

(2005) 06 AP CK 0004

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 1592 of 2004

Utham Kumar Jain

APPELLANT

Vs

The State of A.P. and Others

RESPONDENT

Date of Decision : 07-06-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 48, 482
Hire Purchase Act, 1972 — Section 1(3), 18, 19, 20, 20(1)
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Motor Vehicles Act, 1988 — Section 2(30), 51, 51(1), 51(2), 51(4)
Penal Code, 1860 (IPC) — Section 120B, 323, 379, 406, 420

Citation : (2005) 2 ALD(Cri) 676 : (2006) 1 ALT(Cri) 131 : (2005) CriLJ 3601

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : T.V. Rajeevan, for the Appellant; Addl. Public Prosecutor (for No. 1) and B. Vijaysen Reddy, (for Nos. 2 and 3), for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner is an accused in Crime No. 43 of 2004 of Town Police Station, Sangareddy, under Sections 379 and 323 of Indian Penal Code, 1860 (for short, IPC). In this petition u/s 482 of Code of Criminal Procedure, 1973 (Cr.P.C.), the petitioner seeks to quash the said crime on the ground that if investigation into the crime is allowed, the same would amount to abuse of process of law.

2. The fact of the matter is as follows. The petitioner claims to be engaged in the business of financing in the name and style of "Sumangal Finance and Investments". It is alleged that second respondent approached the petitioner for a loan to purchase D.C.M. commercial vehicle on hire-purchase basis. Accepting the request, the petitioner purchased D.C.M. commercial goods vehicle bearing registration No. AP. 23.T.2728 against execution of hire-purchase agreement dated 30-10-1995. Under the said agreement, the petitioner is owner of the vehicle and second respondent is hirer. The road transport authorities also

recognised hire-purchase agreement by duly endorsing the same in the registration certificate book (R.C. Book). Though second respondent agreed to pay monthly instalments, she committed default in payment. As a consequence of default in payment of instalments, the petitioner invoked the relevant clauses in hire-purchase agreement and seized the vehicle duly informing the concerned police of P. S. Ramachandra-puram/B.H.E.L through Telegram. Till the last instalment is paid, the financier is the real owner and therefore, the vehicle is seized. Therefore, the complaint lodged by respondents 2 and 3 does not disclose the commission of offence u/s 379 of IPC. Be it noted that initially respondents 2 and 3 filed a private complaint u/s 200 of Cr.P.C. on the file of Court of the Additional Judicial Magistrate of First Class. The same was forwarded to S.H.O., Town Police Station, Sangareddy whereupon Crime No. 43 of 2004 was registered.

3. This Court admitted the matter and stayed all further proceedings in Crime No. 43 of 2004 until further orders. Respondents 2 and 3 filed CrI. M.P. No. 236 of 2005 praying this Court to vacate the interim order. When the miscellaneous application was listed before this Court, the matter was heard finally.

4. Along with the petition for vacating the interim order, respondents 2 and 3 filed a detailed counter. A brief reference to the same for the purpose of appreciating the contentions would be necessary. The second respondent obtained a loan of Rs. 1 lakh (rupees one lakh only) from the petitioner for purchasing D.C.M. vehicle bearing No. AP. 23.T.2728. The entire loan amount with interest was repaid to the petitioner. In addition to the said vehicle, the second respondent availed hire-purchase loan from the petitioner for the purchase of two other vehicles bearing Nos. AP. 23.T.3786 and AET 7775. The brother of the third respondent and son of the second respondent by name Mirza Gouse Baig took another hire-purchase loan for purchasing vehicle bearing No. AP. 9V 1876. All these vehicles are being used by the respondents and their family members for running their family transport business. The hire-purchase loan pertaining to vehicle bearing No. AET 7775 has been closed in the year 1998. The loans pertaining to vehicle bearing Nos. AP 23.T.3786 and AP. 23.T.2728 were also closed on repayment of loan amount in the year 1998. The only outstanding loan is that of AP 9V 1876 for which, some payments are yet to be made by the brother of the third respondent. Though the loan amount pertaining to vehicle bearing No. AET 7775 had been closed and the hire-purchase agreement had been cancelled, the hire-purchase agreements of vehicles bearing Nos. AP 23.T.2728 and AP 23.T.3786 are not cancelled and kept in abeyance as security until the hire-purchase loan pertaining to vehicle bearing No. AP 9V 1876 is discharged. The necessary receipts acknowledging the final payment of loan for these two vehicles are also in the custody of the petitioner as security. The petitioner and four others illegally and highhandedly took the D.C.M. goods vehicle bearing No. AP 23.T.2728 when the same was parked at Sangareddy old bus stand and also beat the driver of the vehicle Mohd. Anwar and clearner Abhir. Thus, it clearly constitutes offence under Sections 379 and

323 of I.P.C. It is also contended that whether the entire amount towards hire-purchase loan for the vehicle is paid or not is a question of fact and the same cannot be adjudicated by this Court while exercising jurisdiction u/s 48 of Cr.P.C. The respondents also denied other allegations made in the petition.

