

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr.R. No. : 68 of 2011.**

**Decided on: 31.08.2017.**

Ram Chand

....Petitioner.

**Versus**

State of Himachal Pradesh and another

... Respondents.

**Coram**

***The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.***

**Whether approved for reporting?<sup>1</sup> Yes**

For the petitioners : Mr. N.S. Chandel, Advocate.

For the respondents : Mr. Vikram Thakur, Deputy Advocate  
General for respondent No. 1.

: Mr. Adarsh K. Vashisht, Advocate for  
respondent No. 2.

**Ajay Mohan Goel, Judge(Oral)**

By way this petition filed under Section 397/401  
read with Section 482 of Criminal Procedure Code, the  
petitioner has prayed for the following relief:

*"It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to call for the record of this case for examining and satisfying itself as to the correctness, legality or propriety of the order dated 04.-03-2011 whereby charge under Section 379 IPC was framed in case in P.H. No. 360-1/2002 instituted on 14-05-2002 titled as State of H.P. verses Ram Chand pending in Court of JMIC(1), Ghumarwin, District Bilaspur, and may set the same in exercise of the revisional powers under Section 397 and 401*

<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

*Cr.P.C and also in exercise of inherent powers reserved in this Hon'ble Court under section 482 Cr.P.C to prevent the illegality and abuse of the process of the court in the interest of substantial justice."*

**2.** The case of the petitioner is that respondent No. 2 filed a complaint before learned Chief Judicial Magistrate, camp at Ghumarwin, alleging that he was owner of Truck bearing registration No. HP-38-2588, which was taken away by the petitioner on the night of 19.10.2000, at about 9:00 p.m. from near the rain shelter at Kothi parking, Pargana Ajmerpur, Tehsil Ghumarwin, District Bilaspur, while driver of the truck had gone to his house. It was further mentioned in the complaint that when respondent No. 2/complainant learnt that the truck was parked in village Gatwar, Tehsil Ghumarwin, District Bilaspur, he went there alongwith his driver to bring back the Truck but there the petitioner allegedly threatened him. On these bases, he filed a complaint in the Court of learned Chief Judicial Magistrate, which was endorsed to Police Station Bharari, on the basis of which, FIR No. 151, dated 20.10.2000, was registered against the petitioner under Sections 379 and 506 of IPC. As per the petitioner, father of respondent No. 2, namely, Shri Rattan Chand took ₹ 80,000/- from him for the purpose of

maintenance of Truck in issue and undertook to return said money within one year by way of a written agreement dated 20.07.2009. Thereafter, Rattan Chand on 13.09.1999 again borrowed an amount of ₹ 1,00,000/- for the purpose of repair of Truck and he undertook to return said amount by way of written agreement dated 13.09.1999 within six months. On 16.04.2000, Rattan Chand sold his Truck to the petitioner for an amount of ₹ 1,90,000/- again by way of a written agreement, in which it was agreed and categorically mentioned that Rattan Chand had received a sum of ₹ 1,80,000/- in cash and remaining amount of ₹ 10,000/- was to be paid by the petitioner to Rattan Chand at the time of handing over of the papers of the Truck. As per the petitioner, Rattan Chand undertook to hand over complete documents of truck within a period of two months and in case, Rattan Chand failed to do so, then the petitioner was to be treated as owner of the Truck for a consideration of ₹ 1,80,000/-. Rattan Chand died and respondent No. 2 being his legal heir and successor continued to be in possession of the vehicle. Further as per the petitioner, after the death of Rattan Chand, respondent No. 2 tried to dispose of the vehicle with intention to defeat rights of the petitioner and in these circumstances, the petitioner had taken the possession of the

vehicle in terms of the agreement so entered between him and Rattan Chand and he had become owner of the Truck as per the agreement entered into between him and Rattan Chand. Further as per the petitioner, both he and respondent No. 2 had filed applications under Section 457 of Cr.P.C. for the release of vehicle in issue in the Court of Chief Judicial Magistrate, camp at Ghumarwin, who vide order dated 30.12.2000, passed in Case No. 186/4 of 2000, ordered the release of vehicle in favour of the petitioner. Further as per the petitioner, a trial was pending against him in the Court of learned Additional Chief Judicial Magistrate Ghumarwin, pursuant to lodging of FIR No. 151, dated 20.10.2000, in which charge stood framed against him under Section 379 and 506 of IPC. According to the petitioner, facts categorically demonstrated that no criminal offence as is envisaged under Section 379 of IPC had been committed by him nor any such charge was disclosed from documents on record and accordingly, by way of this writ petition, he prayed for quashing of order dated 04.03.2011, vide which charge stand framed against him under Sections 379 and 506 of IPC.

**3.** I have heard the learned counsel for the parties and also gone through the records of the case as well as the order dated 04.03.2011 passed by the Court below.

