

**(1962) 11 AHC CK 0007**

**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous Application No. 474 of 1962

Niranjan Prakash and Another

APPELLANT

Vs

Manni Lal Dwivedi

RESPONDENT

**Date of Decision :** 02-11-1962

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 561A

**Citation :** AIR 1964 All 433 : (1964) CriLJ 369

**Hon'ble Judges :** K.B. Asthana, J

**Bench :** Single Bench

**Advocate :** B.C. Saxena, for the Appellant; K.M. Dayal, for the Respondent

**Final Decision :** Allowed

## Judgement

K.B. Asthana, J.—Sri Niranjan Prakash and Sri B.P. Singh have filed this application u/s 561-A, Cr. P. C. praying that the proceedings in a criminal case pending against them in the Court of the Bench Magistrate No. III, Kanpur, be quashed. The opposite party to the application is Sri Manni Lal Dwivedi on whose complaint the case against the applicants has been registered. The brief facts necessary for the appreciation of the controversy between the parties in this application may be stated as follows:

2. On 30th June 1959 a truck on Bedford Chassis was purchased in the name of Smt. Brij Dulari wife of Sri Manni Lal Dwivedi for a sum of Rs. 26,300/-.. It appears that Rs. 6300/- were paid in cash and for the balance of Rs. 20,000/- an Hire Purchase agreement was entered into between Smt. Brij Dulari and Messrs. Automobile Financing Corporation of Lucknow hereinafter described as corporation. It further appears that there was default in payment of installment under that agreement and the Automobile Financing Corporation in exercise of its rights under the Agreement seized the truck. But later on it was released. On 17th August 1960 Smt. Brij Dulari transferred the truck in favour of her husband Sri Manni Lal Dwivedi and on the same date Sri Manni Lal Dwivedi entered into a fresh agreement with the Automobile Financing Corporation of hire purchase

under which the balance for the price amounting to Rs. 10,170 was made payable in 12 monthly installments commencing from 21st September 1960.

On 30th September 1960 on behalf of the Corporation Sri B.P. Singh, applicant No. 2 seized the truck and removed It from the possession of Sri Manni Lal Dwivedi. On 25th October, 1960 that is almost a month later Sri Manni Lal Dwivedi lodged a First Information Report in the police station concerned to the effect that Sri B.P. Singh had dishonestly and illegally removed the truck in the absence of the driver and of the complainant and has taken it in his possession, thereby committing theft. This report was followed by a regular complaint filed in the Court if the Magistrate the next day by Sri Manni Lal Dwivedi wherein he made further allegations that he had taken the truck on Hire Purchase Agreement with the Automobile Financing Corporation of Lucknow of which Sri Niranjana Prakash was partner and Sri B.P. Singh, Inspector, and having paid all the money due became its owner, but Sri Niranjana Prakash and Sri B.P. Singh in order to harass the complainant and causing wrongful loss to him colluded together and Sri B.P. Singh removed the truck from the possession of the complainant in the absence of the driver and the complainant, and thereby they committed theft of the truck.

It was also alleged by the complainant that on the 26th September 1960 he paid a sum of Rs. 9300/- to Sri Niranjana Prakash, the partner of the Automobile Financing Corporation who granted him a regular receipt in full payment of the amount due. The original receipt purporting to be signed by Sri Niranjana Prakash was filed by the complainant in court next day i.e. 28th October 1960. The Magistrates after the statement of the complainant was recorded u/s 200, Cr. P. C. issued bailable warrants against the applicants. An application was also filed by the complainant before the Magistrates for a search and seizure of the truck. The Magistrates ordered that the truck be seized. Against this order the applicants went up in revision before the learned Sessions Judge who made a reference to the High Court recommending that the seizure of the truck was illegal and the truck be released. This reference was accepted by this Court by its order dated the 24th January 1962 and the truck was released from seizure since then it has remained in possession of the Corporation.