5. The learned Counsel for the petitioner Sri T.V. Rajeevan, contends that under a hire-purchase agreement, the petitioner as a financier has right to terminate the hire-purchase agreement and retake possession of the vehicle. The financier shall be deemed to be the owner of the vehicle till the last instalment is paid and when the vehicle is seized in exercise of right under hire-purchase agreement, the same does not amount to theft. He has relied on *Sardar Trilok Singh and Others Vs. Satya Deo Tripathi*, ; *K. A. Mathai alias Babu v. Kora Bibbikutty*, (1996) 7 SCC 212 and *Charanjit Singh Chadha and Others Vs. Sudhir Mehra*, .

6. The learned Counsel for respondents 2 and 3, Sri B. Vijaysen Reddy, contends that the loan of Rs. 1.00,000/- obtained by the second respondent from the petitioner was repaid but the hire-purchase agreement was not cancelled and the receipts for the payments of the loan was also kept in the custody of the petitioner. In such a case, according to the learned Counsel, the financier cannot invoke the clause in the hire-purchase agreement to forcibly seize the vehicle. When the entire loan amount is paid, the financier has no right over the vehicle and if the vehicle is forcibly taken, the same would amount to theft. He placed reliance on the observations made by the Supreme Court in the three decisions referred to here-in above as well as a decision of Madras High Court in *Lakshmana v. King-Emperor*, AIR 1927 Madras 343 : (1927 (28) Cri LJ 248). He submits that as per the hire-purchase agreement, the loan amount has to be repaid within a period of twenty (20) months commencing from 30-11-1995. The entire loan amount was paid as stipulated in the hire-purchase agreement and therefore it was improper for the petitioner to seize the vehicle forcibly on 11-2-2004 after expiry of the agreement period. Lastly, he would urge that though for the purpose of hire-purchase agreement, the financier is deemed to be the owner, the said legal fiction cannot confer any such right on financier after the expiry of the period of hire-purchase agreement and even as per the registration certificate issued by road transport authorities, the second respondent alone is the owner of the vehicle though an endorsement was made on 30-10-1995 to the effect that there is hire-purchase agreement with M/s. Sumangal Finance and Investments. He placed reliance on the judgment of the Supreme Court in *Ganga Hire Purchase Pvt. Ltd. Vs. State of Punjab and Others*, and a decision delivered by me reported as *Mirza Ramza Ali Vs. Commissioner, Prohibition and Excise and Another*, .

7. The contention of the petitioner is that he has invoked the relevant clause in the hire-purchase agreement, terminated the same and took possession of the vehicle and therefore the offence of theft is not made out. According to him, being the owner of the vehicle, he has only removed the vehicle from the custody of the hirer and therefore the ingredients of theft are absent. On the

contrary, respondents 2 and 3 contended that after expiry of the period of hire-purchase agreement in law as well as in fact, it is only the second respondent who is the owner of the vehicle and therefore even the financier cannot forcibly take away the vehicle as the same would amount to theft. After completion of the period of hire-purchase agreement, especially when the entire loan amount is paid, the financier can neither remove the vehicle from the custody of the borrower nor consider himself (financier) as owner of the vehicle in law under hire-purchase agreement. Therefore, two issues would arise for consideration. One is with regard to the right of the financier while the hire-purchase agreement with regard to its operation as well as payment of instalments is in currency and the other with regard to the rights and liabilities of the financier and borrower after expiry of the period of hire-purchase agreement as well as after the hire-purchase instalments are allegedly paid by the borrower.

