

CASE NO.:
Appeal (crl.) 549 of 2008

PETITIONER:
Bharath Metha

RESPONDENT:
State by Inspector of Police Chennai

DATE OF JUDGMENT: 25/03/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No.1595 of 2005)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order of a learned Single Judge of the Madras High Court dismissing the petition filed by the appellant. The Criminal Revision was filed against order dated 22.12.2003 made in CMP No. 7255 of 2003 by the Court of Judicial Magistrate No. II, Ponneri, dismissing the petition filed by the appellant under Sections 451 and 457 of the Code of Criminal Procedure, 1973 (in short the \021Cr.P.C.\022). The application was filed for release of lorry bearing Registration No. TN-01-F-9797 which was alleged to have been involved in a case registered for offences punishable under various provisions of the Tamil Nadu Prohibition Act. The case of the appellant before the High Court was that money was provided to the respondent No. 2 to purchase the said lorry under a hire purchase agreement. In terms of the agreement, the hirer was required to pay 32 monthly instalments of Rs.14,875/- between the period from 24.6.2000 and 24.1.2003. Under the hire purchase laws, the hirer can become the owner of the vehicle by exercising the option to purchase after paying the entire amount due and till that time the financier is the owner. The financier is also entitled to possession of the vehicle since he is the owner. In the agreement, appellant is described as the owner and the respondent no.2 as the hirer. The appellant tried to take possession of the vehicle as an owner but the vehicle was not available at the premises and on enquiry appellant came to know that the police had seized the same on 6.9.2000 when the vehicle was operating with a fake number plate for transporting prohibited spirit. The First Information Report was lodged against respondent No.2 and therefore the appellant prayed for release of the vehicle. The prayer was resisted by the State on the ground that the vehicle had already been directed to be returned to the respondent No.2 as he was the owner as per the Registration Certification.

3. The High Court noted that the vehicle was involved in commission of offences punishable under Sections 4(I)(A) and 4(1)(aaa) of the Act read with Rules 5 & 6 of Rectified Spirit Rules. High Court also noted that though an order had been passed for releasing the vehicle in favour of respondent No. 2, he had not taken custody of the same though the order was passed on 23.1.2001. The High Court also noted that since the respondent No.2 was registered as owner of the vehicle and appellant was only the financier, the vehicle could not be

released as prayed for. Accordingly, as noted above, the criminal revision petition was dismissed.

4. Learned counsel for the appellant submitted that in the certificate of registration there is clearly an endorsement to the effect that the vehicle was hired under the hire purchase agreement. It was also clearly endorsed that the hirer had entered into hire purchase agreement with Subham Credits represented by the appellant.

5. Learned counsel for the State clearly stated that though an order was passed permitting to respondent No.2 that release of the vehicle by executing bond of Rs.1,00,000/- with two sureties of like sum and other condition that he shall not alienate or encumber or alter the vehicle and shall produce the vehicle as and when required by the trial court, the said condition has not been complied with.

6. It is to be noted that respondent No. 2 did not appear before the High Court in the connected proceedings.

7. The nature of hire purchase agreement has been noted by this Court in Charanjit Singh Chadha v. Sudhir Mehra (2001(7) SCC 417). At page 421 it was noted as follows:

\0235. Hire-purchase agreements are executory contracts under which the goods are let on hire and the hirer has an option to purchase in accordance with the terms of the agreement. These types of agreements were originally entered into between the dealer and the customer and the dealer used to extend credit to the customer. But as hire-purchase scheme gained in popularity and in size, the dealers who were not endowed with liberal amount of working capital found it difficult to extend the scheme to many customers. Then the financiers came into the picture. The finance company would buy the goods from the dealer and let them to the customer under hire-purchase agreement. The dealer would deliver the goods to the customer who would then drop out of the transaction leaving the finance company to collect instalments directly from the customer. Under hire-purchase agreement, the hirer is simply paying for the use of the goods and for the option to purchase them. The finance charge, representing the difference between the cash price and the hire-purchase price, is not interest but represents a sum which the hirer has to pay for the privilege of being allowed to discharge the purchase price of goods by instalments.

6. Though in India, Parliament has passed the Hire Purchase Act, 1972, the same has not been notified in the Official Gazette by the Central Government so far. An initial notification was issued and the same was withdrawn later. The rules relating to hire-purchase agreements are delineated by the decisions of higher courts. There are a series of decisions of this Court explaining the nature of the hire-purchase agreement and mostly these decisions were rendered when the question

arose whether there was a sale so as to attract payment of tax under the Sales Tax Act.

7. In Damodar Valley Corpn. v. State of Bihar (AIR 1961 SC 440) this Court took the view that a mere contract of hiring, without more, is a species of the contract of bailment, which does not create a title in the bailee, but the law of hire purchase has undergone considerable development during the last half a century or more and has introduced a number of variations, thus leading to categories and it becomes a question of some nicety as to which category a particular contract between the parties comes under. Ordinarily, a contract of hire purchase confers no title on the hirer, but a mere option to purchase on fulfilment of certain conditions. But a contract of hire purchase may also provide for the agreement to purchase the thing hired by deferred payments subject to the condition that title to the thing shall not pass until all the instalments have been paid. There may be other variations of a contract of hire purchase depending upon the terms agreed between the parties. When rights in third parties have been created by acts of parties or by operation of law, the question may arise as to what exactly were the rights and obligations of the parties to the original contract.

8. In K.L. Johar & Co. v. CTO (AIR 1965 SC 1082) this Court took the view that a hire-purchase agreement has two elements: (1) element of bailment; and (2) element of sale, 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 the option is exercised a sale takes place of the goods which till then had been hired.

8. The scope and ambit of Section 451 Cr.P.C. was highlighted by this Court in Sunderbhai Ambalal Desai v. State of Gujarat (2002(10) SCC 283).

9. Undisputedly, in the Registration Certificate the name of the financier has been indicated and the factum that the vehicle was subject to such an agreement was also noted. In the agreement, appellant is described as owner, but respondent no.2 as hirer. It is noticed that the respondent No.2 had applied for the release of the vehicle and the High Court had directed the release of vehicle on certain conditions. Undisputedly, those conditions have not been fulfilled. The vehicle is, therefore, lying with the seizing authorities for nearly eight years now. In view of the factual position highlighted above, we direct release of the vehicle in favour of the appellant subject to fulfillment of the conditions which were stipulated for the respondent No.2.

10. The appeal is allowed to the aforesaid extent.