

**Pinki Devi Vs. the State of Bihar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/122751](http://sooperkanoon.com/122751)

**Court :** Patna

**Decided On :** Jan-21-2008

**Judge :** V.N. Sinha, J.

**Acts :** [Motor Vehicles Act, 1988](#) - Sections 51 and 51(4); [Constitution of India](#) - Article 300

**Appeal No. :** CR. WJC No. 283 of 2007

**Appellant :** Pinki Devi

**Respondent :** The State of Bihar and ors.

**Advocate for Def. :** J.P. Singh and P.K. Das, Advs. For the Respondent No. 10, Akhileshwar Pd. Singh, Adv. For the Respondents 7 to 9, Amit, JC to SC 19 For the Respondents 1 to 6

**Advocate for Pet/Ap. :** Pushkar Narain Shahi and Dharendra Kr. (Munna), Advs.

**Prior history :** V.N. Sinha, J. 1. Heard Learned Counsel for the parties. 2. Petitioner claims herself to be the registered owner of the vehicle, bearing Registration No. BR 33A-8201, which was initially the subject matter of a hire purchase agreement dated 1.9.2001 executed by and between M/s Shrachi Securities Ltd. through its Managing Director, Respondent No. 8 and Smt. Ranjana Poddar, Respondent No. 10. 3. It is submitted on her behalf that she purchased the vehicle from Respondent No. 10 under sale lett

## **Judgement :**

**V.N. Sinha, J.**

1. Heard Learned Counsel for the parties.

2. Petitioner claims herself to be the registered owner of the vehicle, bearing Registration No. BR 33A-8201, which was initially the subject matter of a hire purchase agreement dated 1.9.2001 executed by and between M/s Shrachi Securities Ltd. through its Managing Director, Respondent No. 8 and Smt. Ranjana Poddar, Respondent No. 10.

3. It is submitted on her behalf that she purchased the vehicle from Respondent No. 10 under sale letter dated 11.9.2006, Annexure-1 for Rs. 1,01,000/- as prior thereto hire purchase agreement stood terminated as would appear from the no objection certificate dated 24.9.2004, Annexure-2 to this application issued by the financier in favour of the hirer/first registered owner of the vehicle in question on the basis of which and the sale letter, the transport authorities even transferred and registered the vehicle in the name of the petitioner as would be evident from the endorsement made in the owner book of the vehicle, which is contained in Annexure-3 to this application the relevant entry is dated 18.10.2006 at page 19 of the brief. It is also submitted that on the basis of the aforesaid transfer/registration, the vehicle in question came in possession of the petitioner and while she was in possession of the vehicle in question, the vehicle was forcibly seized by the agents of Respondent Nos. 7 to 9 in a manner, which is not authorized by law. In the background of the aforesaid facts, it is further submitted that seizure being illegal and not authorized by law, is fit to be quashed with direction to Respondent Nos. 7 to 9 to forthwith release the vehicle in favour of petitioner.

4. Respondent Nos. 7 to 9 have opposed the prayer by filing the counter affidavit. According to them, the vehicle was financed under hire purchase agreement dated 1.9.2001, Annexure-A/7 executed by and between Respondent Nos. 7 to 9 and Respondent No. 10 on cash payment of Rs. 1,75,529/- at the time of execution of the agreement with further undertaking that Respondent No. 10 shall pay the remaining amount of Rs. 3,16,800/- in 35 instalments, first instalment whereof was

of Rs. 10,800/- and the remaining 34 instalments were of Rs. 9000/- each. The entire payment was to be made by 1.8.2004. About the no objection certificate, it is submitted that the no objection certificate as contained in Annexure-2, is a forged document as Respondent Nos. 7 to 9 had not issued any such certificate. In this regard, it is further pointed out that Respondent No. 10 herself made payment of the arrears of the amount due on 10.10.2004, 1.12.2004, 25.1.2005, 21.3.2005, 28.4.2005 and 30.6.2005, as such, there was no occasion for the Respondent Nos. 7 to 9 to have issued the no objection certificate dated 24.9.2004. Counsel further pointed out that the Clauses IVA, IVB and V of the Hire Purchase Agreement, including the Clauses contained in 4(b), (f), (h) and 5(a), 7, 8, 12(c) and (d) were violated by the hirer of the vehicle Respondent No. 10 who failed to clear the entire dues in terms of the agreement as such the financier Respondent Nos. 7 to 9 had no option but to seize the vehicle by means, which was convenient to them by forcibly entering into the premises where the vehicle was kept and the seizer is authorized in terms of the Hire Purchase Agreement.

5. Learned Counsel for the earlier registered owner Respondent No. 10 pointed out that having entered into the hire purchase agreement, vehicle was taken on hire after payment of Rs. 1,75,529/- with further resolve to make payment of the remaining amount in 35 instalments, first instalment whereof was of Rs. 10,800/- and remaining 34 instalments were of Rs. 9,000/- each, which payment(s) were made as per the chart appended as Annexure-A to the supplementary affidavit filed on behalf of Respondent No. 10, wherefrom it appears that the amount of Rs. 3,25,890/- was paid against the arrears of Rs. 3,16,800/- by 30.6.2005 and further payment of Rs. 4,000/- was made on 4.9.2006 by way of demand draft issued in the name of financier. It is submitted on behalf of Respondent No. 10, the earlier registered owner that after making entire payment in terms of the hire purchase agreement to the financier Respondent Nos. 7 to 9 the vehicle in question was transferred in favour of the petitioner, in the circumstances, the seizure of the vehicle by Respondent Nos. 7 to 9 from the custody of the petitioner is without jurisdiction.

