
(2003) 02 RAJ CK 0034

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 483 of 2001

Suresh Kumar Puranmal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451

Citation : (2003) 3 RCR(Criminal) 413 : (2003) 2 RLW 1115 : (2003) 2 WLC 395

Hon'ble Judges : A.C. Goyal, J

Bench : Single Bench

Advocate : R.D. Rastogi, for the Appellant; P.S. Choudhary, Public Prosecutor and K.S. Sharma, for the Respondent

Judgement

Goyal, J.—This petition u/s 482 Cr.P.C. is directed against the order dt.21.4.2001, whereby learned Additional Sessions Judge No. 2, Ajmer, affirmed the order dated 18.11.2000 by which learned Judicial Magistrate No. 4, Ajmer, released the vehicle in question in favour of respondent No. 3, through respondent No. 2.

2. The facts in brief are that Truck No. GJ-18-T-269, was purchased by the petitioner on hire-purchase basis from the respondent No. 3 Tata Finance Ltd. An agreement to this effect was executed on 21.8.1997. On 14.10.2000, the respondent Company took possession of the said vehicle on account of over due amount. Thereupon a complaint on behalf of the petitioner was lodged against the respondent Company. It is not disputed that after investigation, final report was submitted by the Police in the Court.

3. In the meantime the petitioner as well as respondent No. 2, on behalf of the respondent No. 3, applied for delivery of possession of this truck. Learned Magistrate, vide impugned order came to the conclusion that no instalment was due but a sum of Rs. 53,383/- under other heads of expenses was due to the petitioner, hence the respondent No. 3 the Tata Finance Company was having a right to take possession of the vehicle back in terms of the hire purchase agreement and thus ordered to deliver this vehicle on "Supardiginama to Tata

Finance Company. This order in Criminal Revision was affirmed as stated here-in-above.

4. I have heard learned counsel for the parties, it was argued by learned counsel for the petitioner that admittedly no instalment was due hence the Tata Finance Company was having no right to take back the possession of this vehicle in terms of hire purchase agreement. It was next submitted that the respondent No. 3, claimed different amounts at different times as over due under various heads of interest and other expenses and for that it had no right to take the possession of this vehicle. Reliance was placed upon *Hari Mohan Agrawal v. State of Raj. and Ors. (1)*, *Sahabuddin v. State of Rajasthan and Ors. (2)* and *Muneer Khan and Ors. v. State of M.P. (3)*.

5. Per contra, learned counsel for the respondents Nos. 2 and 3 contended that there is no ground to interfere with the concurrent findings of both the courts below. It was submitted that since the petitioner committed default in the payment of purchase price in time and other expenses, the respondent Company was having a right to take back the possession of the vehicle as per terms of hire purchase agreement. Reliance is placed upon *Manipal Finance Corp'n. Ltd. v. T. Bangarappa and Anr. (4)*, *K.A. Muthai @ Babu and Anr. v. Kora Bibbikutty and Anr. (5)*, *Ashok Leyland Finance v. State of Rajasthan (6)*, *Dinesh and Ors. v. State of Raj. (7)*, *Shriram Transport Finance Co. Ltd. v. Shri R. KhaishuIIa Khan and Ors. (8)*. In all the judgments relied upon by learned counsel for the respondents Nos. 2 and 3, it was held that in case hirer commits defaults in payment of the instalments in terms of the hire purchase agreement, the finance company has a right to take back the possession of the vehicle.

6. In the instant case admittedly no installment was due and this fact has been specifically mentioned by the learned Magistrate in his order dated 18.11.2000. It has also been observed by the learned Magistrate that in terms of hire purchase agreement the Tata Finance Company had a right to take back the possession of the vehicle on account of non-payment of instalment. Thus the learned Magistrate himself arrived at this conclusion that the Company had a right to take back the possession of the vehicle in terms of hire purchase agreement on account of non-payment of the installments and the petitioner had already deposited all the instalments.

