

Dinesh and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-09-1999

Reported in : 1999(2)WLC518; 1999(1)WLN264

Judge : G.L. Gupta, J.

Appeal No. : S.B. Cr. Misc. Petition Nos. 896 and 960 of 1998

Appellant : Dinesh and ors.

Respondent : State of Rajasthan

Advocate for Def. : Mr. Shah

Advocate for Pet/Ap. : Mr. Mehta

Disposition : Petition allowed

Judgement :

G.L. Gupta, J.

1. Criminal Misc. Petition No. 896/98 has been filed by petitioners Dinesh and Sachin seeking the quashment of F.I.R. No. 363/98 of Police Station Pratap Nagar, Jodhpur. Misc. Petition No. 960/98 has been filed by the petitioner seeking the modification in the order dt. 28.10.1998 passed by the Addl. Sessions Judge, Jodhpur wherein while granting anticipatory bail it was ordered that the petitioners

shall produce the seized Loader within seven days at the Police Station and that seizure would be treated a recovery under Section 27 of the Evidence Act.

2. Mr. Mehta, learned Counsel for the petitioners. contended that the F.I.R. does not disclose a commission of the cognizable offence, and therefore, it should be quashed. His contention was that even as per the contents of the F.I.R. there was Hire Purchase agreement between the parties and as the complainant had committed default in the payment of instalments, the petitioners were entitled to seize the Loader financed by them. He also pointed out that the complainant himself had agreed for the seizure of the Loader when the same was seized by the petitioners, he canvassed that the Additional Sessions Judge ought not to have directed the petitioner to produce the Loader at the Police Station and that the seizure by the police would be treated as recovery under Section 27 of the Evidence Act. Mr. Mehta submitted that if Cr. Misc. Petition No. 896/98 is allowed then petition No. 960/98 becomes in fructuous.

3. Mr. Shah, learned Counsel for the respondent-complainant, on the other hand, contended that the petitioners had no right to seize the Loader without giving notice to the complainant. His further contention was that the respondent had already made payment of more than 80 per cent of the financed amount and the taking of the Loader from the possession of the driver was with dishonest intention which amounted to theft.

4. I have considered the above arguments. During arguments, both the learned Counsel had referred to the provisions of Hire Purchase Act, 1972 but subsequently both of them admitted that the Hire Purchase Act, 1972 has not come into force as yet. Sub-section (2) of Section 1 of the Hire Purchase Act, 1972 provides that the Act shall come into force on such date as the Central Government may by notification in the Official Gazette appoint. The Central Government issued a notification on 30.4.1973 which was published in the Gazette of India, Extra., Part II dt. 30.4.1973, appointing the date 1.6.1973 as the date on which the said Act shall come into force. This notification however was rescinded by subsequent notification dt. 31.5.191973 Extra., Part II dt. 31.5.1973 and 1.9.1973 was appointed as the date on which the said Act shall come into

force. However, this second notification appointing date 1.9.1973 as the date of commencement of the Act was also rescinded vide notification dt. 30.8.1973 published in the Gazette of India Extra Part II dt. 30.8.1973. It has not been shown that subsequent to that notification any other notification appointing the date of the coming into force of the Act was notified. Therefore, it has to be held that the Act of 1972 has not come into force as yet. The transaction of Hire Purchase, therefore, shall be governed by the agreement entered into between the parties.

5. A photo copy of the agreement has been filed by the petitioners. Condition No. 8 of the Agreement reads as follows-

8. In case the Hirer shall during the continuance of this Agreement do or suffer any of the following acts of things viz.

(a) fail to pay any of the Hire monies within the stipulated time whether demanded or not.

(b) die, become insolvent or compound with his creditors.

(c) Hirer being a limited company pass resolution for winding up or have the petition for winding up presented against it or a receiver is appointed by order of the court or otherwise.

(d) Pledge or sell or assign or attempt to pledge or sell or assign or part with possession of otherwise alienate dispose off or transfer the vehicle.

