

Joginder Kumar Vs. State

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Court : Delhi

Decided On : May-21-1991

Reported in : II(1992)BC88; 1991CriLJ2897; 1991(2)Crimes551; 44(1991)DLT518; 1991RLR357

Judge : S.C. Jain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 379

Appeal No. : Criminal Revision Appeal No. 107 of 1991

Appellant : Joginder Kumar

Respondent : State

Advocate for Pet/Ap. : M. Chopra and; S.C. Jain, Advs

Judgement :

S.C. Jain, J.

(1) Facts giving rise to this revision petition are that maruti van Ddv 3268 was got financed by Mrs. Parvinder Kaur and Mr. Gurmeet Singh Sahi to the extent of Rs. 55,000.00 under a hire purchase agreement in the month of November, 1987. The amount so advanced along with interest was to be repaid in 36 Installments of Rs. 2306.94, but the party failed to pay the Installments as agreed to by them and the cheques issued by them were returned by the bankers for want of sufficient funds.

Notices were sent by the finance company to pay the Installments but to no effect. Ultimately, on 4.4.89 at about 12.30 p.m. when this vehicle was parked near Rakabganj Gurudwara the present petitioner Joginder Kumar, who is an employee of the finance company seized the vehicle at the instance of the company by unlocking the van with a duplicate key which the finance company was having and when he started the vehicle, the complainant raised hue and cry and the petitioner Joginder Kumar along with the vehicle was apprehended on the spot. He was arrested and a challan under Section 379-411 Indian Penal Code was prepared. The trial magistrate vide order dated 18.1. 1991 found a prima facie case against the petitioner and charged him under Section 379 IPC.

(2) Aggrieved by this order of the trial magistrate this revision petition has been filed. The only contention raised by the counsel for the petitioner is that the dispute between the parties related to the purchase of vehicle Ddv 3268 by the complainants. This vehicle was financed to the extent of Rs. 55,000.00 by M/S. World links Financial Ltd. A hire-purchase agreement was entered into between the complainant and M/S. World links Finance Ltd. of which the present petitioner is an employee. The loan along with interest was payable in monthly Installments. Clause 7 of the said agreement provides that the agreement can be terminated without previous notice if for any reason whatsoever any hire payment is in arrears or is left unpaid for seven days after the date fixed for its payment. According to the learned counsel, during investigation the police has taken into possession the agreement and two letters dated 30.3.89 addressed to the complainant and the Sho Parliament Street. In both these letters the finance company had stated that certain amount is due from the complainant and that Clause 7 of the Agreement has been invoked for taking possession of the van. According to the learned counsel even in the copy of registration, World links Finance Ltd. has been shown to be the financier. According to the petitioner, notice were duly sent to the party for making payment of the Installments but to no effect. Not only that the payments were not made, the cheques which were given by the complainant were returned by the banker of the finance company with the remark that funds were not available in the account of the complainant. Reliance has been placed on a decision of the Supreme Court in Trilok Singh v. Satya Dev Tripathi : 1980 CriLJ822 in support of his contention that this type of transaction is a bonafide civil

dispute and no criminal prosecution should be instituted on the basis of such a dispute.

(3) For the purpose of framing charge, the duty of the Judge is to consider judicially whether on consideration of the material on record, it can be said that the accused has been reasonably connected with the offence alleged to have been committed and that on the basis of the said materials, there is reasonable probability or chance of the accused being found guilty of the offence alleged.

(4) In this case, as per the order of the trial magistrate it is apparent that there is an hire purchase agreement existing between the complainant and M/S. World links Finance Ltd. of which the petitioner is an employee. As per clause 7 of this agreement, if for any reason whatsoever, any hire payment or part thereof is in arrear and left unpaid for a period of seven days after the date fixed for its payment, the financier can terminate the agreement and retake and recover the possession of the vehicle forthwith. It is the plea of the petitioner that the complainant party was in default and despite notice Installments were not paid and therefore, invoking clause 7 of the agreement, the vehicle has been seized by the petitioner at the instance of the finance company. It is a bonafide civil dispute which led to the seizure of the vehicle. Can it be said to be a case of theft, as has been alleged by the prosecution In my view, this is not a case of theft. It is a bonafide civil dispute which led to the seizure of the vehicle in dispute. The decision of the Supreme Court in Trilok Singh's case (supra) squarely applies to the facts of this case. Initiation of proceedings under Section 379 Indian Penal Code against the employee of the finance company, i e. the petitioner, is clearly an abuse of the process of the Court and it is not a case where any challan under section 379 Ipc should have been filed. No case under Section 379 Indian Penal Code is made out against the petitioner and, therefore, he is entitled to be discharged. Under these circumstances. I accept this revision petition and set aside the order dated 18.1.1991 of the trial magistrate and order that the petitioner shall stand discharged in this case, being Fir No. 149/89, P.S. Parliament Street. The parties are at liberty to invoke the jurisdiction of the civil Court to get their disputes settled which are of civil nature. Revision petition is allowed.