3. It also appears that with regard to this truck there was dispute between the Corporation on one side and Sri Mannilal Dwivedi and his wife Smt. Brij Dulari on the other side which was referred to arbitration in accordance with the terms of the agreement between the parties. It has been stated in the affidavit filed with the application that an award was made in favour of the Corporation and the Corporation has applied to the Court for pronouncement of judgment in accordance with this award. It has been stated in the counter affidavit on behalf of the opposite party that the award has been challenged as being without jurisdiction and defective and that the opposite party has also applied for its being set aside. This matter is still in dispute between the parties. But I am not concerned in this application with it.

The case of the complainant in short therefore is that he had carried out the terms of the agreement and became the owner of the truck and the accused in collusion with each other in order to harass the complainant dishonestly got the truck removed from the possession of the complainant.

4. A perusal of the agreement of hire purchase between the complainant and the Corporation dated 17th August, 1960 shows that in accordance with Clause (5) of this agreement the owner that is the Corporation with or without notice to the hirer that is Sri Manni Lal Dwivedi may terminate the agreement and forthwith retake the possession of the vehicle or call upon the hirer to restore possession of the vehicle to them if any monthly hire or part thereof or other amount due against the hirer for incidental expenses is in arrears for any reason whatsoever. There is also in this agreement a term contained in Sub-clause (m) of Clause 3 that the hirer agrees that all payments made by him to the owner's representatives or sub-offices shall be subject to acknowledgment by the Head Office or Branch Office of the owners and shall not be binding on the owners unless so acknowledged, and that receipt granted on regularly printed forms duly numbered and signed by the persons duly, authorised by the owners will alone be valid.

5. Sri B.C. Saxena, the learned counsel for the applicants has submitted that on a bare perusal of the complaint and the alleged receipt dated 26-9-1960 relied upon by the complainant in support of the alleged full payment of the price of the truck no case for theft, is made out against the applicants. It has been urged that, under the agreement of hire purchase the owners that is the Corporation had the right to take possession of the truck if the installment or any part of the installment or other charges were due and even if the so-called receipt dated 26-9-1960 is assumed to have been signed by Sri Niranjana Prakash it would not be binding on the Corporation as it is not in accordance with Sub-clause (m) of Clause 3 of the agreement and in that circumstance the Corporation through its Inspector Sri B.P. Singh had a right to seize the truck and Sri B.P. Singh in doing so could not be said to have taken the possession of the truck with any dishonest intention as the action would be in bona fide exercise of the performance of his duty as the Inspector of the Corporation.

Sri K.D. Dayal, the learned counsel for the opposite party has countered this argument of the learned counsel for the applicants on the ground that the question whether the receipt is a good receipt and amounts to a valid discharge of the liability the hirer owed to the owner of the truck will depend on the evidence yet to be given at the trial and this Court in exercise of its power u/s 561-A ought not to examine this question in order to find out whether the complaint against the applicants for an offence of theft has any substance. The learned counsel for the opposite party has further urged that on the allegations in the complaint that the complainant was the owner of the truck and that Sri B.P. Singh removed the truck surreptitiously at the instance of Sri Niranjana Prakash, it cannot be said that the complaint does not disclose any

offence. At this stage according to the submissions of the learned counsel for the opposite party only the allegations in the complaint have to be seen as evidence has yet to be led before the trial court and under the law the trial court itself has the power to discharge the accused if on a further examination of the evidence in the case the trial court is not satisfied that the complaint was founded on good grounds.

Sri Saxena, the learned counsel for the applicants has submitted that he is not inviting this Court to examine the genuineness of the receipt dated 26-9-1960 or to examine any further facts, but this Court certainly can be invited to examine on the allegations in the complaint and attendant circumstances whether the removal of the truck by Sri. B.P. Singh, the Inspector of the Corporation was with any dishonest intention or was in bona fide discharge of his duties.

