**(2004) 05 JH CK 0012**

**In the Jharkhand High Court**

**Case No :** Criminal M.P. No. 212 of 2003

Uma Shankar Gopalka and Another — APPELLANT

Vs

State of Jharkhand and Another — RESPONDENT

**Date of Decision :** 13-05-2004

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 379, 406

**Citation :** (2004) 2 JCJR 13 : (2004) CriLJ 2954 : (2004) AIR Jhar HCR 1171 : (2006) 2 JLJR 105 : (2006) 1 JCR 190

**Hon'ble Judges :** Hari Shankar Prasad, J

**Bench :** Single Bench

**Advocate :** I. Sinha, for the Appellant; J.K. Mazumdar, for the Respondent

**Final Decision :** Allowed

## Judgement

Hari Shankar Prasad, J.—This application u/s 482 of the Code of Criminal Procedure has been filed for quashing the entire criminal proceedings initiated against the petitioners in Complaint Case No. 1204/2002 including order taking cognizance dated 27-1-2003, whereby and whereunder cognizance for an offence under Sections 323, 341, 379, 406 and 120B, IPC has been taken against the petitioners.

2. Facts giving rise to the filing of this application are that the opposite party No.2 (hereinafter referred to as the "complainant") has filed a complaint case stating therein that vehicle was purchased by the financier namely, M/s. Gopalka Auto Finance Ltd. on 23-2-1998 on the basis of hypothecation agreement and as per agreement the said vehicle was financed by the financier of Rs. 7,55,150/- with insurance for the period of three years (23-2-1998 to 23-2-2001) and 35 instalments were fixed as per the agreement entered into by both the parties. Due to money problem the complainant could not pay the instalment amount till 25th Sept. 1998 then financier issued a legal notice to the complainant for recovery of the due instalment of Rs. 75,407/- and thereafter vehicle sold to

complainant was seized by the financier against the due amount. It is further alleged that after seizure of the vehicle the complainant paid Rs. 3,38,150/- against the due amount of Rs. 7,55,150/- and for recovery of total due amount of Rs. 4,17,000/- fresh instalment was fixed by the financier. It is alleged that as per the fresh agreement complainant paid total Rs. 3,12,600/- upto 5-1-2002 and only Rs. 62,400/- was the amount, which remained due. For remaining dues of Rs. 62,400/- the vehicle was again seized on 28-6-2002. When complainant came to know about the seizure of the vehicle then he approached the staff of accused No. 1 and he saw that accused Nos. 1 and 2 more persons started abusing the complainant and threatened with dire consequences and asked him to bring Rs. 1,51,000/- for release of the vehicle and petitioners obtained signatures forcefully on blank paper. The complainant obtained loan from Allahabad Bank and paid the amount and vehicle was released to him and thereafter he was called at the office of the petitioners, where he was brutally assaulted.

3. Learned counsel for the petitioner submitted that no case as alleged is made out against the petitioners. In fact a sum of Rs. 1,93,648/- was due against the complainant but matter was settled at Rs. 1,51,000/-. It was further pointed out that the complainant made default in payment of instalment and as per terms and conditions of the hire-purchase agreement, the financier had taken the possession of the vehicle and had also intimated the same to the concerned police station, within whose jurisdiction the vehicle was seized (An-nexure-2). It was also pointed out that no offence of criminal breech of trust is made out against the petitioners because are the proprietor and director of the financier company and they are deemed to be the owners of the vehicle, in respect of which an agreement has been executed and as such no case is made out under the aforesaid sections. It was also pointed out that under clause 3 of the hire-purchase agreement dated 23rd Feb. 1998, there was an agreement between that unless and until the payments are completely made to the owner that is the financier company in accordance with the terms and conditions of the agreement, the vehicle shall remain the property of the owner and in that view of the matter no case under Sections 379 or 406, IPC is made out. It was also pointed out that from the complaint petition also it will appear that complainant had made default on several times in payment of instalments, as a result of which was seized and this is not improper and when seizure has been made, therefore, complainant has come out with a false allegation only in order to harass the petitioner. Reliance in this connection has been made upon K. A. Mathai alias Babu v. Kora Bibbikutty, (1996) 7 SCC 212 , wherein it has been held that on failure to make payment of instalment, the financier has right to resume possession even if the agreement does not contain any clause of resumption of possession and here in the instant case there was an agreement under clause 3 of the agreement dated 28th February 1998. Reliance was further placed upon Charanjit Singh Chadha and Others Vs. Sudhir Mehra, wherein it has been held that in hire-purchase contract, recovery of possession of goods by

 

owner, financier, as per terms of the hire-purchase agreement, no criminal case is made out.

4. On perusal of materials on record, it is clear that vehicle in question was delivered to the complainant on the basis of hire-purchase agreement between the parties and due to default in payment of instalment, the vehicle was seized in terms of hire purchase agreement. In my opinion, when vehicle is seized in terms of the hire-purchase agreement due to failure on payment of instalment, no offence is made out under any of the sections and all allegations are false and concocted.

3. In that view of the matter, this application is allowed and the entire criminal proceeding including order taking cognizance dated 27-1-2003 is quashed.