

Rajeev Raijayada Vs. the State

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Court : Delhi

Decided On : Jan-18-2005

Reported in : 117(2005)DLT44; 2005(79)DRJ565

Judge : S. Ravindra Bhat, J.

Acts : [Constitution of India](#) - Article 226; Indian Penal Code (IPC) - Sections 34, 156(3), 392, 406, 452, 506 and 542; Code of Criminal Procedure (CrPC)

Appeal No. : WP (Crml) 147/2004 and CRLM 1246/2004

Appellant : Rajeev Raijayada

Respondent : The State

Advocate for Def. : Akshay Bipin, Adv.

Advocate for Pet/Ap. : Jatan Singh, Adv

Disposition : Writ petition dismissed

Judgement :

S. Ravindra Bhat, J.

1. In this petition under Article 226 of the Constitution, an appropriate writ for quashing of a First Information Report alleging commission of offences under Sections 392, 452 and 506 read with Section 34 of the Indian Penal Code have

been sought.

2. The petitioner is an Area Officer with M/s Ashok Leyland Finance Ltd.(hereafter called "The Company"). He avers that one Sh. Ram Gopal Verma (hereafter called "Borrower") approached the company for the financing of a two wheeler (Hero Honda Splendor) Motorcycle. The proposal was accepted; consequently a Hire-Purchase Agreement was entered into. The vehicle was purchased and the monthly installment payable under the arrangement was Rs. 1831/-. The petitioner avers that the entire amount financed by the company was repayable in 24 equated monthly installments, for which the borrower issued post dated cheques.

3. It has been further averred that the borrower did not make timely payments leading to an outstanding amount of Rs. 6517/- (Rs. Six thousand Five Hundred Seventeen only). Under the circumstances, in terms of the hire-purchase agreement, the petitioner, in behalf of the company, along with certain other persons took possession of the vehicle on 16.09.2003 from the borrower.

4. It is averred that the borrower, (through his son, the complainant) complained to the police about the incident and leveled allegations about use of force and also holding out of criminal intimidation/threats to himself and the said complainant. Then initial complaint was not registered as First Information Report (FIR) but after directions of the Additional Sessions Judge in proceedings under Section 156(3), the FIR was registered in respect of the concerned offences, on 06.11.2003. The investigation into the incident is in progress. The petitioner has approached for quashing of the First Information Report and all further proceedings.

5. Mr.Jatan Singh, learned counsel for the petitioner has made a two-fold submission. Firstly, he submits that the First Information Report read as a whole and even if taken to be true, does not disclose any cognizable offence. He relies on the following extracts of the FIR :"(c) That the father of the complainant regularly paid the installments and almost Rs. 53120/- was already paid to the accused. (d) That in the morning of 16.09.2003 at 9.00 AM the complainant was clearing the motor cycle at his residence DL-7S-W-5170.(e) That in the morning of 16.09.2003 at 9.00 AM four muscle men came together and push to the complainant and snatched the key from the complainant take away the motor

cycle. (f) That the muscle-men abusing the complainant and his family members and they told that they came by the instructions of the Area Manager Shri Rajeev. 3. That they also threatened to the complainant that in case he shall initiate any action either in the Court or the police, he shall be implicated in the false criminal case and shall be sent behind bar. 4. That after listening the incidents, the mother of the complainant seriously ill and was admitted in Railway Central Hospital, New Delhi".

It is submitted by counsel on behalf of the petitioner that the basis of the allegations against the petitioner are vague and lacking in any particulars; they do not make out any, much less the offences punishable under Sections 392, 406 and 542 IPC.

6. The second submission of the learned counsel for the petitioner is that as the ownership of the vehicle was with the company it was open to the latter to repossess the same in the event of any default in the conditions contained in the Hire-Purchase Agreement. Mr. Jatan Singh relied upon the decision of the Supreme Court reported as Charanjeet Singh Chadha v. Sudhir Mehra. Particular reliance is placed upon the following observations of the Supreme Court :

" The hire-purchase agreement in law is an executory contract of sale and confers no right in them on hirer until the conditions for transfer of the property to him have been fulfilled. therefore, the re-possession of goods as per the term of the agreement may not amount to any criminal offence. The agreement specifically gave authority to the appellants to re-possess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. 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".

It is also submitted that a notice was issued on 16.09.03 to the local police by the company, in compliance with the general directions issued in a Division Bench judgment.

7. Mr. Akshay Bipin, learned counsel appearing for the State submits that there is nothing on record to indicate that the company or the petitioner had the power as alleged, since a copy of the hire-purchase agreement has not been filed. He also submits that even the notice given to the Seema Puri, Police Station on 16.09.2003 at 9.35 AM does not indicate that any advance notice calling upon the borrower to repay the amounts outstanding was issued; even the date, time and place where re-possession was sought to be effected, has been indicated, in the notice.

