(2006) 08 JH CK 0112

In the Jharkhand High Court

Case No : Criminal Rev. No. 164 of 2004

Ravikant Gopalka — APPELLANT

Vs

The State of Jharkhand, Hemant Kumar and Krishna Mohan Jha — RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 323, 34, 341, 379

Citation : (2006) 08 JH CK 0112

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : Kalyan Roy, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner has preferred this Cr. Revision application under Sections 397 and 401 of the Indian Penal Code for setting aside the order dated 15.12.2003 passed by the learned Chief Judicial Magistrate, Hazaribagh in Sadar P.S. case No. 345 of 2002 whereby and whereunder the court refused to release TATA SUMO No. BR-13P-0248 in favour of the petitioner.

2. The petitioners had earlier moved before this Court in W.P.(Cr.) No. 110 of 2003 against the order passed by the Revisional Court below which was dismissed on 17.9.2003.

3. The prosecution story in brief is that the opposite party No. 2 lodged F.I.R stating therein that he was the owner of the Tata Sumo bearing No. BR-13P-0248. It was alleged that on 26.8.2002 while he was returning from Ranchi on the said vehicle the petitioner and other accused persons on the point of pistol took the vehicle in their possession, assaulted the driver of the said vehicle and threatened of dire consequences. On the basis of the said report Ramgarh P.S ease No. 345 of 2002 was registered under Sections 341/379/323

and 34 of the Indian Penal Code.

4. The petitioner is the Managing Director of the Finance Company under M/s Payal Departmental Stores (P) Ltd. and he used to finance to the borrower for purchasing motor vehicles of all kinds under the Hire Purchase Agreement. The petitioner was approached by the respondent No. 3 to finance cash of Rs. 70,000/- to purchase second hand TATA SUMO and submitted proposal for the same under his signature and the signature of the guarantor to which the petitioner agreed to finance. The petitioner had put certain conditions for such finance and accordingly as per oral agreement the name of M/s Payal Departmental Store(P) Ltd. was endorsed in the owner book of Sumo and thereafter the parties entered into Hire Purchase Agreement with the petitioner on 15.1.2002 and the petitioner, on being satisfied having been found the name of the petitioner''s firm in the R.C. Book, advanced a sum of Rs. 70,000/- in cash on the written request of the respondent No. 2 that the respondent No. 3 agreed lo repay the finance amount including interest thereon.

5. The learned Counsel submitted that when the respondent No. 2 defaulted in payment of monthly installment inspite of several request by the petitioner and his staff and having no recourse, the petitioner terminated the agreement and the petitioner being the owner of the above mentioned vehicle seized the same on 26.8.2002 through his staff and obtained a receipt from the driver of the vehicle at Ramgarh and kept it in his garage. One Pranav Kumar son of the respondent No. 2 lodged a case by submitting a written report against the respondent No. 3 in whose name above vehicle was registered giving rise to Sadar P.S. case No. 345 of 2002 for the offence under Sections 420/464/471/120B of the Indian penal Code. The letter dated 31.8.2002 was served upon the petitioner by the Investigating Officer of Sadar P.S. case No. 345 of 2002 instructing not to transfer or to do any thing with the seized vehicle and to keep the same in his safe custody till the investigation with the possibility of the vehicle in question being seized in the instant case. Subsequently, the vehicle was seized by the police on 13.9.2002 after inspecting and verifying all the relevant documents including the letter dated 31.8.2002.

6. The petitioner preferred a petition before the Chief Judicial Magistrate, Hazaribagh for release of the vehicle where he came to know that the respondent No. 2 has also filed a petition for release of the above vehicle and after hearing the parties, the Chief Judicial Magistrate, directed the vehicle in question to be released in favour of the respondent No. 2, Hemant Kumar. Thereafter, Cr Rev. No. 32 of 2003 was preferred against the impugned order which was heard and dismissed by the 8th Additional Sessions Judge, Hazaribagh on 4.6.2003. Against the said order, W.P.(Cr.) No. 110 of 2003 was preferred by the petitioner before this Court which was disposed of on 17.5.2003 with the direction to the Chief Judicial Magistrate to decide the release application with the observation, that the vehicle can be released only in favour of the registered owner.

