

(1986) 05 AHC CK 0026

In the Allahabad High Court

Case No : Criminal Misc. Case No. 3697 of 1985

Vinod Kumar Dewan

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 20-05-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482, 561A
Hire Purchase Act, 1972 — Section 20, 20(1), 20(3)
Penal Code, 1860 (IPC) — Section 364, 392

Citation : (1986) 10 ACR 377

Hon'ble Judges : G.B. Singh, J

Bench : Single Bench

Advocate : R.C. Sinha, Pradeep Agarwal, Arun Senhee and R.K. Nigam, for the Appellant; Vishwa Mohani and Vimal Kumar, for the Respondent

Final Decision : Partly Allowed

Judgement

G.B. Singh, J.—This is a petition u/s 482 of the Code of Criminal Procedure.

2. M/s. Motor Sales Limited, Lucknow is a company incorporated under the Indian Companies act and is a dealer of TELCO and sells chassis of trucks manufactured by TELCO and give the truck chassis on hire purchase basis also. Nankau Prasad Singh opposite party No. 2 approached M/s. Motor Sales Limited and proposed to have a truck chassis on hire purchase basis. The Motor Sales Limited accepted the proposal and a hire-purchase agreement was drawn up on 23-7-1982 (Annexure No. 2). The opposite party No. 2 agreed to purchase a chassis for a sum of Rs. 250377/- and paid Rs. 57745/- as initial payment. The balance was to be paid in 17 instalments; the first of them was of Rs. 11354/- and the other 16 instalments were of Rs. 11330/-. The first instalment was payable on 24th September, 1982 and the other instalments were payable on 24th day of every succeeding calendar month. The chassis was registered with R.T.O., Allahabad and the number assigned to it was URS-9518. It appears that some of the instalments could not be paid by the due dates and ultimately a sum

of Rs 23990/- towards instalments and some amount towards interest on account of non payment of the instalments by the due dates, was due from the opposite party No. 1, after the payment of the 15th instalment on 3-2-1984. According to the Petitioner who is an Accountant of M/s. Motor Sales Limited contacted opposite party No. 2 in the month of November, 1985 to make necessary payments but the latter failed. The case of the Petitioner is that on 20-11-1985 the opposite party No. 2 expressed his inability to pay the money and gave a writing Annexure No. 4 agreeing that the Petitioner could take possession of the truck and accordingly the Petitioner went to the village Annpara on 21-11-1985 and took possession over the truck with the consent of the opposite party No. 2. It has been further alleged that on 27-11-1985 or 28-11-1985 the opposite party No. 2 came to the office of the Petitioner for settlement of the account and when it could not be done, the opposite party No. 2 lodged the first information report at Police Station Naka Hindola District Lucknow though the alleged incident took place within the circle of Police Station Pipri District Mirzapur, against the Petitioner alleging that he alongwith some others forcibly took possession over the truck while it was being taken to workshop Anri. On that report a case has been registered and is being investigated. The Petitioner apprehending his arrest during investigation, filed the present petition u/s 482, Code of Criminal Procedure alleging that no offence has been committed by him, the FIR may be quashed and the Petitioner may not be arrested. It was also prayed that the truck may be given in the Supurdgi of the Petitioner. On the petition the investigation and the arrest were stayed and the vehicle seized was given to the custody of the Chief Judicial Magistrate, Lucknow.

3. On service of the notice on opposite party No. 2 he filed counter affidavit admitting that a sum of Rs. 23990/- is due from him towards the balance. He, however, pleaded that he went to make payment of that sum to the office of the Petitioner and paid certain sums but they were appropriated in an unauthorised manner towards the payment of the instalments of another truck of which he is a guarantor. He denied that he gave writing on 20-11-1985 to the Petitioner giving his consent to take possession over the truck by the owner for non-payment of the balance. It has also been pleaded by him that the Petitioner with the help of some others forcibly took possession over the truck in question while the truck was in the custody of the servants of the opposite party No. 2 and they, therefore, committed an offence under Sections 392/364 of the Indian Penal Code. The police of District Mirzapur came to Lucknow and recovered the truck from the possession of the Petitioner on 16-12-1985 and the Petitioner obtained exparte order about stay of the investigation and custody of the truck in question. It was also pleaded by him that the first information report lodged discloses an offence against the Petitioner and the petition u/s 482 of the Code of Criminal Procedure is liable to be dismissed.

