
(2008) 02 P&H CK 0041
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 86-SB of 2006

M/s Libra Auto and General Finance Limited	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 25, 60(3), 8

Citation : (2008) 02 P&H CK 0041

Hon'ble Judges : Sham Sunder, J

Bench : Single Bench

Advocate : R.K. Battas with Mr. R.D. Gupta, for the Appellant; S.S. Sahu, AAG, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Sham Sunder, J.—This appeal is directed against the order dated 16.9.2005 rendered by the Judge, Special Court, Bathinda vide which it ordered confiscation of truck No. RK.-31-G-2429.

2. The facts, in brief, are that case FIR No. 170 of 6.12.2000 u/s 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter called as 'the Act' only) Police Station Sangat, was registered against Karamjit Singh, Rajinder Puri, Raj Kumar and Charanjeet, accused for having been found in conscious possession of 75 kgs of opium without any permit or licence, being transported in truck No. RK-31-G-2429 loaded with marbles. "The accused were convicted by the trial Court vide judgment dated 18.11.2004. Two appeals, were preferred by the accused. The appeal filed by Charanjit Singh and Karamjit Singh, was dismissed, whereas, the appeal filed by Rajinder Puri and Raj Kumar, appellants was accepted vide judgment dated 16.8.2005 by this Court.

3. Since M/s. Libra Auto & General Finance Limited (hereinafter called as the 'Company'), the owner of the truck aforesaid, which was not arrayed as an accused, had also filed an appeal, against the order dated 18.11.2004 of

confiscation of the truck, in question, this Court directed the trial Court vide judgment dated 16.8.2005, that since no opportunity had been afforded to the said appellants, to explain the circumstances, under which the truck was being used, for carrying contraband, they be afforded the same, before confiscation of the truck, and a fresh order be passed. In view of the said direction, having been issued, by this Court, the trial Court afforded an opportunity to the Company. During the course of enquiry, the said Company led evidence. The trial Court, ultimately, again came to the conclusion, that since the Company had failed to establish that the truck was being used for the purpose of carrying contraband, without its permission, and that all the precautions had been taken by it, before the misuse of the truck, the same was liable to be confiscated. Accordingly, vide order dated 16.9.2005, referred to above the truck, in question, was confiscated.

4. Feeling aggrieved, against the order dated 16.9.2005 regarding the confiscation of the truck, rendered by the trial Court, the instant appeal, was filed by the appellant.

5. I have heard the learned Counsel for the parties, and have gone through the evidence and record of the case, carefully.

6. Learned counsel for the appellant, at the very outset, contended that the appellant being the Financer of the truck, in question, remained the owner of the same, until the installments regarding the sale price of the said truck, were fully paid by Karamjit Singh, hirer. It was further contended that the hire purchase agreement was executed between the said Company and Karamjit Singh son of Gurdev Singh, hirer as a result whereof the possession of the truck was handed over to him. For plying the same, in accordance with the provisions of law. It was further contended that since the Company, the owner, was neither in possession of nor in control of the truck nor had authorized the hirer Karamjit Singh, to use the same, in contravention of the relevant provisions of law, it could not be said that it permitted the use thereof for carrying contraband by Karamjit Singh. It was further contended that all precautions by way of incorporating necessary conditions. In the hire purchase agreement, had been taken, by the owner, regarding the use of the truck by the hirer. It was further contended that sufficient evidence was also led by the owner, in this regard, by the same was not taken into consideration, by the Court below, and, as such, the order referred to above, confiscating the truck, in question, being illegal was liable to be set aside.

7. On the other hand, learned Counsel for the respondent, contended that since the truck was handed over to the hirer, under hire-purchase agreement, though the same was financed by the Company, dealing in financing the vehicles he (hirer) became the owner thereof, and if he mis-used the same for carrying contraband, it was liable to be confiscated, as per the provisions of Section 60(3) of the Act. It was further contended that no reliable evidence was led by the Company, that the truck was being used for carrying the contraband, without its knowledge or connivance and that the person in-charge of the conveyance, and

the agent of the owner, had taken all reasonable precautions, against the said use. It was further contended that, under these circumstances, the order impugned passed by the trial Court, was correct, and liable to be up held.

8. There is hardly, any dispute, that the appellant Company, was dealing in financing the vehicles. It financed the truck, in question, in favour of Karamjit Singh son of Gurdev Singh, by providing facility to him, to the tune of Rs. 5,79,860/-. The amount was paid to M/s. Cargo Motors limited, Jalandhar, vide PD No. 695509. M/s. Cargo Motors Ltd. handed over the possession of the truck, in question, to Karamjit Singh, who executed hire- purchase/ lease agreement, in favour of the aforesaid Company on 9.3.2000 for agreeing to liquidate the financed amount, through installments. Ex. R-1 is the copy of the draft/cheque in the sum of Rs. 5,80,906/- issued in favour of M/s. Cargo Motors Limited. Ex. R-2 is copy of pay order. Ex.R-3 is the draft in the name of M/s Cargo Motors Limited, drawn on State Bank of Patiala, in the sum of Rs. 5,79,860/-. Ex.R-4 is copy of the lease agreement/hire- purchase agreement, executed between M/s. Libra Auto and General Finance Ltd. and Karamjit Singh son of Gurdev Singh hirer and Rajinder Kapoor, guarantor.