8. Let this Court first consider the first issue i.e., the right of the financier when the hire-purchase agreement is in force. It is admitted case that the petitioner's finance concern gave loan of Rs. 1,00,000/- to the second respondent for purpose of D.C.M. commercial goods vehicle. An agreement dated 30-10-1995 styled as hire-purchase agreement was entered into by and between M/s. Sumangal Finance and Investments on one hand and the second respondent on the other hand as well as one M.A. Fayeem, who joined the agreement as a guarantor. As per the agreement, the petitioner agreed to let and the hirer to take on rent the motor vehicle for a term of 20 months commencing from 30-11-1995 at the rate of Rs. 6,800/- per month except for the first month when an amount of Rs. 30,000/- payable on the execution of the agreement. The agreement, inter alia, provides that the hirer may at any time terminate the hiring and become purchaser of the vehicle by paying the balance amount. The agreement also provides that it shall be open to the financier to terminate hire-purchase agreement, in which event it shall be incumbent on the part of the hirer to pay to the owner (financier) all the moneys due, falling which it shall be open to the financier to take possession of the vehicle whether the same is in possession of the hirer or any other person. Such being contractual position, whether the right of the financier to take possession of the vehicle is absolute or is subject to conditions ?

9. Hire Purchase Act, 1972 is an Act to define and regulate the rights and duties of parties to hire-purchase agreements. It is comprehensive legislation, which shall come into force as and when the Central Government by notification in the Gazette notifies the date on which the Act comes into force of the Act. But, so far the Central Government has not issued any notification "under Section 1(3) of the Hire Purchase Act. Therefore, as on today there is no law in India governing the rights and duties of the parties to hire-purchase agreement. Therefore, one has to look to the provisions of Contract Act as well as the Covenants in the hire-purchase agreement itself. A hire-purchase agreement is a special contract of bailment. In a recent judgment in Charanjit Singh Chadha and Others Vs. Sudhir Mehra, , the Supreme Court dealing with hire-purchase agreement observed as

under :

Hire-purchase agreements are executory contracts under which the goods are let on hire and the hirer has an option to purchase in accordance with the terms of the agreement. These types of agreements were originally entered into between the dealer and the customer and the dealer used to extend credit to the customer. But as hire-purchase scheme gained popularity and in size, the dealers who were not endowed with liberal amount of working capital found it difficult to extend the scheme to many customers. Then the financiers came into picture. The finance company would buy the goods from the dealer and let them to the customer under the hire-purchase agreement. The dealer would deliver the goods to the customer who would then drop out of the transaction leaving the finance company to collect instalments directly from the customer. Under hire-purchase agreement, the hirer is simply paying for the use of the goods and for the option to purchase them. The finance charge, representing the difference between the cash price and the hire-purchase price, is not interest but represents a sum which the hirer has to pay for the privilege of being allowed to discharge the purchase price of goods by instalments.

10. Whether the exercise of a right by the financier/owner under hire-purchase agreement in seizing the vehicle amounts to criminal offence? In *Sardar Trilok Singh and Others Vs. Satya Deo Tripathi*, the appellant who is a financier lent money to the respondent for purchase of a truck. As per the hire-purchase agreement entered into between the parties, the loan was payable in monthly instalments and any default in any one of the instalments would give a right to the financier to terminate the agreement without notice and seized the truck. In the complaint lodged by the respondents, it was alleged that the financier obtained signatures from the borrower on blank form and when there was default in the payment of third instalment, the truck was forcibly seized and removed by the appellant/financier. The Magistrate before whom the complaint was filed took cognizance of the offence and directed to issue summons against ten persons including the appellant before the Supreme Court. The appellant moved the High Court to quash the proceedings u/s 482 of Cr.P.C. The High Court of Allahabad dismissed the petition. The Supreme Court while allowing the appeal quashed the criminal prosecution. The Supreme Court also observed that whether or not the financier seized the vehicle in exercise of his bona fide right of seizing the truck and whether or not a blank form was executed are all disputed questions giving rise to a civil dispute. It is apposite to excerpt the following observations from the judgment of the Supreme Court.