4. It was argued by the learned Counsel for the Petitioner that the dispute between the parties is of a civil nature and the facts disclosed in the first

information report do not constitute an offence as M/s. Motor Sales Limited being the owner of the truck could take possession in the truck in case of default in payment of the instalments. In support of this argument he placed reliance upon a case reported as Trilok Singh v. Satya Deo Tripathi 1979 AWC 465. The learned Counsel for the opposite party no 2, on the other hand, argued that the facts mentioned in the first information report to constitute an offence and even if the dispute is of civil nature the first information report and the investigation proceeding thereon cannot be quashed. In support of this argument several cases were cited on behalf of the opposite party No. 2. Having carefully considered all these cases I am of the opinion that the argument of the learned Counsel for the Petitioner must prevail.

5. In Trilok Singh v. Satya Deo Tripathi 1979 AWC 465 SC the dispute between the parties related to the purchase of a truck under a hirepurchase agreement. The loan was payable in monthly instalments. According to the hire purchase agreement on default of any one instalment the financier had the right to terminate hire purchase agreement even without notice and seize the truck. On default of the third instalment the truck was forcibly seized and removed by the financier. The hirer lodged an FIR against the financier but the police submitted a final report in that connection. The hirer then filed a complaint against the financier alleging that he committed certain offences while taking possession over the truck in question. After enquiry the Magistrate directed the issue of summons. The financier then moved an application u/s 482, Code of Criminal Procedure alleging that he had not committed any offence. He prayed that the proceedings should be quashed. The High Court dismissed the application u/s 482 Code of Criminal Procedure; the financier, therefore, filed an appeal in the Supreme Court. It was held that the proceedings initiated were clearly an abuse of the process of the Court and it was the case where no process ought to have been directed to be issued against the accused-Appellants. The dispute raised by the complainant was purely of a civil nature and on the well settled principles of law it was a very suitable case where the criminal proceedings ought to have been quashed by the High Court in exercise of its inherent power. With these observations the appeal was allowed and criminal proceedings initiated on the basis of the complaint were quashed. The facts of the reported case are similar to those of the present one. The only difference is that in the reported case the matter was pending before the Magistrate who directed for the issue of summons. As against this in the present case the first information report has been lodged and the investigation is proceeding. These facts do not make any difference. The reason is that in the exercise of the powers u/s 482 Code of Criminal Procedure the High Court can interfere even at the stage of investigation and it is not necessary that proceedings should be pending before the Court.

6. In R.P. Kapur Vs. The State of Punjab, it has been held that the inherent jurisdiction of the High Court vested u/s 482 Code of Criminal Procedure can be exercised to quash the criminal proceedings at an interlocutory stage where the

allegations in the first information report or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged. It has been observed in this connection at page 1242 that:

Cases may also arise where the allegations in the first information report or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged, in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person.

7. In *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, it has been observed that an investigation can be quashed if no cognizable offence is disclosed by the FIR as it is not within the province of the police to investigate into a report which does not disclose the commission of a cognizable offence and the Code of Criminal Procedure does not impose upon them a duty to interfere into such cases. It has been further held in this case that whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case and if on a consideration of the relevant material the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting material for proving the offence, but in case the Court, on a consideration of the relevant materials is satisfied that no offence is disclosed it will be the duty of the Courts to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual. It is true that these observations were made in a writ under Article 226 of the Constitution of India but it hardly makes any difference. In *M/s. Nathoo Mal Agarwal and Sons v. State of U.P.* 1983 AWC 787 also it has been observed that the power u/s 482 Code of Criminal Procedure are wide enough and in suitable cases where there are strong justification even investigation can be quashed. The observations made in these cases indicate that interference can be made by the High Court even at the stage of investigation where the first information report does not disclose any offence and it would be a mock trial if the case is allowed to proceed.