8. Counsel for the respondent-State, relies upon two Division Bench judgments of this Court reported as Dr. Amitabh Varma v. Commissioner of Police and Bhagya Products v. Commissioner of Police. In latter decision, certain directions and guidelines were issued for general observance. They read as follows :-

"11. Conscious of the fact that parties are governed by a written contract and are bound by the terms of the contract which they have entered into with open eyes, and in view of the guidelines framed by the Reserve Bank of India which we find are not being honoured strictly by the finance companies, we issue the following guidelines to be strictly followed by all finance companies before it exercises its power to repossess a vehicle :

(i) Whenever a cheque is not honoured for payment, it would be immediately brought to the notice of the borrower by issuance of a notice under registered post, to be posted at the address provided by the borrower and proof of dispatch by registered post at the given address would be considered as sufficient proof of service of notice.

(ii) 7 days time should be given reckoned from the date of service of the registered notice for clearance of the amount under the dishonoured cheque.

(iii) In case of second dishonour of cheque similar notice be provided drawing the attention of the borrower to the term of agreement entitling the lender to recall the

entire loan. This notice should again give 7 days time to the borrower to pay the out standing amounts as on date. The 7 days time to be reckoned from the date of service of the notice.

(iv) If the amount is not paid, it would be open to the finance company in exercise of its power under the finance agreement to recall the loan. If it exercises this power another notice be given to the borrower intimating that the loan has been recalled and the borrower should be called upon to tender the amount due within 7 days of receipt of notice. This notice again be sent by registered post at the address given by the borrower.

(v) If no amount is paid within the stipulated period as per the notice, finance company would be authorised to repossess the vehicle but this power of repossession would not entitle the finance company to track the vehicle while plying on the road.

(vi) In case the borrower refuses to sign the papers when the car is repossessed, on repossession of the vehicle, immediate information be provided by the finance company to the local police intimating the time and place when the vehicle was repossessed. Subject to the guidelines framed by us which would be binding on all the lenders, the matter having been settled between the parties, no directions are required to be given. 12. The petition stands disposed of".

9. I have considered the submissions of the parties. The facts of the case are not in dispute; the borrower had entered into a hire-purchase agreement with the company. Under the arrangement amounts were payable to the company, which were made in advance through post-dated cheques. The record discloses that as against the principal amount of Rs. 35,000/- originally advanced, substantial amounts had been recovered by the company. In this background, it sought to repossess the vehicle. The averments in the petition are to the effect that the outstanding amount was Rs. 6517/- (Rs. Six thousand Five hundred and Seventeen only)

10. The contention of the counsel for the petitioner that in all hire-purchase cases, the creditor would be entitled to take unilateral action and repossess the vehicle is

too broad to be accepted. The facts of each case, in the light of the allegation side out in the complaint about the nature and pattern of behavior at the time of such repossession would be relevant, while considering whether any offence is made out in a given complaint or FIR, in the context of a claim for quashing criminal proceedings. In the present case, the FIR is categorical in that the objectionable behavior is not merely directed against the manner of repossession (and nature of force used at that time) but also in regard to the threat held out by the financier or company (in this case, the petitioner).

11. The Division Bench decisions, particularly, the judgment in *Bhagya Products* (supra) requires that creditors and financial institutions, which enter into hire-purchase agreements, have to follow a certain procedure before they can exercise their powers under the agreements. These procedures have been apparently put in place as safeguards against harassment and arbitrary, unilateral action. It is significant to note that the judgment in that case was delivered on 29th May 2003. The company as well as the petitioner here were aware of the directions contained in that judgment since a notice purporting to have been issued to the concerned area police, has been relied upon. That notice is dated 16.09.2003. What is important about the notice is not what it states, but what it does not. It is completely lacking in any particulars as to the date, time and steps when the repossession is proposed. Likewise, the averments in the petition are bereft of any mention about issuance of any notice to the complainant or the borrower, in accordance with the directions contained in the Division Bench judgment.

12. It has been repeatedly held by the Supreme Court that quashing of criminal prosecutions or First Information Reports, has to be resorted to sparingly and in exceptional cases (refer *State of Haryana v. Bhajan Lal*; *S.M. Dutta v. State of Gujarat*; *M. Narayan Dass v. State of Karnataka*). It is also settled law that a First Information Report need not contain, with exactitude, all details of the offences alleged; it is sufficient if it broadly records the incident, as it would be the basis of further investigation and action under the Criminal Procedure Code.

13. In my opinion, having regard to the above conspectus of facts, the petitioner has not been able to make out a case for exercise for discretion under Article 226

of the Constitution. It cannot be said that the relevant portion of the FIR neither implicates the petitioner nor, if assumed to be true, would not lead to a cognizable offence.

14. For the foregoing reasons, the writ petition cannot be entertained. It is made clear that nothing mentioned in this judgment shall be construed as an expression of merits, and it is open to the parties to avail all remedies available in law.

15. The writ petition is therefore, dismissed with no orders as to costs.

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