REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

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

Anup Sarmah …Petitioner

Versus

Bhola Nath Sharma & Ors. …Respondents

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 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. 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.

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 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.

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-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 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 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.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

New Delhi,
October 30, 2012

ITEM NO.9 COURT NO.8 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).8907/2009

(From the judgement and order dated 22/06/2009 in CRLR No.156/2009, of The HIGH COURT OF GUWAHATI ,ASSAM)

ANUP SARMAH **Petitioner(s)**

VERSUS

BHOLA NATH SHARMA & ORS. **Respondent(s)**

(With appln(s) for stay and office report)

Date: 30/10/2012 This Petition was called on for hearing today.

CORAM :
HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Petitioner(s) **Mr. Gopal Singh,Adv.**
Mr. Rituraj Biswas,Adv.
Ms. Sujaya Bardhan,Adv.

For Respondent(s) **Mr. Naresh Kaushik,Adv.**
Mr. Sanjeev Kumar Bhardwaj,Adv.
Mrs. Vivya Nagpal,Adv.
Mrs. Lalita Kaushik,Adv.

UPON hearing counsel the Court made the following
O R D E R
In terms of the signed reportable order, the Special Leave Petition is dismissed.

(O.P. Sharma) **(M.S. Negi)**
Court Master **Court Master**
(Signed reportable order is placed on the file)