8. The learned Counsel for the opposite party No. 2 in order to show that investigation by the police cannot be quashed, placed reliance upon *Hazari Lal Gupta Vs. Rameshwar Prasad and Another, etc.*, and *Jehan Singh Vs. Delhi Administration*, . It has been held in these cases that the inherent jurisdiction vested u/s 561-A (new Section 482) Code of Criminal Procedure cannot be exercised to interfere with the police investigation. The other cases relied upon by the learned Counsel for the opposite party No. 2 are *Maheshwari Oil Mills Vs. The State of Bihar*, and *Dr. Radhanath Rath and Others Vs. Balakrishna Swain*, . The case reported in *Dr. Radhanath Rath and Others Vs. Balakrishna Swain*, is

clearly distinguishable from the facts of the present case. In that case the question of interference with the investigation was not considered. The principle laid down in that case is that if the prima facie material for taking cognizance by the Magistrate was present there should not be interference by the High Court with the order of the Magistrate for issuing summons against the accused for their appearance. The observations in the other three cases render little assistance to the learned Counsel for the opposite party No. 2 in view of the rule enunciated in *R.P. Kapur Vs. The State of Punjab*, , *Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others*, and 1983 AWC 787.

9. The point to be considered now is, if the present case is of exceptional nature where the interference should be made by the Court at an interlocutory stage. The dispute between the parties related to taking repossession over the vehicle by the owner. Undisputedly, the vehicle was taken under a hire-purchase agreement. One of the conditions of the hire-purchase agreement was that the owner could terminate the contract with or without notice and re-take and recover possession of the vehicle if any monthly hire or part thereof is in arrears and left unpaid for a period of 7 days after the date fixed for its payment for any reason whatsoever. There is no dispute that some instalments could not be paid by the opposite party No. 2 in time. Thus, by virtue of the aforesaid condition of the hire-purchase agreement the owner could re-take possession of the vehicle in question. The alleged incident of re-possession of the truck took place according to the Petitioner when the opposite party No. 2 gave a writing on 20-11-1985 expressing his consent for the re-possession. The opposite party No. 2 admits his signature on this writing but asserts that his signatures were fraudulently obtained. The contention of fraud has been denied by the Petitioner in the rejoinder affidavit. The alleged incident took place on 21-11-1985 within the circle of Police Station Pipri District Mirzapur. The first information report was lodged on 28-11-1985 at Police Station Naka Hindola Lucknow. The allegation of the Petitioner is that after re-possession of the truck the opposite party No. 2 approached the Petitioner and visited his office on 27-11-1985 and 28-11-1985 for settlement of account and when did not succeed lodged the first information report in order to exercise pressure on him. All these facts militate against the dishonest removal of the truck without consent of the opposite party No. 2 and thus necessary ingredients of the offence of robbery u/s 392 IPC are wanting. Similarly there is no clear allegation in the FIR that the driver has been kidnapped for murder which is punishable u/s 364 IPC. The observations made in *Trilok Singh v. Satya Deo Tripathi* 1979 AWC 465 SC clearly indicate that the dispute relating to re-possession of the vehicle of the (sic) is of civil nature and in such a case the investigation should not be allowed to proceed. With regard to the allegations made in the complaint petition about the commission of dacoity the following observations were made:

On the face of the complaint petition itself the highly exaggerated version given by the Respondent that the Appellants went to his house with a mob armed with deadly weapons and committed the offence of dacoity in taking away the truck

was so very unnatural and untrust-worthy that it could not take the matter out of the realm of civil dispute. No body on the side of the Respondent was hurt. Even a scratch was not given to any body.

10. With these observations the criminal prosecution case was quashed. In the present case also, the first information report appears to contain unnatural and improbable story. The circumstances as enumerated above and the fact that it is a dispute of civil nature clearly indicate that it is a case of an exceptional nature which deserves interference at an interlocutory stage and if the investigation is allowed to proceed it would be an unnecessary harassment of the Petitioner and would be a mock trial.

11. Thus, the investigation deserves to be quashed in the circumstances of the case to secure the ends of justice.

12. The second point argued by the learned Counsel for the Petitioner and the opposite party No. 2 relates to the custody of the seized truck. On the first information report lodged by the opposite party No. 2, the truck was seized by the police and vide ad interim order dated 20-12-1985 passed by this Court, the vehicle is in the custody of the Chief Judicial Magistrate Lucknow. The learned Counsel for the opposite party No. 2 in order to show that the owner could not recover possession of the vehicle from the hirer opposite party No. 2 otherwise than in accordance with Section 20 of the Hire Purchase Act 1972, and since the owner has not followed the procedure laid down under this Section, the opposite party No. 2 is entitled to the custody of the truck in question. Section 20 of the Hire Purchase Act reads as follows:

20. Restriction on owner's right to recover possession of goods otherwise than through Court-(1) Where goods have been let under a hire-purchase agreement and the statutory proportion of the hire-purchase price has been paid, whether in pursuance of the judgment of a Court or otherwise, or tendered by or on behalf of the hirer or any surety, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than in accordance with Sub-Section (3) or by suit.