We are clearly of the view that it was not a case where any processes ought to have been directed to be issued against any of the accused. On the well-settled principles of law it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct. Money must have been advanced

to him and his partner by the financier on the basis of some terms settled between the parties. Even assuming that the agreement entered on 29th March, 1973 was duly filled up and the signature of the complainant was obtained on a blank form, it is to be noticed that the amount of the two monthly instalments admittedly paid by him was to the tune of Rs. 3,566/- exactly @Rs. 1,783/- per month. The complainant does not say as to when these two monthly instalments were paid. In the First Information Report which he had lodged he had not stated that the third monthly instalment was payable on July 31, 1973. Rather, from the statement in the First Information Report it appears that the instalment had already become due on 28-7-73, when the complainant went out of Kanpur according to his case. The question as to what were the terms of the settlement and whether they were duly incorporated in the printed agreement or not were all questions which could be properly and adequately decided in a civil Court. Obtaining signature of a person on blank sheet of paper by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of the Penal Code making it an offence or when such a document is used as a genuine document. Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on 30-7-1973 from the house of the respondent they could and did claim to have done so in exercise of their bona fide right of seizing the truck on the respondent's failure to pay the third monthly instalment in time.

11. In *K. A. Mathai alias Babu v. Kora Bibbikutty*, (1996) 7 SCC 212, accused Nos. 1 and 2 were before the Supreme Court against the order's of conviction passed by the High Court. Accused No. 2 was the owner of the vehicle who purchased the bus with the help of a financier under hire-purchase agreement. Some time thereafter he sold the bus with stage carrier permit to the complainant but subject to hire-purchase agreement with the financier. The complainant paid part of the amount as price of the bus and agreed to pay the instalments to the financier. When he defaulted in payment of the instalments, the financier took the bus in the presence of accused Nos. 1 and 2. They were convicted by the Court of first instance but the Court of Sessions acquitted them. High Court, however, restored conviction. Aggrieved by which, the appeal was filed before the Supreme Court. The Supreme Court allowed the appeal observing thus.

It is more than clear that the hire-purchase agreement with the financier was entered into much prior in time, whereafter the agreement of sale between A-2 and the complainant took place, and which was subject to the rights of the financier. It is even otherwise understandable that A-2 could not have passed a better title of the bus to the complainant than that she had acquired for herself under the hire-purchase agreement. Though we do not have the advantage of reading the hire-purchase agreement, but as normally drawn it would have contained the clause that in the event of the failure to make payment of instalments/s the financier had the right to resume possession of the vehicle.

Since the financier's agreement with A-2 contained that clause of resumption of possession, that has to be read, if not specifically provided in the agreement, as part of the sale agreement between A-2 and the complainant. It is, in these circumstances, the financier took possession of the bus from the complainant with the aid of the appellants. It cannot thus be said that the appellants, in any way, had committed the offence of theft and that too, with the requisite mens rea and requisite dishonest intention. The assertion of rights and obligations, accruing to the appellants under the aforesaid two agreements, wiped out any dishonest pretence in that regard from which it could be inferred that they had done so with a guilty intention. In this view of the matter, we think that the High Court was in error in upsetting the well-considered judgment of the Court of Session.

12. In Charanjit Singh Chadha and Others Vs. Sudhir Mehra, , the appellants were running Deluxe Leasing Pvt. Ltd. a non-banking financial institution. The respondent as a partner of a firm entered into hire-purchase agreement whereunder motor vehicle was given to him for a consideration of Rs. 3,02,884/- payable in 36 monthly instalments of Rs. 8,400/- each. When the vehicle developed trouble, the same was entrusted by the respondent to a motor mechanic. On the premise that there was a default in payment of instalment, the appellants removed the vehicle from the motor mechanic. He filed a criminal complaint under Sections 406, 420 and 120B of IPC. The Magistrate took cognizance of the offence and issued summons. Aggrieved by which, the appellants filed petition u/s 482 of Cr.P.C. before the High Court of Punjab and Haryana to quash the criminal proceedings. The High Court declined to quash the proceedings and the matter was carried to Supreme Court. The Supreme Court allowed the appeal holding that if the motor vehicle, which is subject-matter of hire-purchase agreement is taken re-possession for default in payment of instalments in terms of the agreement, the same would not amount to criminal offence. The Court also relied on earlier decision in K. A. Mathai alias Babu v. Kora Bibbikutty, (1996) 7 SCC 212 and observed as under :

The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the re-possession of goods as per the term of the agreement may not amount to any Criminal offence. The agreement (Annexure P-I) specifically gave authority to the appellants to repossess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire-purchase agreement, the appellants have continued to be the owners of the vehicle, and even if the entire allegations against them are taken as true, no offence was made out against them.

