement to show that the vehicle was financed by the petitioner. It is the case of the respondent No. 3 that, respondent No. 3, being bona fide purchaser, not aware of the fact that respondent No. 2 had purchased the vehicle, out of loan, advance by the petitioner-company, under the hire purchase agreement, was entitled to get the custody of the vehicle, in question. In order to substantiate this contention, the reliance is placed on the judgment, reported in 1995(1) Crimes 803 (Orissa), Basanti Pradhan v. State of Orissa, where it has been held :

".....Basanti Pradhan having purchased the vehicle on hire-purchase agreement, the claim of the financier (opposite party No. 3) cannot be preferred to that Basanti Pradhan because as held in the case of Prabhat Kumar Das's case (supra) "the Magistrate is required to confine himself only to find out as to who is entitled to possession of the property but not the title or ownership thereof."

Similarly, reliance is also placed on the reported judgment of this Court, reported in Haribhau Dhondiba Chavan Vs. Balkrishna Bhikoba Ballal, , particularly, the observations made in para 6 of the judgment, which read as under :

".....held that, normally, the registered owner is the proper person for the interim custody of the vehicle."

9. Shri Khapre, learned Counsel contended that the respondent No. 3 purchased the vehicle from respondent No. 2 for the consideration of Rs. 3,90,000/- in the month of February, 1998, after obtaining the finance from Mahindra and Mahindra Finance Services, Nagpur, to the extent of Rs. 2,50,000/-. The respondent No. 3 was not at all aware regarding the loan obtained by respondent No. 2 from the petitioner-company. The Registration Certificate issued by R.T.O., Shivani in respect of the vehicle, in question, does not show anything in respect of hypothecation/finance being advanced by the petitioner-company to respondent No. 2. It is further submitted that, respondent No. 3, under the bona fide belief, that the respondent No. 2 is the owner of the vehicle, purchased the same. The learned Counsel, therefore, contended that the impugned order is just and proper and same is also sustainable in law.

10. Shri Chawda, learned A.P.P. for the State/respondent No. 1, contended that, normally, in such circumstances, and u/s 457 of the Code of Criminal Procedure, the interim custody of the vehicle is given to the registered owner of the vehicle, as contemplated u/s 2(30) of the Motor Vehicles Act, 1988, therefore, the impugned order is just and proper.

11. In order to appreciate the controversy, in question, particularly, in regard to the provisions of section 457 of the Code of Criminal Procedure, it will be appropriate to consider certain factual aspects of the matter. In the instant case, the petitioner being a finance company and at the relevant time, was engaged in doing the business of finance, for the purposes of purchase of old and new vehicles. The recitals in the application being Misc. Criminal Case No. 30/ 1998,

preferred by the petitioner before the Court below would show that, on 10-10-1997, the respondent No. 2 Farooque Iqbal had approached the petitioner with proposal for purchasing TATA SUMO (vehicle in question). The petitioner, accordingly at the instance of respondent No. 2, advanced financial assistance to him to the tune of Rs. 3,95,000/-, for the purpose of purchase of the vehicle. The respondent No. 2 had executed hire purchase agreement, in presence of two guarantors, viz., Abdul Shaikh Abdul Kadar and Faizal Kazi. The said vehicle came to be registered at R.T.O. Durg in the name of respondent No. 2 Farooque Ahmed, with the hire-purchase endorsement of B.C.L. Financial Services Ltd., vide Registration No. MP 24 GC 0621, dt. 15-10-1997. The respondent No. 2 had taken the delivery of the vehicle on 17-10-1997. The Chasis No. of the vehicle is 385013 JSQ 939784 and Engine No. is 483 DL JSQ 800019. Respondent No. 2, therefore, is first Registered owner of the said vehicle. It is further stated by the petitioner in the said application that, till December 1997, the respondent had paid the amount of Rs. 46,743/- to the petitioner, and nothing has been paid thereafter by the respondent No. 2. The petitioner after getting the information that the vehicle, in question, came to be re-registered at R.T.O., Shivani, and sold the same to other person, the report was lodged on 25-2-1998, and during the course of investigation, the vehicle, in question came to be seized on 26-2-1998, having Registration No. MP 22 B 6992, with the same Chasis and Engine numbers, at stated above. It is further stated in the said application that, since the vehicle was purchased by respondent No. 2, under hire-purchase agreement with the petitioner-company and respondent No. 2 is the first registered owner of the said vehicle and, therefore, the petitioner is entitled to have the custody to the vehicle, in question.