9. The first question, that arises for consideration, is, as to who was the legal owner of the truck, after the same was financed, and the lease deed/hire-purchase agreement, copy whereof is Ex.R- 4, was executed. The definition of owner is not provided in the Act. In Sundaram Finance Ltd. Vs. State of Kerala and Another, , a Bench of three Judges of the Apex Court dealt with the scope of the hire- purchase agreement, and the question, as to whether, the ownership under the said agreement, vests in the financier or in the hirer. It was held, in the said authority, that the financier remains the full-fledged legal owner of the vehicle, financed, and the hirer does not become the owner thereof, until and unless the entire sale price was paid by him as per the stipulation, made in the hire-purchase agreement. In K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III, a Division Bench of the. Apex Court held that the distinguishing feature of hire-purchase agreement, is that the property does not pass, when the agreement is made, but only passes when the option is exercised after complying with all the provisions of the agreement. Thus, the intending purchaser is only the hirer, so long as the option is not exercised. So the property does not pass, at the time of the agreement, but remains in the name of the intending Seller, and only passes later, when the option is exercised by the intending Purchaser. In Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others, , a Constitution Bench of the Apex Court, held that the transaction partakes of the nature of contract of bailment, with an element of sale. As aforesaid, added to it. In such an agreement, the hirer may not be bound to purchase the things hired. But, in either case, if there is an obligation to buy, or an option to buy, the goods delivered to the hirer, by the owner, on the terms, that the hirer, on payment of premium, as also of a number of installments, shall enjoy the use of the goods, which, ultimately, may become his property, the transaction amounts to one of hire- purchase, even though the title

to the goods has remained with the owner, and shall not pass to the hirer, until a certain event happens, nominal or otherwise.

10. Keeping in view the principle of law, laid down, in the aforesaid authorities, now let us see, whether, in the instant case, M/s. Libra Auto and General Finance Ltd., dealing in financing the vehicles, remained the legal owner of the truck, in question, even after the execution of the hire-purchase agreement, copy whereof is Ex.R-4. The terms of the hire-purchase agreement are very much relevant. According to the hire-purchase agreement, the party namely M/s. Libra Auto and General Finance Ltd., the financier was to remain the full owner of the Motor Vehicle. It was also provided in the agreement, referred to above, that the lessee/hirer shall neither sell, alienate, encumber, nor change their property, or any part thereof till such time, that their liability under the agreement is fully discharged and the lessors have the first and paramount lien on all their assets, stated by the lessees and Guarantors. It was further provided, in the said agreement, that the lessee shall pay to the lessor, during the said term, monthly and proportionately, for any part of a month, the lease charge, set out in Schedule II hereto, payable in advance, on the 1st day of each English calendar month, the first such payment to be made on 10.5.2000. In clause 7, it was provided that the lessee acknowledges that it holds the vehicle/equipment, as a mere Bailee of the lessor, and shall not have any proprietary right, title or interest in the Vehicle or any part thereof. It was further provided, that the lessee shall, at no time, contest or challenge the lessor's sole and exclusive right, title and interest in the Vehicle/Equipment. It was further provided in the said agreement, that if the lessee committed default, in making the payment of installments, the lessor will be entitled to take the possession of the vehicle so financed. The agreement aforesaid, therefore, vested the complete legal ownership, of the truck, in question, in the Company aforesaid. Mere giving of possession, of the truck, in question, to the hirer for the use thereof, in accordance with the provisions of law, did not vest the title of the truck, in him. Keeping in view the principle of law, laid down, in the aforesaid authorities, as also the terms and conditions of the hire-purchase agreement, copy whereof is Ex.R-4, it is established that the aforesaid Company registered at Gopal Nagar, Jalandhar, remained the full fledged legal owner of the truck, in question, even after the execution of the hirepurchase agreement.

11. The next question, that arises for consideration, is, as to whether, the truck, in question, was used without the knowledge or connivance of the legal owner thereof, by the hirer, for the purpose of transporting or carrying contraband. According to Section 60(3) of the Act, any animal or conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation under sub-section (1) and sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used, without his knowledge or connivance, his agent, if any, and the person-incharge of the animal or conveyance and that each of them had taken all reasonable precautions against such use. As stated above, the hire- purchase agreement