13. The conspectus of the precedents referred to hereinabove would show that i) hire-purchase agreement is a special kind of contract of bailment and is in the nature of executory contract of sale; ii) under the hire-purchase agreement the

right in general property of the goods would not pass to the hirer but what is transferred is a special right to possession of the goods subject to fulfilling the conditions of hire-purchase; iii) the hire-purchase agreement does not confer any right -- either general or special right in rem on the hirer to own the property absolutely unless and until all conditions are fulfilled; and iv) the right of the owner for repossession in default of the conditions of agreement has to be exercised only as per terms of the agreement and not otherwise.

14. It may also be noted that though Parliament enacted Hire Purchase Act in 1972, thus far the same has not been enforced by the Central Government by issuing a notification appointing a date for commencement, the rights and liabilities between the owner and hirer under an agreement of hire-purchase must necessarily be governed by the terms of the agreement. Under the provisions of Hire Purchase Act, 1972 especially Sections 18, 19, 20 and 26, a hirer has a right to notice before termination of the agreement, a right to preempt the owner from seizing the vehicle after duly paying the instalments due, a right against coercive dispossession subject to payment of "statutory proportion of the hire-purchase price (Under Section 20(1) of the Hire-Purchase Act, if the hirer pays statutory proportion of price, the owner cannot enforce the right to recover possession. If the hire-purchase price is less than Rs. 15,000/-, the statutory proportion would be one-half and if the hire purchase price is not less than Rs. 15,000/-, three-fourths would be the statutory proportion. Further, under the proviso to Section 20(1), in case of motor vehicles, statutory proportion would be one half or three-fourths of the hire-purchase price as the case may be)" and right not to be affected prejudicially with regard to the first agreement in the case of multiple hire-purchase agreements. Though various provisions of Hire-Purchase Act confer rights and obligations on the owner as well as hirer and also declares that notwithstanding anything contained in contract, the provisions in the hire-purchase agreement prevail, it is unfortunate that the Central Government did not bring the Act into force though about half a decade ago the Supreme Court in *Charanjit Singh Chadha and Others Vs. Sudhir Mehra*, made a reference to this aspect of the matter. It is high time that the Central Government be advised to bring into force the Hire-Purchase Act, 1972 as expeditiously as possible having regard to the economic reforms which script and guide Indian economic development.

15. When a hirer fails to pay the instalments or hire of the motor vehicle, whether or not the hire-purchase agreement provides, it is open to the owner to resume possession of the motor vehicle. (See *K. A. Mathai alias Babu v. Kora Bibbikutty* (supra)). In the case where the hirer asserts that the entire amount has been paid but discharge note was not given or the owner did not take steps for getting the necessary endorsement from road transport authorities, the position would be altogether different. The hypothesis of the second point for consideration would be that the owner can exercise the right to seize the vehicle and retake possession only when there is default on the part of the hirer and only after terminating the hire-purchase agreement. If for any reason, the owner

does not exercise the right to retake possession of the vehicle, even if after expiry of the period of hire-purchase agreement and waits for a longer period after such expiry, the Court can always draw an inference that the allegation made by the hirer to the effect that the entire hire-purchase price is paid but the necessary endorsement under Motor Vehicles Act, 1988 has not been made is correct (though it is rebuttable). This has both legal aspect as well as factual aspect in a given case.

16. Section 2(30) of Motor Vehicles Act defines "owner" as to mean a person in whose name a motor vehicle stands registered, and where such person is a minor the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement are treated as "owners". Even where the vehicle is governed by hire-purchase agreement, as per Motor Vehicles law, the person in possession of the vehicle is alone considered to be owner thereby meaning that the special right in property to possession is itself treated as ownership by Motor Vehicles Act.

17. Section 51 of Motor Vehicles Act contains special provisions regarding motor vehicle subject to hire-purchase agreement. It is apt to extract relevant portion of Section 51 of Motor Vehicles Act, which reads as under, (in so far as it is relevant).

51. Special provisions regarding motor vehicle subject to hire-purchase agreement, etc.: (1) Where an application for registration of a motor vehicle which is held under a hire-purchase, lease or hypothecation agreement (hereinafter in this section referred to as the said agreement) is made, the registering authority shall make an entry in the certificate of registration regarding the existence of the said agreement.

(2) Where the ownership of any motor vehicle registered under this Chapter is transferred and the transferee enters into the said agreement with any person, the last registering authority shall, on receipt of an application in such form as the Central Government may prescribe from the parties to the said agreement, make an entry as to the existence of the said agreement in the certificate of registration and an intimation in this regard shall be sent to the original registering authority if the last registering authority is not the original registering authority.

