
(1996) 11 AHC CK 0078
In the Allahabad High Court
Case No : Criminal Revision No. 162 of 1996

Sardar Mahendra Singh Ajmani and Another	APPELLANT
Vs	
State of U.P.and Others	RESPONDENT

Date of Decision : 04-11-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451

Citation : (1996) 11 AHC CK 0078

Hon'ble Judges : N.B.Asthana, J

Final Decision : Allowed

Judgement

N.B. Asthana, J.—This revision has been directed against the order dated 1996 passed by C.J.M. Lakhimpur Kheri in Criminal Misc. Case No. 142 of 1996 directing the release of Mahindra Jeep No. U.H.T. 9365 in favour of opposite party No. 4 in case Crime No. 870 of 1996 under Sections 394/427/506, I.P.C. P.S. Kotwali Lakhimpur, District Lakhimpur Kheri.

2. Originally the revisionists filed Criminal Misc. Case No. 496 of 1996 in this Court under Sections 482, 483, Cr. P.C. read with Section 397, Cr. P.C. However, on 16/9/96 it was stated before the Court that this application be treated as Revision under Section 397, Cr.P.C. It was accordingly treated and registered. The case of the applicants is that the vehicle in question was given to opposite party No. 4 on a hire purchase agreement. According to the terms of this agreement the opposite party No. 4 was to make payment in 18 monthly instalments of Rs. 4,314/ each. He failed to make the payments as agreed upon, and, therefore, in accordance with the terms of the hire purchase agreement the vehicle was seized by the revisionists and parked into the Mill premises of revisionist No. 1. The opposite party No. 4 alongwith other persons forcibly entered into the Mill premises and took away Jeep causing other damage to the property of the revisionist No. 1. He then lodged the first information report on the basis of which Crime No. 870 of 1996 was registered. During investigation the Jeep was seized. Both the parties applied for release of Jeep in their favour.

The application filed by the revisionists was dismissed while the application filed by opposite party No. 4 was allowed. The Jeep was released in his favour. Aggrieved by this order, the revisionists have come to this Court in revision.

3. I have heard the learned Counsel for the revisionists and have perused the material available on record. Although Vakalatnama was filed on behalf of opposite party No. 4, but none appeared on the date of hearing.

4. The Chief Judicial Magistrate, as appears from a perusal of this order, was of the opinion that the hire purchase agreement between the parties is not in accordance with law and, therefore, the revisionists cannot take any benefit of it and released the Jeep in favour of opposite party No. 4. The order further shows that C.J.M. was of the opinion that since the hire purchase agreement has not been signed by the guarantor, it cannot be said to be a hire purchase agreement in accordance with law.

5. The hire purchase agreement and the other papers have been placed on record, which show that in the registration certificate of the vehicle the name of revisionist No. 2 is entered in which it is stated that opposite party No. 4 is the registered owner under a hire purchase agreement with revisionist No. 2. Had an agreement of hire purchase not taken place between the parties then such an entry in the registration certificate would not have been made.

6. From the papers placed on record, it prima facie appears that the opposite party No. 4 entered into a hire purchase agreement with revisionist No. 2 and that he has not paid their entire amount in accordance with the hire purchase agreement.

7. The opposite party No. 4 also filed a civil suit with respect to this very truck. He was made to pay Rs. 50,000/- during the pendency of the civil suit, but thereafter got it dismissed in default. He wanted adjournment, but the trial Court did not grant it and then he failed to appear. The temporary injunction granted was also discharged.

8. Since the revisionist No. 2 is still the owner of the vehicle in question as payment of the purchase money has not been made, in view of the law as laid down in K.A. Mathai alias Babu and another v. Kora Bibbikutty and another, 1996 SCC (Cr) 281, the financier has right to resume possession even if the agreement does not contain a clause of resumption of possession. The revisionists rightly seized the vehicle in question on account of nonpayment of the instalments of hire purchase agreement and as such the court below committed a patent mistake in releasing the vehicle in favour of opposite party No. 4.

9. The revision is accordingly allowed. The impugned order is set aside. Chief Judicial Magistrate Lakhimpur Kheri is directed to get the vehicle seized from the possession of opposite party No. 4 and hand it over to revisionist No. 2 at an early date. Petition allowed.