6. In my judgment, in exercise of my power u/s 561-A, Cr. P. C. I would be justified to quash the proceedings if I found that the institution or continuance of criminal proceedings against the applicants amount to abuse of the process of the Court or if quashing of those proceedings would otherwise secure the ends of justice. It is well established that if the First Information Report or the complaint, even if, they were taken at their face value and accepted in their entirety did not constitute the offence alleged and no question of appreciating evidence arose, then this Court in exercise of its inherent power can interfere and quash the proceedings based on such First Information Report or complaint. Further it is possible for this Court to quash the proceedings in its inherent jurisdiction in case it finds that there is no legal evidence in support of the allegations made in the First information Report or in the complaint although those allegations disclose that some offence has been committed. See the case of R. P. Kapur v. State of Punjab AIR 1950 S C 866.

7. The complainant in his complaint has himself referred to the fact that the accused were the representatives of the Corporation who were the owners of the truck and with whom the complainant had entered into Hire Purchase Agreement. The complainant further alleged that he had made the full payment for which he obtained the receipt from the accused Niranjan Prakash, a partner of the Corporation and thereby he had become the owner of the truck. I think that the learned counsel for the applicants is on strong grounds when he urges that this Court can be invited to examine the terms of the Hire Purchase Agreement to find out whether the ownership in the truck or the title in the truck in the circumstances of the case had passed definitely to the complainant. The question of title to the truck is relevant for the purpose of finding out whether in removing the truck the accused had any dishonest intention.

It is one of the essential ingredients of the offence of theft that the deprivation of possession of the property should be with a dishonest intention. When a person is said to be acting dishonestly is explained by the I. P. C., namely, when a person, does anything with the intention of causing wrongful loss to some person or wrongful gain to another person. Wrongful gain is gain by unlawful means of

property to which the person gaining is not legally entitled, likewise wrongful loss means the loss by unlawful means of property to which the person losing it is legally entitled. The question, therefore, would be in the present case as to which party was legally entitled to the truck, the subject-matter of the alleged offence on 30-9-1960 when it was removed. If on the facts and circumstances as emerge out from the record there appears a doubt as to legal title of the truck, one of the main ingredient in the offence of theft disappears. Therefore, if it is possible for me to be satisfied on the record as it stands that the legal title to the truck was seriously disputed on the date when the alleged offence is said to have been committed, the applicants would be entitled for quashing of the proceedings pending against them.

8. For the purpose of finding out whether the legal title in the truck on 30th September 1960 vested in Sri Manni Lal Dwivedi it is necessary to refer to certain dates. The truck was purchased first in the name of the wife of Sri Manni Lal Dwivedi on the 30th June, 1959. There was a Hire Purchase Agreement between the Corporation and Smt. Brij Dulari for payment of the price. During the currency of that agreement the Corporation remained the owner of the truck. On 17th August 1960 a fresh agreement was entered into between Manni Lal Dwivedi, the complainant and the Corporation for the payment of the balance of price by installments, again the ownership of the truck remained vested in the Corporation. The first installment in accordance with the Hire Purchase Agreement dated 17th August 1960 was payable by Manni Lal Dwivedi to the Corporation on 21st September 1960.

The assertion of the complainant is that instead of paying installment of Rs. 488/- as agreed he paid a sum of Rs. 9300/- to Sri Niranjan Prakash on 26th September 1960, a partner of the Corporation running the Branch Office, of the Corporation at Kanpur. This amount according to the complainant. was accepted by the Corporation as in full payment of the price of the truck. In the affidavit filed in support of the present application Sri Niranjan Prakash has denied the receipt of any money from the complainant and has asserted that the receipt produced by the complainant is a forgery. But Sri Saxena, the learned counsel for the applicants has not put the case of the applicants before me on the footing that there was no payment and that the receipt produced by the complainant to show that he had legal title to the truck was a forgery. What he has contended is that even assuming that the receipt was given on payment of Rs. 9100/- and that receipt showed that Sri Niranjan Prakash received Rs. 9300/-but it not being on the regular form duly numbered, will not be binding on the Corporation as it is not a receipt in accordance with Sub-clause (m) of Clause 3 of the Hire Purchase Agreement, and, therefore, admittedly on 21st September 1960 no installment having been paid by the complainant, the Corporation as the owner of the truck on. the 30th September 1960 under the terms of the Hire Purchase Agreement had every right to seize the truck.

