SUPREME COURT OF INDIA

HON'BLE K. T. THOMAS AND K. G. BALAKRISHNAN, JJ.

Charanjit Singh Chadha & Ors. -Appellants

versus

Sudhir Mehra -Respondent

Criminal Appeal No. 883 of 2001

Decided on 31-8-2001

Criminal Procedure Code, 1973—Section 482—Indian Penal Code, 1860—Sections 406, 420, 120-B and 379—Criminal procedings—Quashing of—Hire purchase agreement—Default in paying in instalment—Appellants forcibly repossessed vehicle—HELD—Hire purchase agreement in law is executory contract of sale—And confers no right *in rem* on hirer—Until conditions for transfer of property to him have been fulfilled—Re-possession of goods may not amount to any criminal offence. (Para—17)

JUDGMENT

K. G. Balakrishnan, J. : Leave granted.

2. The appellants are running a non-banking financial institution, by name, Messrs. Deluxe Leasing Private Limited. The respondent, Sudhir Mehra, partner of a partnership firm, entered into a hire purchase agreement with the appellants on 3.5.1994 whereunder a motor vehicle was handed over to the respondent. The total consideration agreed to be paid by the respondent was Rs. 3,02,884/- and the respondent made an initial payment of Rs. 69,308/- and the balance amount was to be paid in 36 monthly instalments of Rs. 8,400/- each starting from 3.6.1994. According to respondent, he had been paying the instalments regularly. The respondent filed a criminal complaint before the Judicial Magistrate. Amritsar on 3.12.1998 alleging that the motor vehicle in question had developed some trouble and it was entrusted to a motor mechanic on 14.9.1996 for carrying out repairs and that in the night of 16.6.1996 the appellants forcibly took away the vehicle from the motor mechanic and thus committed offences S. 406/420/ 120-B IPC. Pursuant to the complaint, the Magistrate took cognizance of the offences and issued summons to the appellants. Appellants filed a petition under Section 482 of Criminal Procedure Code before the High Court of Punjab & Haryana to quash the complaint proceedings. In the petition, it was alleged by the appellants that respondent had committed default in paying the instalments and that as on 1.9.1996 an amount of Rs. 1,34,887/- was outstanding against the respondent and therefore the appellants were constrained to terminate the hire purchase agreement and that the respondent surrendered the motor vehicle to the appellants. The learned Single Judge of the High Court declined to quash the proceedings and

held that the allegations in the complaint were capable of making out offences punishable especially under Section 379 IPC and, therefore, the petition under Section 482 Cr. P. C. was dismissed. Aggrieved by the same, the appellants have filed the instant appeal.

3. We heard learned counsel on either side. The counsel for the appellants contended that the allegations made in the complaint would not make out an offence punishable under law and that the appellants had exercised their right under the hire purchase agreement. It was argued that even if it is proved that the vehicle was forcibly taken away from the custody of the respondent, that may not be an offence punishable under law as the hire purchase agreement clearly provided for repossession of the vehicle by the owner, namely, the appellants, in the event of default by the respondent.

4. Admittedly, the respondent entered into a hire purchase agreement with the appellants and pursuant thereto the respondent obtained a motor vehicle and agreed to pay the balance consideration in instalments, According to the appellants, the respondent committed default in paying the instalments and the hire purchase agreement was terminated, whereas the respondent would contend that he had been paying the instalments regularly though in the complaint it is admitted that a cheque issued by the respondent for a sum of Rs. 84,000/- was dishonoured by the bank and the appellants had filed a criminal complaint under Section 138 of the Negotiable instruments Act.

5. 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 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.

6. Though in India the Parliament has passed a Hire Purchase Act, 1972, the same has not been notified in the official gazette by the Central Govt. so far. An initial notification was issued and the same was withdrawn later. The rules relating to hire purchase agreements are delineated by the decisions of higher courts. There are series of decisions of this Court explaining the nature of the hire purchase agreement and mostly these decisions were rendered when the question arose whether there was a sale so as to attract payment of tax under the Sales Tax Act.

7. In **M/s. Damodar Valley Corporation v. State of Bihar AIR 1961 SC 440**, this Court took the view that a mere contract of hiring, without more, is a species of the contract of bailment, which does not create a title in the bailee, but the law of hire purchase has undergone considerable development during the last half a century or more and has introduced a number of variations, thus leading to categories and it becomes a question of some nicety as to which category a

particular contract between the parties comes under. Ordinarily, a contract of hire purchase confers no title on the hirer, but a mere option to purchase on fulfilment of certain conditions. But a contract of hire purchase may also provide for the agreement to purchase the thing hired by deferred payments subject to the condition that title to the thing shall not pass until all the instalments have been paid. There may be other variations of a contract of hire purchase depending upon the terms agreed between the parties. When rights in third parties have been created by acts of parties or by operation of law, the question may arise as to what exactly were the right and obligations of the parties to the original contract.

8. In **K. L. Johar & Co. v. The Deputy Commercial Tax Officer AIR 1965 SC 1082**, this Court took the view that a hire purchase agreement has two elements: (1) element of bailment; and (2) element of sale, in the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then had been hired.