4. It is not in dispute that vehicle bearing registration No. HP-38-2588 was registered in the name of father of respondent Surjeet Singh. Learned Counsel for respondent No. 2 also did not dispute the execution of Ekrarnamas Ext. P-1, Ext. P-2 and Ext. P-3, which stand entered into between the present petitioner and his late father. A perusal of the contents of these Ekrarnamas *inter alia* demonstrates that on 28<sup>th</sup> of July, 1999, the late father of respondent No. 2 took a loan of ₹ 80,000/- from the petitioner which he had undertaken to repay within a period of one year. Vide Ekrarnama Annexure P-2, dated 13.9.1999, late father of respondent No. 2, further took an amount of ₹ 1,00,000/- from the petitioner for the repair of his vehicle (Truck) bearing registration No. HP-38-2588. It is also not in dispute that vide Ekrarnama dated 16.4.2000, vehicle in issue i.e. Truck bearing No. HP-38-3588, L.P. 1210, was sold by the later father of respondent No. 2 to the petitioner for an amount of ₹ 1,90,000/-, out of which, as is contained in the Ekrarnama Ext. P-3, an amount of ₹ 1,80,000/- already stood received by him. It was also mentioned in this Ekrarnama that balance amount of ₹ 10,000/- was to be received by the late father of respondent No. 2 at the time when he was to hand over the entire documents of the vehicle to the

petitioner. It was further mentioned in the said Ekrarnama that in case the documents of the vehicle were not delivered to the petitioner within a period of two months then it would be deemed that vehicle stood sold to the petitioner for an amount of ₹ 1,80,000/-. Father of respondent No. 2 died thereafter and it is in this capacity that respondent No. 2 continued to be in possession of the vehicle. As the terms of the Ekrarnama Ext. P-3 were not complied with by the deceased father of respondent No. 2, petitioner claims to have had taken the possession of the vehicle as he had become owner of the same as per the conditions contemplated in the Ekrarnama.

**5.** Be that as it may, in my considered view, in this case the issue involved is of civil nature as the execution of the agreements by father of respondent No. 2 with the petitioner has not been disputed nor is the factum of receipt of amount contained therein by the father of respondent No. 2 from the petitioner. Whether or not petitioner could have had taken the possession of Truck in issue and whether or not respondent has any legal right over the said truck simply on the basis of the fact that Truck is registered in the name of his father, is an issue to be decided by a Civil Court. It is settled law that if agreement stands executed with the

registered owner of the vehicle for the purpose of sale of the vehicle and he had also received the amount of consideration, then the registration certificate alone cannot be the sole basis of determining the ownership of the vehicle. It is further settled law that the sale of a motor vehicle is governed by the Sale of Goods Act and is complete when the consideration is paid irrespective of the fact that sale has been registered with the registering authority or not. It is also settled law that registration of the vehicle in the name of transferee is not essential to complete the transfer. (See Mathew Thankachan v. V.G. Manmohan and others AIR 1998 Kerla 128). This important aspect of the matter has not been taken into consideration by the learned Court below while framing charges against the petitioner. Apparently, the charge has been framed in a mechanical manner and without any due application of mind. It has not been appreciated that after framing of charge, an accused has to undergo the ordeal of trial and the very purpose of framing of charge is that if at that stage, it is borne out from the record that prima-facie no criminal case is made out against the accused, then he should be discharged and should not be called upon to undergo the ordeal of trial. Hon'ble Supreme Court in various cases has held that where a financier takes possession of a

vehicle in terms of hire purchase agreement as a result of default having been made in payment of installments, no criminal case is made out and terms and conditions incorporated in the agreement gives rise only to a dispute of civil nature and in such a case, civil court has to decide as to what was the meaning of those terms and conditions. This has been so held by Hon'ble Supreme Court in **Sardar Trilok Singh v. Satya Deo Tripathi**, (1979) 4 SCC 396, **K.A. Mathai v. Kora Bibbikutty**, (1996) 7 SCC 212, **Charanjit Singh Chadha v. Sudhir Mehra**, (2001) 7 SCC 417 and **Anup Sarmah v. Bhola Nath Sharma and Others**, (2013) 1 Supreme Court Cases 400.

6. Therefore, in view of the reasoning given above as well as in light of law discussed above, this petition is allowed and order dated 04.03.2011, passed by learned Judicial Magistrate 1<sup>st</sup> Class, Court No. 1 Ghumarwin, District Bilaspur and charge of even date, framed in Police Challan No. 360-1/2002, are quashed and set aside.

The petition stands disposed of in above terms, so also pending miscellaneous application(s), if any.

**(Ajay Mohan Goel)**  
**Judge**

August 31, 2017.  
(narender)