(3) Any entry made under Sub-section (1) or Sub-section (2), may be cancelled by the last registering authority on proof of the termination of the said agreement by the parties concerned on an application being made in such form as the Central Government may prescribe and an intimation in this behalf shall be sent to the original registering authority, if the last registering authority is not the original registering authority.

(4) No entry regarding the transfer of ownership of any motor vehicle which is held under the said agreement shall be made in the certificate of registration

except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement.

(5) Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfies possession of the vehicle owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him, a notice by registered post acknowledgment due at his address entered in the certificate of registration) and notwithstanding that the certificate of registration is not produced before it cancels the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement:

Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee;

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the remaining period for which the certificate cancelled under this sub-section would have been in force.

18. A plain reading of the above provision would show that where an application for registration of motor vehicle held under hire-purchase agreement is made, the registering authority shall make an entry in the book of registration regarding the evidence of such agreement. When the registered motor vehicle is transferred and the transferee enters into hire-purchase agreement with any person, the registering authority on receipt of the application from the party may again make an entry as to the existence of agreement in the certificate of registration duly informing the original registering authority.

19. Any entry made under Sub-sections (1) and (2) of Section 51 to the effect that a motor vehicle which is subject-matter of hire-purchase agreement can be cancelled by a registering authority on proof of termination of the said agreement by the parties concerned on an application made to the original registering authority. The cancellation of an entry commonly called "endorsement" of hire-purchase/hypothecation can be made on a written consent of the person whose name has been specified in the certificate of registration and the person with whom the registered owner has entered into an agreement. Sub-section (4) of Section 51 read with sub-section (1) makes it abundantly clear that even where the motor vehicle is held under hire-purchase agreement, it is only the name of hirer, who is registered as owner and not the financier. When a hire-purchase agreement governs the use of motor vehicle, the registering authority only makes an entry in the certificate regarding the

existence of such agreement.

20. A reading of Sub-section (5) of Section 51 further makes it clear that the name of the financier cannot be shown as owner of the vehicle unless and until such person satisfies the registering authority that he has taken possession of the vehicle owing to default of the registered owner, in which event it is competent for the registering authority after issuing notice to the registered owner to cancel the certificate and issue a fresh certificate of registration in the name of the financier. Thus, for all purposes, a person who is in possession of the vehicle or hirer whose name is shown as registered owner can alone be treated as owner. The position is not different even in the Hire-Purchase Act, 1972.

21. Generally, in the definition clause of the hire-purchase agreement, the financier is described as owner. However, for the purpose of Motor Vehicle Act, the person in whose name the vehicle is registered by registering authority and the person who is in possession of the vehicle notwithstanding any endorsement of hire-purchase shall be deemed to be the owner of the vehicle. In *Ganga Hire Purchase Pvt. Ltd. Vs. State of Punjab and Others*, it was contended that the financier continues to be the owner of the vehicle so long as the entire hire-purchase price is not paid and therefore unless and until the vehicle used for carrying narcotic drugs with the knowledge of the financier, an order of confiscation could not have been passed u/s 60(3) of Narcotic Drugs and Psychotropic Substances Act, 1985. The Supreme Court rejected the submission and held as under (para 2) :

The bone of contention of the appellant is that in view of the hire-purchase agreement, the appellant continues legally to be "the owner" of the vehicle so long as the entire hire-purchase money has not been paid and therefore unless and until it is established that the vehicle was used for carrying of narcotics with the knowledge of the appellant, an order of confiscation could not have been passed. In support of this contention, reliance has been placed on a decision of a learned single Judge of the Rajasthan High Court in the case of *The Punjab Kashmir Finance Pvt. Ltd. Vs. State*. The expression "owner" has not been defined in the NDPS Act. There is also no dispute that under the hire-purchase agreement the title to the vehicle is retained with the appellant until and unless the entire hire-purchase money is paid back. But, if the contention of the appellant is accepted, then all the vehicles which have been purchased on hire purchase basis, cannot be confiscated notwithstanding the fact that the vehicles were found to be used for commission of offences under the NDPS Act in carrying narcotic and psychotropic substances. The very purpose for engrafting Sub-section (3) of Section 60 of the NDPS Act is to have it as a deterrent measure to check the offences under the Act in question which have been found to be dangerous to the entire society. In the absence of any definition of "owner" in the NDPS Act, it would be reasonable for us to construe that the expression "owner" must be held to mean the "registered owner" of the vehicle in whose name the vehicle stands registered under the provisions of the Motor Vehicles Act.