6. In support of the case that vehicle has been seized in an unauthorized manner and should be released forthwith, Learned Counsel for the petitioner has relied on

the judgment of the Hon'ble Supreme Court in the case of ICICI Bank Ltd. v. Prakash Kaur and Ors. reported in : AIR 2007 SC1349 and with reference to the law laid down in the said judgment, submitted that the action of the Respondent Nos. 7 to 9 to take forcible possession on their own without resorting to any legal means is wholly unauthorized and seizure should be quashed with direction to them to forthwith entrust the vehicle to the petitioner and thereafter to take lawful means for its recovery or for the recovery of the dues against Respondent No. 10.

7. Counsel for the private Respondent Nos. 7 to 9 while opposing the prayer has relied on the judgment of the Hon'ble Supreme Court in the case of Managing Director, Crix Auto Financed (India) Limited v. Shri Jagminder Singh and Anr. reported in : (2006)2SCC598 whereof has also been quoted in paragraph 20 of the counter affidavit, perusal whereof indicates that the Hon'ble Supreme Court has deprecated the practice to consider the release of any vehicle under the Public Interest Litigation with further observation that it shall be open for the High Court to consider each case on its own merit for release of the vehicle alleged to have been seized in an unauthorized manner.

8. During the hearing of this application, this Court categorically asked the counsel for the Respondent Nos. 7 to 9 whether they had issued any notice either to Private Respondent No. 10, the earlier registered owner of the vehicle or to the petitioner about violation of any of the Clauses of the hire purchase agreement. Counsel with reference to the pleadings filed on behalf of the private Respondent Nos. 7 to 9 could not satisfy this Court that any such notice was served either on the petitioner herein or on Respondent No. 10. This Court then asked the Learned Counsel about the action taken by Respondent Nos. 7 to 9 when they learnt about the fraudulent transfer of the vehicle in favour of the petitioner on the basis of forged no objection certificate ignoring Sub-section (4) of Section 51 of the [Motor Vehicles Act, 1988](#) (hereinafter referred to as the Act), which inter alia mandates no entry regarding transfer of ownership of any motor vehicle, which is held under hire purchase agreement shall be made in the certificate of registration except with the written consent of the persons whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement then the Learned Counsel submitted that the

District Transport Officer concerned has been verbally informed and he is making enquiry about the circumstances in which transfer of the vehicle in question was recorded in favour of the petitioner on the basis of forged no objection certificate. In this connection, he submitted that the District Transport Officer concerned has not been made party respondent in this case and then referred to the averments made in paragraph (V) of the affidavit filed on behalf of the Superintendent of Police and Deputy-Superintendent of Police, Samastipur, wherefrom it appears that the enquiry about the circumstances in which vehicle in question was transferred in favour of the petitioner is being conducted by the District Transport Officer concerned. In this case, State counsel while filing counter affidavit in view of the provisions contained in Article 300 of the [Constitution of India](#), ought to have taken instruction from the District Transport Officer concerned about the circumstances in which the vehicle was transferred in favour of the petitioner ignoring Sub-section (4) of Section 51 of the Act, but for the reasons not disclosed in the counter affidavit, no such instruction was taken from the District Transport Officer concerned and the counter affidavit has been filed on behalf of the Superintendent of Police and the Deputy Superintendent of Police, Samastipur stating that enquiry is being made by the District Transport Officer concerned. In the circumstances, this Court concludes that an enquiry about the circumstances in which transfer of the vehicle was, made in favour of the petitioner is being conducted by the District Transport Officer concerned and private Respondent Nos. 7 to 9 before forcibly seizing the vehicle in question ought to have satisfied the District Transport Officer concerned about the failure of the private Respondent No. 10 to comply with the terms of the hire purchase agreement and to have further requested him to cancel the certificate of registration of the vehicle showing the ownership of the petitioner.

9. Having heard counsel for the parties, in view of the discussions made in paragraph 8 above, I am of the view that as the vehicle in question has been forcibly seized by Respondent Nos. 7 to 9 from lawful custody of the petitioner, who is the registered owner of the vehicle in view of the entry dated 18.10.2006, as contained in Annexure-3 without even taking any step with the registering authority in terms of Section 51 of the Act, the aforesaid seizure of the vehicle at the instance of private Respondent Nos. 7 to 9 made on 31.1.2007 has to be

declared as illegal with direction to private Respondent Nos. 7 to 9 to return the vehicle in question to the petitioner forthwith but the return will be subject to the result of enquiry, which is being conducted by the District Transport Officer concerned. In the event, District Transport Officer concerned comes to the conclusion that Respondent No. 10 had no authority to transfer the vehicle in question to the petitioner then in that case, he should also cancel the transfer/registration of the vehicle made in favour of the petitioner, who shall be at liberty to take action against private Respondent Nos. 7 to 9 for return of the consideration money of Rs. 1,01,000/-.

With the aforesaid observations and directions, this application is disposed of.

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