(e) do or suffer any act or omission or thing whereby or in consequence of which the said chassis/vehicle/machinery/equipment may be distrained or taken in execution of civil or criminal proceedings by any court of competent jurisdiction or by any public authority.

(f) fails to keep the chassis/vehicle/machinery/equipment comprehensively insured during the period of Agreement.

(g) fails to pay to the Government or any public authority or to any statutory authority any taxes, surcharges, levies, toll octroi, entry taxes, penalties, etc. in respect of the chassis/vehicle/machinery/equipment.

(h) illegally removes the chassis/vehicle/machinery/equipment to another State (and gets it re-registered there in case of a vehicle).

(i) break or fail to perform or observed any of the condition on his part.

Then on occurrence of any of the above events whether specifically mentioned or not which is detrimental to the owner's right or title, the rights of the Hirer under this Agreement shall stand determined/terminated ipso facto without any notice to the Hirer and all the hire monies paid by the Hirer shall be absolutely forfeited to the Owner.

The Owner is entitled to enter any house or place where the said chassis/vehicle/machinery/equipment may be located and take possession of the same without notice at the risk and responsibility of the Hirer because of his default the Owner had to repossess the chassis/vehicle/machinery/equipment along with additions mentioned in terms and conditions and described in the Schedule.

The owner thereupon is entitled to sell the chassis/vehicle/machinery/equipment and appropriate the proceeds towards the sum or sum due to them and in case the sum is realised is deficient to sue the hirer and/or guarantor for all the amounts receivable under the contract including AFC and other charges as per this Agreement.

(emphasis supplied)

6. It is evident that on the occurrence off any off the events from (a) to (i) the rights off the Hirer stand determined/terminated ipso facto without any notice to him. It it further clear that under the terms off the agreement, the owner i.e. the Financer is entitled to enter the house or place where the chassis/vehicle/machinery/equipment is kept by the Hirer and take possession off the same without notice to the Hirer.

7. In the instant case, it is not disputed that some of the instalments had fallen due and one of the cheque given by the complainant-respondent had been dishonoured. Therefore, under the terms of the agreement the owner i.e. the

petitioners could seize the Loader without notice to the complainant-Hirer. As such, the taking away of the Loader by the petitioners from the possession of the driver of the complainant cannot be said to be removal with dishonest intention.

8. Moreover, the Hirer-complainant was interrogated immediately after he lodged the F.I.R. In that statement, which was recorded before the registration of the case, the Hirer complainant stated that he had reached the place where the Loader was being seized and at that time he had told the petitioners not to tell anything to the driver and they could exercise their right of seizure. These facts clearly indicate that even the complainant-Hirer had not objected to the taking away of the Loader by the petitioners, rather he had agreed that the Loader could be seized. In these circumstances, it is not possible to hold that the accused petitioners had committed any offence in seizing and taking away the Loader. It is obviously a dispute of civil nature.

9. In the case of *State of Harana v. Ch. Bhajan Lal* 1992 SC 604 the Apex Court has held that where the allegations made in the First Information Reporter the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused the F.I.R. may be quashed. It has been further held in that case that if the allegations in the F.I.R. and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) Cr.P.C. the F.I.R. may be quashed.

10. In the instant case, as already stated, the dispute essentially is of civil nature as it has arisen out of the breach of the terms of the Hire Purchase 'Agreement. Not only this, even the complainant Hirer had agreed that the Loader could be seized by the petitioners. That being so, the taking of the Loader by the petitioners does not amount to the commission of theft. The F.I.R. is liable to be quashed.

11. Consequently, the misc. petition No. 896/98 is allowed and the F.I.R. No. 362/98 of Police Station, Pratap Nagar is hereby quashed. Pursuant to the quashing of the F.I.R. the Misc. Petition No. 960/98 becomes in fructuous and is hereby dismissed. It is made clear that if a civil suit is filed the Civil Court shall not be bound by the observations made in this order.