22. If the owner under hire purchase agreement terminates the agreement and takes possession of the hired vehicle in terms of the hire purchase agreement which binds the owner and the hirer, as held by the Supreme Court the re-possession of the vehicle may not amount to any criminal offence. But as in the present case if the hirer complains that the entire amount is paid but the owner did not get the entry of hire purchase agreement cancelled, the Court dealing with the complaint of theft alone has to look into the matter. That is the reason why in Sub-section (5) of Section 51 of Motor Vehicles Act, the law mandates that financier has to satisfy the registering authority under the Motor Vehicles Act that he has taken possession of the vehicle owing to default of the registered owner under the provisions of the said crime. To escape the criminal liability, the financier must show to the Court either before trial Magistrate or before the High Court dealing with an application u/s 482 of Cr.P.C., for quashing that the financier has taken possession of the vehicle for committing default by the hirer in terms of the hire purchase agreement.

23. There is yet another reason also for coming to the conclusion that the financier after expiry of the period of agreement, especially after long lapse of time cannot exercise the right to take possession of the vehicle covered by hire purchase agreement. Section 3 of the Limitation Act, 1963, is to the effect that subject to the provisions contained in Sections 4 - 24 of the Limitation Act, every application made after prescribed period of limitation shall be dismissed and as per Clause (j) of Section 2 of the said Act, the period of limitation means the period of limitation prescribed by the Schedule. The Schedule appended to the limitation contains three divisions. First division deals with suits, second division deals with appeals and the third division deals with applications. Part VI of First Division of the Schedule (Articles 68 to 71) deals with suits relating to moveable property. All these articles prescribe the limitation of three years. Even where a person seeks recovery of moveable property, the suit has to be brought within a period of three years. In a case where the financier under hire purchase agreement is not diligent in exercising power to retake possession of the hired vehicle, such a financier shall be precluded from bringing a suit for recovery of the moveable property. Applying the same principle to this case, having regard to the fact that the agreement period expired on 31-7-1997 but the financier sought to exercise power long thereafter, it must be held that the rights of the financier under the agreement got extinguished in accordance with Section 27 of the Limitation Act.

24. In the present case, the agreement was entered into between the second respondent and the petitioner on 30-11-1995 and the same expired on 31-7-1997. After that the owner/financier did not give any intimation of termination of hire purchase agreement nor took any action. It is only on 11-2-2004 long after expiry of the period of hire purchase agreement, the petitioner took the vehicle into his custody. It is the specific case of the respondents 2 and 3 that they paid the entire amount towards hire purchase price but the financier did not return hire purchase agreement duly cancelled nor

did give valid reasons about the amounts paid. The fact that the financier did not immediately exercise his right under hire purchase agreement to seize the vehicle when allegedly there was a default in payment of instalments during the currency of the agreement, would certainly lend support to the version of the respondents 2 and 3. Therefore, it must be held that the vehicle of the second respondent was not taken possession in terms of hire purchase agreement dated 30-10-1995 and therefore the financier has no immunity for criminal prosecution as it was in the cases decided by the Supreme Court.

25. The right of the owner/financier under hire purchase agreement to seize the vehicle and take possession even if there is a default in payment of one instalment at any time during the currency of the agreement is a drastic power which is in the nature of confiscation. There is no gain-saying in mentioning that the power to confiscate is appropriatory in nature and under the agreement the financier can even sell the seized vehicle. The covenant has to be interpreted strictly. That may be the reason why the Parliament chose to provide adequate safeguards by enacting Sections 18, 19, 20 and 26 under the Hire Purchase Act, which has not been enforced as yet. Be that as it is, in this case, there is dispute as to whether second respondent has paid entire hire purchase instalments and as to whether the petitioner failed to cancel the hire purchase agreement and issue valid document of discharge. The very question whether the petitioner has seized vehicle on 11-2-2004 in accordance with hire purchase agreement dated 30-10-1995 is in dispute. Unless and until the petitioner proves such a thing before the criminal Court, the criminal prosecution cannot be thwarted at the threshold. It is always open to the petitioner to prove the same and get an order of discharge from the criminal Court. Be it noted that observation with regard to inter se rights of parties to this case are intended not to be conclusive and criminal Court has to decide those issues independently.

26. In the result, the Criminal Petition is devoid of merit and is accordingly dismissed.