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ANUP SARMAH

v.

BHOLA NATH SHARMA AND ORS.

(Special Leave Petition (Crl.) No.8907 of 2009)

OCTOBER 30, 2012

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[DR. B.S. CHAUHAN AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Hire-Purchase – Vehicle purchased by petitioner on hire-
C *purchase basis – Complaint filed by petitioner that the respondents-financier had forcibly taken the custody of the said vehicle – Criminal proceedings initiated against the respondents before the Judicial Magistrate – Quashed by High Court in criminal revision – Justification – Held: In an*
D *agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the latter – Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is re-possessing the goods*
E *owned by him.*

Trilok Singh & Ors. v. Satya Deo Tripathi **AIR 1979 SC 850: 1979 (4) SCC 396;** *K.A. Mathai alias Babu & Anr. v. Kora Bibbikutty & Anr.* **(1996) 7 SCC 212 and** *Charanjit Singh Chadha & Ors. v. Sudhir Mehra* **(2001) 7 SCC 417**
F **– relied on.**

M/s. Damodar Valley Corporation v. The State of Bihar **AIR 1961 SC 440: 1961 SCR 522;** *Instalment Supply (Private) Ltd. & Anr. v. Union of India & Ors.* **AIR 1962 SC**
G **53: 1962 SCR 644;** *K.L. Johar & Co. v. The Deputy Commercial Tax Officer, Coimbtore III* **AIR 1965 SC 1082: 1965 SCR 112 and** *Sundaram Finance Ltd. v. State of Kerala & Anr.* **AIR 1966 SC 1178: 1966 SCR 828 – referred to.**

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Case Law Reference:

1979 (4) SCC 396	**relied on**	**Para 5**
(1996) 7 SCC 212	**relied on**	**Para 6**
2001) 7 SCC 417	**relied on**	**Para 7**
1961 SCR 522	**referred to**	**Para 7**
1962 SCR 644	**referred to**	**Para 7**
1965 SCR 112	**referred to**	**Para 7**
1966 SCR 828	**referred to**	**Para 7**

CRIMINAL APPELLATE JURISDICTION : Special Leave (Crl) No. 8907 of 2009

From the Judgment & Order dated 22.6.2009 of the High Court of Guahati at Gauhati in Criminal Revision No. 156 of 2009.

Gopal Singh, Rituraj Biswas, Sujaya Bardhan for the Appellant.

Naresh Kaushik, Sanjeev Kumar Bhardwaj, Vivya Nagpal Lalita Kaushik for the Respondents.

The following Order of the Court was delivered

O R D E R

1. This petition has been filed against the impugned judgment and order dated 22.6.2009 passed by the High Court of Assam at Gauhati in Criminal Revision No. 156 of 2009 rejecting the case of the petitioner against the respondents that they had forcibly taken the custody of the vehicle purchased by the petitioner on hire-purchase from them. The court has quashed the criminal proceedings against the respondents.

2. Learned counsel for the petitioner has submitted that

A respondents-financer had forcibly taken away the vehicle financed by them and illegally deprived the petitioner from its lawful possession and thus, committed a crime. The complaint filed by the petitioner had been entertained by the Judicial Magistrate (Ist Class), Gauhati (Assam) in Complaint Case No. B 608 of 2009, even directing the interim custody of the vehicle (Maruti Zen) be given to the petitioner vide order dated 17.3.2009. The High Court has wrongly quashed the criminal proceedings pending before the learned Magistrate.

C 3. On the contrary, learned counsel appearing on behalf of the respondents, has submitted that under the hire-purchase agreement, the financier remains the owner of the vehicle till the entire payment is made and, therefore, possession taken by the financier for non-payment of instalments by the petitioner could not be held an offence. Thus, the High Court has rightly D quashed the proceedings and no interference is required.

4. We have considered the rival submissions raised by the learned counsel for the parties and perused the records.

E 5. In *Trilok Singh & Ors. v. Satya Deo Tripathi,* AIR 1979 SC 850, this Court examined the similar case wherein the truck had been taken in possession by the financier in terms of hire purchase agreement, as there was a default in making the payment of instalments. A criminal case had been lodged against the financier under Sections 395, 468, 465, 471, 12- F B/34, I.P.C. The Court refused to exercise its power under Section 482, Cr.P.C. and did not quash the criminal proceedings on the ground that the financier had committed an offence. However, reversing the said judgment, this Court held that proceedings initiated were clearly an abuse of process of G the Court. The dispute involved was purely of civil nature, even if the allegations made by the complainant were substantially correct. Under the hire purchase agreement, the financier had made the payment of huge money and he was in fact the owner of the vehicle. The terms and conditions incorporated in the

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agreement gave rise in case of dispute only to civil rights and in such a case, the Civil Court must decide as what was the meaning of those terms and conditions.

6. In *K.A. Mathai alias Babu & Anr. v. Kora Bibbikutty & Anr.*, (1996) 7 SCC 212, this Court had taken a similar view holding that in case of default to make payment of instalments **financier had a right to resume possession even if the hire purchase agreement does not contain a clause of resumption of possession** for the reason that such a condition is to be read in the agreement. In such an eventuality, it cannot be held that the financier had committed an offence of theft and that too, with the requisite mens rea and requisite dishonest intention. The assertions of rights and obligations accruing to the parties under the hire purchase agreement wipes out any dishonest pretence in that regard from which it cannot be inferred that financier had resumed the possession of the vehicle with a guilty intention.

7. In *Charanjit Singh Chadha & Ors. v. Sudhir Mehra,* (2001) 7 SCC 417, this Court held that recovery of possession of the vehicle by financier-owner as per terms of the hire purchase agreement, does not amount to a criminal offence. Such an agreement is an executory contract of sale conferring no right in rem on the hirer until the transfer of the property to him has been fulfilled and in case the default is committed by the hirer and possession of the vehicle is resumed by the financier, it does not constitute any offence for the reason that such a case/dispute is required to be resolved on the basis of terms incorporated in the agreement. The Court elaborately dealt with the nature of the hire purchase agreement observing that in a case of mere contract of hiring, it is a contract of bailment which does not create a title in the bailee. However, there may be variations in the terms and conditions of the agreement as created between the parties and the rights of the parties have to be determined on the basis of the said agreement. The Court further held that in such a contract,

element of bailment and element of sale are involved 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 option is exercised a sale takes place of the goods which till then had been hired. While deciding the said case, this Court placed reliance upon its earlier judgments in *M/s. Damodar Valley Corporation v. The State of Bihar,* AIR 1961 SC 440; *Instalment Supply (Private) Ltd. & Anr. v. Union of India & Ors.*, AIR 1962 SC 53; *K.L. Johar & Co. v. The Deputy Commercial Tax Officer, Coimbtore III,* AIR 1965 SC 1082; and *Sundaram Finance Ltd. v. State of Kerala & Anr.*, AIR 1966 SC 1178.

8. In view of the above, the law can be summarised that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is re-possessing the goods owned by him.

9. If the case is examined in the light of the aforesaid settled legal proposition, we do not see any cogent reason to interfere with the impugned judgment and order. The petition lacks merit and, accordingly, dismissed.

B.B.B. SLP dismissed.