9. Similar views were expressed earlier in **Instalment Supply (Pvt.) Ltd. & Anr. v. Union of India & Ors. AIR 1962 SC 53**; and reiterated in **Sundaram Finance Ltd. v. State of Kerala AIR 1966 SC 1178**.

10. The agreement executed by the parties in this case also is to the effect that the hirer would not become the owner of the property until he pays the entire instalments. A copy of the agreement is produced as Annexure P-1 wherein the appellants are referred to as the first party and the respondent as the second party and it is specifically stated that the first party would be the absolute owner of the vehicle and the respondent-second party agreed to pay all the instalments punctually. Clause 7 of the agreement says that the hire may at any time before the final payment under the hire purchase agreement falls due and after giving the owners not less than fourteen days notice in writing of his intention to do so and re-delivering the vehicle to the owners at their office, terminate the hire purchase agreement. Clause 8 (viii) gives a right to the owner to repossess the vehicle in case of default by the hirer. Clause 9(ii) gives the owner an irrevocable licence to enter any building, premises or place where the vehicle may be or supposed to be for the purpose of inspection, repossession or attempt to repossess the vehicle and the owner of the vehicle will not be liable fore any civil or criminal action at the instance of the hire. It is also made clear that the hirer would be liable for all the expenses of the owner in obtaining repossession or attempting to obtain repossession of the vehicle.

11. The whole case put forward by the respondent- complainant is to be appreciated in view of the stringent terms incorporated in the agreement. If the hirer himself has committed default by not paying the instalments and under the agreement the appellants have taken re-possession of the vehicle, the respondent cannot have any grievance. The respondent cannot be permitted to say that the owner of the vehicle has committed theft of the vehicle or criminal breach of trust or cheating or criminal conspiracy as alleged in the complaint. When the agreement specifically says that the owner has got a right to repossess the vehicle, there cannot be any basis for alleging that the appellants have committed criminal breach of trust or cheating.

12. Before the learned Single Judge, the respondent had contended that the vehicle was in the possession of the respondent and it was taken out of his custody without his consent and

therefore, the offence of theft is made out. This plea is also without any basis as the appellants have taken repossession of the vehicle in exercise of their right under the agreement. There may be instances where the owners of the goods may commit theft of his own goods. The illustration (k) of Section 378 IPC, which is an instance of such a theft, is to the following effect :

"Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property in as much as he takes it dishonestly."

13. But in the instant case, the owner re-possessing the vehicle delivered to the hirer under the hire purchase agreement will not amount to theft as the vital element of 'dishonest intention' is lacking. The element of 'dishonest intention' which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer. It is appropriate to note that the term 'dishonestly' is defined under Section 24 of the IPC as follows:

"Dishonestly"- Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

14. It is also to be noticed that learned author R. M. Goode, in his book hire Purchase Law & Practice (Second Edn.) has observed as follows at page 846 :

"It would seem that so long as the hirer is in possession of the goods they belong to him for the purpose of the Act (The Theft Act, 1968) even though his possession is unlawful e.g. because the hirepurchase agreement has come to an end. If the owner has an enforceable right to possession then he will not be guilty of theft in seizing the goods if he knew of his legal rights since he will not be acting dishonestly but will have taken the goods in the well founded belief that he has a right to resume possession."

15. This Court also had occasion to consider this question. One of the earlier decisions is **Sardar Trilok Singh & Ors. v. Satya Deo Tripathi (1979) 4 SCC 396**. In that case, the parties had entered into a hire purchase agreement. The complainant alleged that the accused, in a high handed manner during his absence came to his house and forcibly removed the truck and thereby committed the offence of dacoity. The police investigated the case and filed a final report. The accused filed his objection before the Magistrate, but the objection was not considered. The accused filed a revision before the sessions court which was dismissed. Thereafter the accused filed a petition under section 482 Cr. P. C. to quash the proceedings. That was summarily dismissed by the High Court and the matter reached up to this Court at the instance of the accused. In paragraph 5 of the judgment, this Court observed :

"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 settied between the parties.................................
Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on July 30, 1973

from the house of the respondent they could and did claim to have done so in exercise of their bona fide right seizing the truck on the respondent's failure to pay the third monthly instalment in time. It was, therefore, a bona fide civil dispute which led to the seizure of the truck".

16. In **K. A. Mathai & Anr. v. Kora Bibbikutty & Anr. (1996) 7 SCC 212**, the bus was obtained by the complainant on a hire purchase agreement. The complainant paid only part of the consideration and defaulted in paying the instalments and the vehicle was taken possession of by the financier and at that time, both the first accused who had driven away the bus from the possession of the complainant and the second accused were present in the bus. They were prosecuted for the offence punishable under Section 379 read with Section 114 IPC. This Court holding that the bus was taken away at the instance of the financier and the accused had not committed an offence observed as under :

"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 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."

17. The hire-purchase agreement in law is an a 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 repossession of goods as per the term of the agreement may not amount to any criminal offence. The agreement (Annexure P-1) 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 dept. 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. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. We, therefore, allow this appeal and set aside the impugned judgment. The complaint and any other proceedings initiated pursuant to such complaint are quashed.