was executed at Ludhiana by the Company, having its registered office at 1031, Gopal Nagar, Jalandhar. Karamjit Singh in whose favour the vehicle was financed was a resident of Village Sadhana, District Bathinda. The Managing Director, Directors and the office bearers of the Company aforesaid, must be having their Head Office at Jalandhar or Ludhiana where the aforesaid agreement Ex.R-4 was executed. The distance between Jalandhar, Ludhiana and Bathinda is too far. The legal owner of the vehicle, therefore, after handing over the possession thereof, to the hirer, had no control over the same. It was not possible for the legal owner of the vehicle, or its office bearers, to have check or control over the vehicle, when it was being plied by Karamjit Singh, the hirer thereof; at a place, which was far away from Ladhiana and Jalandhar. Even the appellant Company, and its Managing Director were not challaned for the offences punishable under Sections 8 or 25 of the Act. They were even not arrayed, as accused, in the aforesaid FIR, Even then, out of abundant caution in the hire- purchase agreement, copy whereof is Ex.R-4, a clause was incorporated, that the lessee shall use, operate, maintain and garage/store Vehicle/Equipment properly and carefully in conformity with the terms thereof and any applicable law for the time being, in force, and/or any other instructions/undertakings or a device given by the manufacturer or lessor in that behalf, and shall comply with all statutory or other requirements, which may affect the Vehicle/Equipment, its operation, use maintenance, and observe the provisions of any statute, Regulation or bye- laws, relating thereto. A specific stipulation, referred to above, therefore, stood incorporated, in the agreement, that the hirer was only authorized to use the vehicle, in accordance with the relevant provisions of law, Rules and Regulations. Had it been the intention of the legal owner of the truck, in question, to allow the misuse of the same, for the purpose of transporting the contraband therein, then such a clause, would not have been incorporated, in the hire-purchase agreement, copy whereof is Ex.R-4. Not only this, Amar Nath Sharma, RW-1, Randhir Singh, RW-2, and Bhupinder Kumar, RW-3, were examined by the Company. The legal owner of the truck, relied upon the terms and conditions, of the agreement, copy whereof is Ex.R-4, to establish that the truck was used by Karamjit Singh, for carrying the contraband, without his knowledge or connivance. Since, in the instant case, knowledge regarding the misuse of truck by Karamjit Singh, the hirer could not be attributed to the aforesaid Company, the legal owner of the same, the trial Court, in my opinion, was wrong in confiscating the same. In M/s. Punjab Kashmir Finance Pvt. Ltd. v. State 1993 C.L.J. 498, the vehicle had been given, on hire, as per the hire-purchase agreement. It was seized, while carrying contraband materials and confiscated. The vehicle was used without the knowledge of the Company, the legal owner thereof. The owner had taken all precautions, while giving on hire, the vehicle, as per the agreement. The prosecution had neither filed any challan, u/s 25 of the Act, nor led any evidence, to the effect, that the aforesaid Company permitted M/s. Swaran Singh Hardayal Singh, the hirer to use the truck for illegal activities. The evidence was produced, in that case, that M/s. Punjab Kashmir Finance Pvt. Ltd. had no knowledge that the truck was being used for illegal activities by the

hirer. In the aforesaid case, it was held that the appellant took reasonable precautions, while giving the truck on hire. In these circumstances, the order of confiscation of the truck was set aside. In *Balwinder Singh v. Asstt. Commissioner Customs and Central Excise* 2005 (4) SCC 146, recovery of heroin and opium from a truck was effected. B, was the registered owner of the said vehicle. B had sold the said truck to one 'S', much prior to the occurrence, but the registration was not changed, in the name of 'S'. B was convicted solely for the reason, that he was the registered owner of that vehicle. There was no evidence, on record, that he knowingly allowed any person to use the vehicle, for any illegal purpose. Also no evidence to prove the conspiracy, set up by the prosecution, was led. Hence, though, the contraband was recovered, from the vehicle, yet there was no evidence to show that "B" had any control over the same, nor was he in possession of the drugs, in question. B, the owner of the truck was, thus, acquitted. The facts of *M/s. Punjab Kashmir Finance Pvt. Ltd.*'s case (supra) are similar and identical to the facts of the instant case. *Balwinder Singh*'s case (supra) also dealt with the situation, when liability for the commission of offence, under the Act was not fastened on the registered owner. The first default in paying the installment of sale price, was committed by the hirer in November, 2000, whereas, on 6.12.2000, the truck in question, was intercepted, while carrying the contraband. Thus, there was no lapse, on the part of the appellant Company. The principle of law, laid down, in the aforesaid authorities, is fully applicable, to the facts of the instant case. As stated above, in the instant case, at the relevant time, neither the appellant was in control of the truck nor in possession thereof; nor it had permitted the use thereof for illegal activities; nor it connived with the hirer and the driver; nor it hatched conspiracy with them, for the commission of crime; nor abetted the commission of crime, by them; nor could be attributed any knowledge regarding the misuse thereof; nor it was challaned under Sections 8 or 25 of the Act. On the other hand, the appellant took all precautions, a reasonable and prudent person, could take, in the given circumstances, against the use of the vehicle, in contravention of the provisions of any law, by incorporating a specific condition, in regard thereto in Ex.R-4.

12. In view of the above discussion, it is held that the order impugned, vide which the truck, was confiscated by the Trial Court, is not based, on the correct appreciation of evidence, the aforesaid factors, circumstances, and law, on the point. The same warrants interference, and is liable to be set aside.

13. For the reasons recorded, hereinbefore, the appeal is accepted. The order dated 16.9.2005, confiscating truck No. RK-31-G- 2429, is set aside. The truck, in question, shall be released in favour of the appellant-Company.