The learned counsel for the opposite party has urged that as the payment was

made to the partner of the Corporation and the receipt was granted by him, Sub-clause (m) of Clause 3 of the agreement would not be attracted. Of course, it has not been disputed by the learned counsel for the opposite party before me that the receipt dated 26th September 1960 alleged to be under the signature of Sri Niranjan Prakash is not on the regular form of the Corporation and not duly numbered. This submission of the learned counsel for the opposite party, to my mind, may be plausible but is too subtle. This shows that the question as to the title of, the truck is of considerable difficulty depending on the interpretation of the terms of the agreement. It further shows that a dispute which would be essentially of a civil nature between the parties has been ingeniously converted into a proceeding of a criminal nature. Prima facie the receipt even if signed by Sri Niranjan Prakash would not absolve the complainant who is the hirer, of his liability as it is not on the regular form of the Corporation and is not binding on the Corporation.

An attempt was made by the learned counsel for the opposite party to show that Sub-clause (m) of Clause 3 of the agreement and for the matter of that even Clause 5 of the agreement was void under the law of contract But I am not concerned here with the validity of these clauses and their binding nature. On the other hand this aspect of the case again emphasises the circumstance that the dispute between the parties is more of a civil nature than of a criminal nature.

9. On behalf of the applicants reliance has been placed on the Full Bench case decided by the Calcutta High Court in Mohd. Abdul Khover v. Asgar Khan 35 Cri L J 761 (Cal), in which it was held that where under an agreement of hire purchase the employees of a company were justified in taking the parts of the machine supplied by them if c were not paid and acting on a bona fide impression, that installments had not been paid, they removed the parts and that at most the employees acted on a bona fide mistake, of fact then there was no dishonest intention such as is required for a case of theft. In the instant case before me if the question of title of the truck on the 30th September 1960 was in doubt and it could be said that the Corporation was still the owner of it or that the Corporation bona fide could claim the title to the truck, then certainly the action of Sri B.P. Singh, the Inspector of the Corporation in seizing the truck would not be with any dishonest intention, and it would not amount to the offence of theft. In my Judgment in the circumstances of the case the title of the truck as far as the complainant was concerned was uncertain and the Corporation or Its representative acted bona fide when seizing the truck in accordance with the terms of the Hire Purchase Agreement.

10. My attention has been drawn by the learned counsel for the opposite party to the case of Hari Kishan Balabaksh v. State AIR 1951 Nag 162 to show that if the vendor removes the property from the possession of the vendee with the intention that the person in possession do something towards unpaid balance of the price of the thing even though he does not intend to deprive that person of the thing permanently, he must be deemed to have committed an offence of

theft. According to the submission of the learned counsel for the opposite party, even if the truck was seized by the applicants on behalf of the Corporation, it was seized with the intention of realising the balance due from the complainant as price of the truck and removal of the truck in such circumstances would be theft. I do not think the ratio of the case of Hari Kishan Babu Baksh cited by the learned counsel can apply to the facts of the present case. In the present case under the terms of the agreement so long as the installments were not paid ownership of the truck remained vested in the Corporation.

But in the case cited by the learned counsel the owner ship had passed from the vendor to the vendee and therefore removal of the article sold though with the intention that the person in whose possession that article was and who was the owner of the article pay the balance of the price amounted to theft. However, it is not necessary for me to further discuss the question as in my opinion, on the facts of the instant case on the complaint filed and on the evidence which has been given so far in support of the complaint even if the same were taken at their face value, no dishonest intention can be attributed on the part of the applicants when they seized the truck. It is, therefore, clear that the present case falls within the declaration of law by the Supreme Court in the case of R.P. Kapur Vs. The State of Punjab, and I would be justified in the exercise of my inherent powers u/s 561-A, Cr. P. C. to quash the proceedings pending against the applicants in the court of the Magistrate Bench III Kanpur and I order accordingly.

11. There will be no order as to costs.