12. The recitals in the Criminal Misc. Application Case No. 31/1998, preferred by the respondent No. 2 Farooq, u/s 457 of the Criminal Procedure Code, clearly show that he has entered into a hire-purchase agreement with the petitioner-company for the purchase of TATA SUMO JEEP and obtained finance from the petitioner-company, to the tune of Rs. 3,95,000/-It is further stated in the said application that, the vehicle is purchased from Jaika Automobiles, Nagpur and was registered in the R.T.O. Durg. The Registration number was allotted to the said vehicle was MP-24 GC - 0621. It is nowhere stated in the said application by the respondent No. 2, that, he has sold the vehicle, in question, to respondent No. 3. After going through the above referred applications, preferred by the petitioner as well as respondent No. 2, it is, prima fade, clear that the respondent No. 2 executed hire-purchase agreement with the petitioner-company for the purchase of vehicle i.e. TATA SUMO. The petitioner-company advanced loan of Rs. 3,95,000/- to the respondent No. 2 for that purpose. The vehicle was purchased from Jaika Motors Ltd., Nagpur and the vehicle came to be registered with the R.T.O., Durg, who has allotted the Registration No. MP 24 GC 0621, to the said vehicle. The said vehicle bears Chasis No. 385013 JSQ 939784 and Engine No. 483 DL 41 JSQ 800019. The respondent No. 2 is the first registered owner of the vehicle. The vehicle which came to be seized by the

Sitabuldi Police Officials, in pursuance of the report lodged by the petitioner, possesses the above referred chasis and engine numbers. On the back drop of the above referred circumstances, I will have to find out as to whether the claim of the petitioner for getting the vehicle released in his favour on Suparatnama is just and proper.

13. The law laid down by the Apex Court, in the case of Damodar Valley Corporation Vs. State of Bihar and Others, , in my opinion is applicable in the instant case. In para 8 of the above referred judgment, it has been observed by the Apex Court :

"8. It is well settled that a mere contract of hiring, without more, is a species of the contract of bailment which does not create a title in the bailee, but the law of hire purchase has undergone considerable development during the last half century or more and has introduced a number of variations, thus leading the categories and it becomes a question of some nicety as to which category a particular contract between the parties come under. Ordinarily a contract of hire-purchase confers no title on the hirer, but a mere option to purchase on fulfillment of certain conditions."

On the basis of the above referred ratio laid down by the Apex Court, the Division Bench of Karnataka High Court in Shriram Transport Finance Co. Ltd. Vs. Khaishiulla Khan, , has held thus:

"The solemn agreement entered into by the parties under which rights and obligations are created cannot be brushed aside simply because section 2(30) of the Act widens the meaning of the word "owner" to include the person in possession of the vehicle under the hire-purchase agreement. If the hirer in possession of the vehicle has agreed that the financier or the owner would be at liberty to seize the vehicle whenever defaults are committed by him it becomes the obligation of the hirer to honour his commitment and pay the installments as stipulated without committing any defaults. Having come in actual possession of the vehicle in pursuance of such agreement and the financier reposes confidence in him and entrusts the vehicle to his possession to run it and make earnings and the hirer taking advantage of the position in which he is placed by virtue of the agreement makes out a case of financier committing theft when he seizes the vehicle under the hire-purchase agreement in fact commits betrayal of the trust reposed in him by the financier or the real owner. It has become the modus operandi of the hirers, as we come across such instances frequently, to commit defaults either wilfully or otherwise, scuttle the rights of the financiers to seize the vehicle under the agreement by filing complaints of theft, take possession of the vehicle through Court relying on registration certificates and drive the financiers or absolute owners to Civil Courts to recover the money advanced to the hirers. Such a course of open breach of solemn agreements cannot be encouraged by Courts but the courts on the contrary, should give effect to such agreements voluntarily entered into. In our view, therefore, the learned Magistrate in the case giving rise to Criminal Petition No. 110/92 was wrong in

entrusting custody of the vehicle to the hirer-respondent."

