
(1994) 01 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 9746-M of 1992 and 16362 of 1993

Sham Lal Sood

APPELLANT

Vs

Jagdev Singh

RESPONDENT

Date of Decision : 14-01-1994

Acts Referred:

Citation : (1994) 2 RCR(Criminal) 21

Hon'ble Judges : H.S.Brar, J

Advocate : G.S. Grewal, Navdeep Singh, M.S. Kohli, N.S. Virk, Dinesh Goel,
Advocates for appearing Parties

Judgement

Harphul Singh Brar, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure, for quashing of First Information Report No. 104, registered at Police Station, Sangrur on August 25, 1992. The First Information Report was lodged on the statement of Jagdev Singh son of Teja Singh, resident of Patiala Gate, Sangrur, which reads as under :

"I am the owner of Mahavir Transport Co. (Regd.) Sangrur. My one bus No. PAB 9719 model 1988 bearing chasis No. 344050284398, Engine No. 692D 23292307 have yellow colour with green stripes and black glasses belonging to Mahavir Transport Co. plies from Sangrur to Bareta. In the evening, I park it in the PRTC Bus Stand Sangrur, like everyday the driver of the above bus, Baljit Singh son of Sudhra Singh resident of Chatha Sekhwan P.S. Sangrur parked the said bus in the PRTC Bus Stand and left for his village. When he came to the bus stand yesterday (following morning) he saw that the bus was not there where he had left it parked last night. He came to my house and told me, I searched a lot for the bus but could not trace it. Now I have learnt that day before yesterday persons from Motor and General Finance Ltd. New Delhi have stolen away the bus from the bus stand. Action may be taken. I have heard the statement which is correct. Sd/ Jagdev Singh, attested SI Kewal Krishan dated 25.8.92."

2. Briefly stated, the facts as mentioned in the petition are that respondent Jagdev Singh proprietor of Mahavir Transport Co. (Regd.), Sangrur got a new vehicle financed from Motor and General Finance Ltd. on hire purchase basis. The said vehicle was given Registration No. PAB 9719. It was of Model 1988, bearing Chasis No. 344050284398, Engine No. 692D23292307. Respondent Jagdev Singh purchased the abovementioned vehicle on hire purchase and took a loan of Rs. 3,62,000/ from the Finance Company. The loan was returnable by 35 monthly instalments from November 6, 1988 at the rate of Rs. 10,400/ per month. According to the agreement which is attached as Annexure P1 with the petition, the guarantor was also made liable for the recovery of the loan amount if the hirer failed to pay any instalment and the same could be recovered from the guarantor.

3. It is then stated in the petition that since respondent Jagdev Singh did not fulfil the conditions of the agreement and did not pay the instalments as agreed, petitioner Sham Lal Sood as Attorney of the Finance Company informed the guarantor for the payment of the amount due to the Company failing which proceedings would be started both against the hirer as well as the guarantor, Paramjit Singh son of Sardara Singh.

4. It is then stated in the petition that it seemed that Paramjit Singh Guarantor of the loan in question, when received notice of the Company, contacted the hirer Jagdev Singh telling him to pay the instalments or to return the vehicle to the Company. The hirer having shown his inability to pay the amount to the Finance Company, handed over his bus to the guarantor on August 23, 1992. When the guarantor was bringing the bus to be handed over to the Finance Company who was the actual owner, the police at Malerkotla intercepted the bus and detained the guarantor Paramjit Singh, who remained in police custody up to September 1, 1991. Representation made by Paramjit Singh to the D.I.G. Police, Patiala Range, Patiala has also been annexed with the petition as Annexure P2.

5. It is next stated in the petition that the hirer Jagdev Singh after handing over the bus to the guarantor seemed to have changed his mind and on August 25, 1992 lodged the First Information Report, as mentioned above against the Finance Company. On the basis of his statement, the First Information Report was registered at Police Station, Sangrur, under Section 379, Indian Penal Code.

6. It is then stated in the petition that the First Information Report on the face of it is false and motivated to avoid the payment of instalments of loan taken by Jagdev Singh respondent, which is clear from the fact that a civil suit No. 379 dated September 7, 1992 filed by Jagdev Singh and his brother in the Court of Additional Senior Subordinate Judge, Sangrur against the guarantor Paramjit Singh, Motor and General Finance Ltd., the insurer and the petitioner who is the Attorney of the Finance Company, is pending.

7. The learned counsel for the petitioner contends that the First Information Report in question is liable to be quashed on the following grounds :

(1) That the main basis of the First Information Report is the loan of Rs. 3,62,000/ which the respondent had taken. It is clearly a case of civil liability converted into criminal offence and is misuse of the procedure of law and abuse of the process of the Court;

(2) That no First Information Report is lodged against the Company for making any of the officebearers of the Company liable for the alleged offence. The offence of theft lodged in the First Information Report cannot be committed by a Registered Company;

(3) That the contradictory stand has been taken in the civil suit and in the First Information Report and filing of both the proceedings betrays the real intention of the respondent for lodging the First Information Report; and

(4) That no case of theft under Section 379, Indian Penal Code, is made out either against the petitioner or the Company.

The learned counsel for the petitioner in order to substantiate his arguments, relied upon the observations in Trilok Singh and others v. Satya Deo Tripathi, AIR 1979 SC 850 and M/s Shriram Transport Finance Co. Ltd. v. R. Kahishiulla Khan and others, 1993(2) RecentCR 175 .