7. The case of the Tata Company was that some amount on account of interest and other expenses was due, hence the Company was entitled to the possession of the vehicle. The contention of learned counsel for the petitioner was that the respondent No. 3 Company itself was and still not definite as to how much amount was due as the respondent No. 3 sent a letter Annexure 1 to the petitioner and this letter was received on 4.11.2000. Vide this letter only a sum of Rs. 5501/- was said to be due and this amount was paid by the petitioner on 7.11.2000 and copy of the receipt has also been submitted as Annexure 3. Vide Annexure R. 2 a sum of Rs. 38,129/- was due as on 25.10.2000. This is the document showing the statement of account of respondent No. 3 itself.

Subsequently the respondent company, vide Annexure 4 informed the petitioner that only a sum of Rs. 31,862/- was due as on 15.11.2000 according to Annexure 4 and this is also a document containing the statement of the account of the respondent Company. It was also contended that the petitioner deposited a sum of Rs. 60,000/- on 21.11.99 but only a sum of Rs. 52,300/- was credited in his account and this fact is also evident from Annexure 4. It was also argued that at Page 16 of Annexure R, 3, again a statement of account of the Respondent Company, a sum of Rs. 8,000/- has been charged on 23.3.2000 as re-possession charges of the vehicle and again a sum of Rs. 7,000/- has been charged on 18.10.2000 as re-possession charges of the same vehicle. It was also contended that in para 4 of the reply of this petition filed on 10.1.2002, it is stated that the outstanding amount till now is 49,165/- while before the learned Magistrate, it was a case of the respondent Company that a sum of Rs. 53,383/- is due and thus the statements of account are incorrect. In reply, learned counsel for the respondents Nos. 2 and 3 submitted that letter of outstanding balance of Rs. 5501/- was sent by mistake and various details of the outstanding balance have been shown from time to time and on account of minor mistakes in accounts, if any, no adverse inference can be drawn against the respondents Nos. 2 and 3.

8. I have considered the rival submissions. As stated hereinabove no instalment according to hire purchase agreement was due and thus the judgments relied upon by learned counsel for the respondents Nos. 2 and 3 are not applicable to the facts of the present case. A bare perusal of the outstanding balance amount shown from time to time goes to show that the respondent No. 3 Company was and still is not certain as to how much amount was due under various heads of interest and expenses. The respondent No. 3 Company charged a sum of Rs. 8,000/- and Rs. 7,000/- as re- possession charges of the vehicle respectively on 23.3.2000 and 18.10.2000 and prima facie no jurisdiction has been put forward for the same. At one point of time outstanding balance shown by the respondent No. 3 itself was a sum of Rs. 5501/-, at another point of time it was Rs. 38,129/-. At another point of time it was Rs. 31,862/- and before the trial Court the outstanding balance was said to be Rs. 53,383/-. In reply to this petition filed before this Court on 10.1.2002, the outstanding balance shown in Para 4 of the reply is Rs. 49,165/-. In view of such contradictory figures of outstanding balance, it is highly difficult for the Court to ascertain and rather such facts can not be ascertained in criminal proceedings and it was proper on the part of the Tata Finance Company to approach the Civil Court for determination and recovery of the outstanding balance. At the cost of repetition, it is observed that no instalment against this vehicle was due when the vehicle was taken away by the respondent No. 3. A look at the judgments relied upon by the learned counsel for the petitioner goes to show that while deciding the application for giving the vehicle on Supardiginama, Judicial Magistrate, has no power to go into the question of title of the property. Hon. Supreme Court in Manoj's case (supra) held that if the financier is aggrieved, he may approach the Civil Court. Thus

both the courts below did not take into consideration this aspect of the matter that no instalment was due. In other words all the installments had already been deposited by the petitioner and there was some dispute regarding outstanding balance of the amount under heads of interest and expenses and on that count, the petitioner could not have been deprived of his right to possession of this vehicle.

9. Consequently, I set-aside the impugned orders dated 21.4.2001 and 18.11.2000 and direct that the vehicle in question should be given to the petitioner on "Supardiginama" on his executing a bond in the sum of Rs. seven lacs with an undertaking to produce it in the Court as and when directed to do so. The petitioner along with stay application stands disposed of accordingly.