Explanation--In this Section, "statutory proportion" means,-

(i) one-half, where the hire-purchase price is less than fifteen thousand rupees; and

(ii) three-fourths, where the hire-purchase price is not less than fifteen thousand rupees ;

Provided that in the case of motor vehicles as defined in the Motor Vehicles Act, 1939 (4 of 1939) "statutory proportion" shall mean,-

(1) one-half, where the hire-purchase price is less than five thousand rupees;

(ii) three-fourths, where the hire-purchase price is not less than five thousand rupees but less than fifteen thousand rupees;

(iii) three-fourths of such higher proportion not exceeding nine-tenths as the Central Government may, by notification in the Official Gazette, specify, where the hire-purchase price is not less than fifteen thousand rupees.

(2) If the owner recovers possession of goods in contravention of provisions of Sub-Section (1), the hire-purchase agreement, if not previously terminated, shall terminate, and-

(a) the hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner all sums paid by the hirer under the agreement or under any security given by him in respect thereof; and

(b) the surety shall be entitled to recover from the owner all sums paid by him under the contract of guarantee or under any security given by him in respect thereof.

(3) Where, by virtue of the provisions of Sub-Section (1), the owner is precluded from enforcing a right to recover possession of the goods, he may make an application for recovery of possession of the goods to any Court having jurisdiction to entertain a suit for the same relief.

(4) The provisions of this Section shall not apply in any case in which the hirer has terminated the agreement by virtue of any right vested in him.

13. It is not disputed that the vehicle in question had been let under a hire-purchase agreement. It is also undisputed that only two instalments out of 17 instalments could not be paid. Thus, the hirer had paid statutory proportion of the hire-purchase price before taking possession over the vehicle by the owner. It is undisputed that the owner did not make any application for recovery of possession of the vehicle to any Court having jurisdiction to entertain a suit for the same relief under Sub-Section (3) of Section 20 of the Hire Purchase Act. It is also undisputed that he did not file any suit for recovery of possession of the vehicle in question.

14. Thus, taking back possession over the vehicle was a contravention of Section 20 of the Hire Purchase Act. The learned Counsel for the Petitioner in order to justify re-possession of the vehicle placed reliance upon the writing dated 20-11-85 Annexure No. 4 to the petition. Since the opposite party No. 2 has disputed its due execution and since the opposite party No. 2 had paid 15 instalments, and two instalments of that amount remained due, it is difficult to place much reliance on this writing dated 20-11-85 for the purposes of the point under consideration. In view of this fact and the provisions of the Hire Purchase Act, 1972 I am of the view that the possession of the vehicle should remain with the opposite party No. 2 and the owner M/s. Motor Sales Limited who is still the owner of the vehicle can recover the amount due or the possession over the vehicle in accordance with the provisions of law.

15. The Petitioner has prayed for quashing of the first information report. It has been held in Kurukshetra University and Another Vs. State of Haryana and

Another, that the first information report cannot be quashed by the High Court in the exercise of its inherent jurisdiction u/s 482 Code of Criminal Procedure.

16. The learned Counsel for the Petitioner could not cite any authority showing that the first information report could be quashed inspite of the above observation made by the Supreme Court in the aforesaid case. The learned Counsel for the Petitioner realising the weakness in this regard did not press this point much. It is, therefore, clear that the first information report cannot be quashed and only the investigation which is proceeding on the basis of the first information report which does not disclose an offence can be quashed as has been discussed.

17. The petition is, therefore, allowed in part. The investigation proceeding on the basis of the first information report dated 28-11-85 Annexure No. 5 is quashed. The seized vehicle shall be released and handed over to the opposite party No. 2 by the Chief Judicial Magistrate, Lucknow.

Petition partly allowed.