8. The learned counsel for Jagdev Singh respondent No. 1 states that it was he and not the petitioner who was the owner of the bus as he had purchased the same from the petitioner Company. He has admitted in his written statement in Para No. 4 thereof that a hirer does not become owner of the vehicle till he pays last instalment and after that ownership is transformed to the hirer. According to him, he has become owner of the bus after paying all the instalments. He, in fact, had paid more than what he had to, i.e. Rs. 3,62,000/. He has also denied other allegations made in the petition.

9. Reply has also been filed by Devinder Singh, PPS, Deputy Superintendent of Police, Sangrur, on behalf of respondents 2 and 3 in the form of an affidavit. It has been admitted in Para No. 3 therein that Bus No. PAB 9719 was purchased by Messrs Mahavir Transport Company, Sangrur on hire purchase basis and out of the loan amount of Rs. 3,62,000/, an amount of Rs. 70,000/ is still to be returned by the said Firm. Jagdev Singh aforesaid is one of the partners of Messrs Mahavir Transport Company, Sangrur, who had purchased the abovesaid bus on hire purchase basis financed by Motor and General Finance Limited. It has also been stated in the reply that the case of theft was registered against the petitioner as the abovesaid bus stood transferred in the name of Messrs Mahavir Transport Company, Sangrur.

10. I have given my thoughtful consideration to the rival contentions of the learned counsel for the parties and carefully peeped into the record of the case. In my considered view, no case of theft is made out against the petitioner. Consequently, First Information Report No. 104 registered at Police Station, Sangrur on August 25, 1992, is liable to be quashed mainly on the grounds,

namely :

(1) Admittedly, the dispute between the parties related to the purchase of a bus by the complainantrespondent. The hire purchase agreement was entered into between the respondents and the petitionerMotor General Finances Ltd., Asaf Ali Road, New Delhi. The loan was payable in monthly instalments. According to the agreement, on default of any instalment, the Financier had the right to terminate the hire purchase agreement even without notice and seize the bus. In this case, since respondent Jagdev Singh did not fulfil the conditions of the agreement and did not pay the instalments as agreed, the petitioner as Attorney of the Finance Company informed the guarantor for the payment of the amount due to the Company failing which proceedings would be started both against the hirer as well as against the guarantor Paramjit Singh;

(2) Paramjit Singh who was the guarantor of the loan in question, when received notice of the Company, contacted the hirer telling him to pay the instalments or he should return the vehicle to the Company. The hirer having shown his inability to pay the amount to the Finance Company, the guarantor took the bus from the hirer for handing it over to the Finance Company. It was only at that stage that the police intercepted the bus and detained the guarantor Paramjit Singh in police custody and registered a case of theft of the bus under Section 379 of the Indian Penal Code, against the petitioner. This fact is further fortified from the civil Suit filed by Jagdev Singh and his brother in the Court of Additional Senior Subordinate Judge, Sangrur, against the guarantor Paramjit Singh, Motor and General Finance Ltd., the insurer and the petitioner who happens to be the Attorney of the Finance Company. A copy of the plaint filed in the civil suit annexed as Annexure P4 with the petition, indicates that they had requested the Finance Company to issue them No Objection Certificate for final settlement, so that nothing should remain between the parties.

11. It seems from the factual position on the record that the accounts could not be settled by the parties regarding the sale price of the bus and the ownership of the said bus was not finally transferred to the hirer. In that event, the hirer could not be termed as an owner. In the HirePurchase Act, 1972, the terms "hirer" and "owner" have been defined to mean as under :

"2.(e) "hirer" means the person who obtains or has obtained possession of goods from an owner under a hirepurchase agreement and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law;

(f) "owner" means the person who lets or has let, delivers or has delivered possession of goods, to a hirer under a hirepurchase agreement and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement has passed by assignment or by operation of law."

12. In addition, I have also perused the Certificate of Registration of Bus No. PAB

9719 in question. A specific note has been appended thereto which runs as under :

"Note : The motor vehicle above described is held by the person registered as under hire purchase agreement with

The Motor General Finance Ltd., Asaf Ali Road,
New Delhi.

Signature of Registering Authority

28.11.88."

This fact has not been disputed by the counsel for the respondents.

13. The learned counsel for respondent No. 1 has, however, pressed into service the following authorities in order to support his submissions :

(1) Pratibha Rani v. Suraj Kumar and Another, 1985(1) CLR 666 and

(2) Shiv Kumar Gupta v. State of Punjab, 1988(1) Crimes 548.

The said authorities are not relevant to the facts of the present case at all.

14. It is, thus, clear that the ownership of the bus still remains with the Finance Company and did not pass over to respondent No. 1. In my view, it is not a matter where any criminal case may have been registered against the petitioner company. The dispute raised by respondent No. 1 was purely of a civil nature even assuming the facts stated by him are substantially correct. Even assuming that the petitioner either by himself or in the company of others including the guarantor seized the bus from the possession of respondent No. 1, they could do so in their bona fide right to seize the bus on respondent No. 1's failure to pay the remaining instalments due to them. It was, thus, a bona fide civil dispute which led to the seizure of the bus. Moreover, it is an admitted fact that the said respondent has filed a suit in the Civil Court for the final settlement of the dispute which is still pending.

15. In my opinion on the facts and circumstances of the case, the criminal prosecution deserves to be quashed. Consequently, First Information Report No. 104 registered at Police Station, Sangrur on August 25, 1992 and any consequent proceedings thereon are, thus, quashed. The CrI. Misc. No. 16362 of 1993 is dismissed as infructuous. Main petition CrI. Misc. No. 9746M of 1992 is allowed.

JUDGMENT accordingly.