7. The prayer of the petitioner for release of the vehicle was refused solely on the

ground that the vehicle in question stood in the name of the respondent No. 3 but no application was preferred by him for release of the vehicle so it could not be released to the petitioner. Advancing his argument Mr. Kalyan Roy submitted that the petitioner had filed certain documents before the court below in support of the fact that he is the financer/owner whereas the respondent No. 2 was the registered owner. He laid emphasis on the settled principle of law that if borrower fails to repay the loan, the ownership of the vehicle comes within the control of the financer according to the terms of the Hire Purchase Agreement and therefore, the vehicle should have been released in favour of the financer. In the present case the respondent No. 3, alleged to be the registered owner, neither appeared before the court below nor expressed eagerness or interest to get the vehicle released in his favour and thereby he has lost all interest in the vehicle and in this manner the petitioner is the sole interested person who had financed the loan to the respondent No. 3 for purchase of the vehicle. In this manner, the petitioner is the only interested person and is entitled to get the vehicle. The vehicle in question is lying in Ramgarh Police Station under the open sky since August 2002 and is subjected to damages and no purpose shall he served to the police if it is allowed to be kept there.

8. Mr. Kalyan Roy relied upon a decision reported in 1996(1) East Cr. Case 81(Patna)(RB). In Dr. Hafiz Samim Alam v. State of Bihar and Anr. the learned Single Judge observed:

On the contrary, this Court in the case of Chandra Brothers v. State of Bihar reported in 1980 BLJ 516, almost under similar circumstances, interalia, has held that "such cases have been become rather common these days and in most of the cases there are always default and that the finance in such cases, under the terms and conditions of the agreement, has a right to seize the vehicle otherwise such clause in the agreement will be meaningless and to great disadvantage to the financer, who invests heavy amount and later on duped by the hirers After paying a small sum of money, they become the owner of the vehicles and play the same. Even if they do not pay the installments, they ply the vehicle without raising any dispute and taking recourse to the clause of the agreement that gives right to the parties to refer the matter to the arbitrator. In such situation, under the terms and conditions of the agreement, the financer can always seize the vehicle, "Seize" according to Chamber''s Twentieth Century Dictionary means to "take by force, to take possession of, to apprehend. The act of seizure will always be an unpleasant act and will be resisted by the person, who runs the vehicle. Some force may also be necessary in this regard. Such action on the part of the financer will he completely covered by the terms and conditions of the agreement and cannot be said to be a criminal act. Opposite party No. 2 entered into the agreement and cannot be allowed to challenge the seizure by the financer after a default has been committed by him. Release of vehicles in favour of such persons will amount to putting premium on their fraud. They will run the vehicle merrily and the financer will be forced to go for arbitration or to court of law. In the meantime, the defaulter will get all the advantages to the vehicle being in his possession. It is the duty of a court to protect the interest of such aggrieved persons and in this case from the facts, it is absolutely clear that payment were not made to the financer and the petitioner-company was really the aggrieved party.

9. Though the opposite party No. 2 appeared but no counter affidavit has been filed in the present case. Similarly notice was sent to the opposite No. 3 under: registered cover with A/D as well as the ordinary process, found to be validly served, but without response.

10. Having regard to the facts and circumstances of the case, perusal of the order impugned passed by the Chief Judicial Magistrate, Hazaribagh, in Sadar P.S. Case No. 345 of 2002 on 15.12.2003. I find that the prayer of the petitioner for release of the vehicle in question was refused only on the ground that he was not registered owner whereas, as per the report submitted by the D.T.O. Hazaribagh, it was the opposite party No. 2, Hemant Kumar who was the registered owner of the TATA SUUMO No. BR 13-0248 but the registered owner did not appear before the court seeking release of the Sumo. At the same time as per the observation made by a Bench this Court in W.P.(Cr.) No. 110 of 2003, vehicle in question, could not be released either in favour of the petitioner or in favour of opposite party No. 3, Krishna Mohan Jha since they were not registered owners.

11. I find that the learned Chief Judicial Magistrate, Hazaribagh by the order impugned failed to appreciate the provision of Hire Purchase Agreement Act 1972. It is settled that the financer in case of default of payment of the instalments, as against the Hire Purchase Agreement, upon the purchase of the vehicle, has a right to seize the vehicle otherwise such clause in the agreement will be meaningless and great disadvantage to the financer, as also observed in the case of Dr. Hafiz Samim Alam v. State of Bihar and Anr. (Supra).

12. Under the facts and circumstances, the order impugned passed by the Chief Judicial Magistrate, Hazaribagh in Sadar P.S. Case No. 345 of 2002 on 15.12.2003 is set aside with the direction to the Chief Judicial Magistrate, Hazaribagh to pass an appropriate order afresh in view of the provision of the Hire Purchase Agreement Act 1972 and fee terms of the agreement between the parties and relevant propositions of law within 30 days, after hearing the parties. With the above observation this Cr. Revision application is allowed.