14. The law laid down by the Apex Court and followed by the above referred Division Bench of the Karnataka High Court, in no uncertain terms conveys that the contract of hire-purchase simpliciter confers no title on the hirer, but a mere option to purchase on fulfilment of certain conditions; and the solemn agreements entered into by the parties, under which contracts and obligations are created cannot be brushed aside simply because section 2(30) of the Act widens the meaning of the word "owner" to include the person in possession of the vehicle, under hire-purchase agreement. In the instant case, the petitioner is the real owner, however, respondent No. 2, is the first valid registered owner of the vehicle. The respondent No. 2 obtained loan from the petitioner-company, under the hire-purchase agreement and, therefore, was under statutory obligation to repay the loan and, therefore, would only remain registered owner till such time, when respondent No. 2 shall exercise option to purchase vehicle, in question on fulfilment of required conditions under the hire purchase agreement.

15. The trial Court while passing the impugned order did not consider any of these legal aspects as well as factual material placed before it. The trial Court has also not given reasons as to how the conclusion is reached by the trial Court, for the purposes of allowing the Misc. Criminal Application No. 32 of 1998, moved by respondent No. 3.

16. Similarly, the Gauhati High Court in its judgment reported in Manoj Kumar Sharma Vs. Sadhan Roy and Another, , particularly in para 4 observed :

"Therefore, in my own view, also it would not be judicious to give custody of the truck to opposite party No. 2 merely because she happens to be its registered owner. The petitioner is better entitled to get the custody during the proceedings of the case."

The ratio laid down by the judgment of the Gauhati High Court is also, in my opinion, applicable to the case in hand. Hence, the contention raised by the learned Counsel for respondent No. 3 is liable to be rejected and the petitioner, in my opinion, is better entitled to have the custody of the vehicle during the pendency of the case.

17. In view of the above referred judgment of the Apex Court and the Division Bench's judgment of the Karnataka High Court and the judgment of the Gauhati High Court, I respectfully disagree with the view taken by the Orissa High Court in Basanti Pradhan v. State of Orissa, reported in 1995(1) Crimes 803, as well as the view taken by this Court in Haribhau Dhondiba Chavan v. Balkrishna Bhikoba Ballal, reported in 1987 M.L.J. 340, as relied by the Counsel for respondent No. 3.

18. Since for the purposes of controversy, in question, reliance is placed by this Court on the above referred Apex Court's judgment, it is not necessary for me to refer the matter to the larger Bench.

19. It is, however, true that respondent No. 3 in the given set of circumstances might have been put to financial loss due to act of respondent No. 2. It is open for respondent No. 2 sic 3 to take appropriate steps against respondent No. 2, if any.

20. It is also difficult to appreciate contentions raised by respondent No. 3, in respect of bona fide purchase of the vehicle, by respondent No. 3 from respondent No. 2. Be that as it may, in the instant case, for the reasons stated hereinabove, the impugned order is not just and proper and the petitioner, in my opinion, is entitled, for the interim custody of the seized vehicle i.e. TATA SUMO till the final disposal of the case.

21. In the circumstances, the Criminal Writ Petition is allowed and the impugned order dated 23-3-1998 passed by the learned First Judicial Magistrate, First Class, Nagpur, is hereby quashed and set aside. The petitioner is entitled to have the interim custody of the seized vehicle i.e. TATA SUMO, till the final disposal of the case. The petitioner is directed to execute a bond of Suparatnama of Rs. 5 lakhs and is further directed to produce the vehicle as and when ordered by the Court below and is also directed not to dispose of the said vehicle in any manner whatsoever.

22. At this "stage, Shri Khapre, learned Counsel for respondent No. 3 submitted that the effect and operation of this order may be suspended for a period of two months, in order to enable respondent No. 3, to approach the Apex Court. In the circumstances, the order of this Court is stayed/suspended for a period of two months from today i.e. up to 13th March, 1999, and will cease to operate from 13th March, 1999, unless appropriate orders are obtained from the Apex Court.

23. Petition allowed.