

GAHC010172852016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./619/2016

TATA MOTORS FINANCE LTD. and ANR.
A NON-BANKING FINANCE COMPANY AND SUBSIDIARY OF TATA
MOTORS LTD. HAVING ITS REGISTERED OFFICE AT NANAVATI
MAHALAYA, 3RD FLOOR, 18 HOMI MODI STREET, MUMBAI-400001 AND
ITS LOCAL OFFICE AT GODREJ BUILDING, 2ND FLOOR, ULUBARI,
GUWAHATI -07, THROUGH ITS AUTHORIZED SIGNATORY SRI ANUJ
KUMAR GOGOI.

2: SRI PRAKASH PONNADA @ P. PRAKASH
S/O SRI PUNADA SOMA SUNDAR SANTI ULUBARI
G.S. ROAD
P.S. PALTAN BAZAR
GUWAHATI - 781007

VERSUS

THE STATE OF ASSAM AND ANR

2: SRI TANKESWAR DAS
S/O LT. NIRANJAN DAS A RESIDENT OF VILL- NANDANGIRI
BARBARI P.O. HENGRABARI
P.S. DISPUR
GUWAHATI
ASSAM- 781036

Advocate for the Petitioner : MS.D DEVI

Advocate for the Respondent : MR.M K SHARMA (R-2)

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners	:	Mr. R. De, Advocate.
For the Respondents	:	Mr. M.K. Sharma, Advocate.
Date of Hearing	:	09.05.2024.
Date of Judgment	:	16.05.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. R. De, the learned counsel appearing for the petitioners. Also heard Mr. M.K. Sharma, the learned counsel representing the respondents.

2. This is an application under Section 482 of the CrPC praying for quashing the criminal proceeding of CR Case No.534/2016 pending in the court of learned Judicial Magistrate First Class, Kamrup (M), Guwahati.

3. The respondent Tankeswar Das had purchased a vehicle TATA Winger bearing Registration No.AS-01-DD-7639 from the petitioner company on the basis of a higher purchase agreement. The respondent was paying the monthly instalment of ₹15,300/- to the present petitioner company.

4. On 28.01.2016 at about 11 A.M. while the said vehicle was carrying some passengers, Sri Jagadish Kalita, the repossession agent of the present petitioner company along with some other unknown persons repossessed the said vehicle.

5. The respondent Tankeswar Das had contacted the petitioner company and wanted to know about his liability towards the company. It is alleged that the petitioner company did not provide any information to the respondent.

6. On 13.02.2016, the respondent met Sri Naba Das, an agent of TATA Motors Finance Limited to know about his liability towards his company. This time, also, the respondent could not get any proper answer.

7. Narrating the aforesaid facts, the respondent filed a complaint petition in the court below against –(1) TATA Motors Finance Limited; (2) Mr. P. Prakash, Manager of TATA Motors; (3) Naba Das, agent TATA Motors; (4) Jagadish Kalita, repossession agent, TATA Motors Finance Limited and (5) other 5 to 6 numbers of unknown persons.

8. After examination of some witnesses under Section 202 of the CrPC, the trial court took cognizance of the offences under Sections 120B/341/379/414 of the Indian Penal Code along with Section 34 of the said Code against the above mentioned four persons.

9. The learned counsel, for the petitioners, Mr. De has relied upon a judgment of the Supreme Court that was delivered in *Anup Sarmah v. Bhola Nath Sharma*, (2013) 1 SCC 400. In the said case, the Supreme Court has held as under--

“6. In *Charanjit Singh Chadha v. Sudhir Mehra* [(2001) 7 SCC 417 : 2001 SCC (Cri) 1557] this Court held that recovery of possession of the vehicle by the 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.

“8. ... 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.”
(*Charanjit Singh Chadha* case [(2001) 7 SCC 417 : 2001 SCC (Cri) 1557] , SCC p. 422, para 8)

While deciding the said case, this Court placed reliance upon its earlier judgments in *Damodar Valley Corpn. v. State of Bihar* [AIR 1961 SC 440] , *Instalment Supply (P) Ltd. v. Union of India* [AIR 1962 SC 53] (SCC p. 744, para 8), *K.L. Johar & Co. v. CTO* [AIR 1965 SC 1082] , (AIR p. 1090, para

17) and *Sundaram Finance Ltd. v. State of Kerala* [AIR 1966 SC 1178] .”

10. On the other hand, the learned counsel, for the respondents, Mr. M.K. Sharma has relied upon a judgment of the Supreme Court that was delivered in *Magma Fincorp Ltd. v. Rajesh Kumar Tiwari*, (2020) 10 SCC 399. The relevant part of the said judgment is quoted as under:

“87. The question raised by the financier in this appeal, that is, whether the financier is the real owner of the vehicle, which is the subject of a hire-purchase agreement, has to be answered in the affirmative in view of the law enunciated by this Court in *Charanjit Singh Chadha* [*Charanjit Singh Chadha v. Sudhir Mehra*, (2001) 7 SCC 417 : 2001 SCC (Cri) 1557] , *K.L. Johar & Co.* [*K.L. Johar & Co. v. CTO*, AIR 1965 SC 1082] and *Anup Sarmah* [*Anup Sarmah v. Bhola Nath Sharma*, (2013) 1 SCC 400 : (2013) 1 SCC (Civ) 513 : (2013) 1 SCC (Cri) 518] . The financier being the owner of the vehicle which is the subject of a hire-purchase agreement, there can be no impediment to the financier taking possession of the vehicle when the hirer does not make payment of instalments/hire charges in terms of the hire-purchase agreement. However, such repossession cannot be taken by recourse to physical violence, assault and/or criminal intimidation. Nor can such possession be taken by engaging gangsters, goons and musclemen as so-called recovery agents.”

11. I have considered the submissions made by the learned counsel of both sides.

12. Mr. Sharma has agreed that repossession of a vehicle by a Finance Company is allowed under the law. Mr. Sharma has pointed out that though repossession of a vehicle is allowed under law, but the law does not allow the financier to use force to repossess the vehicle.

13. Here, the question arises whether the TATA Motors Finance Limited or its Manager Mr. P. Prakash or the agent Naba Das is vicariously liable for the act of Jagadish Kalita and his unknown associates?

14. It is an admitted fact that the Finance Company is entitled to repossess a vehicle financed by it if there is any default in repayment of loan. In this case, TATA Motors Finance Limited had financed the vehicle for Tankeswar Das. It is alleged that Tankeswar Das had defaulted in repayment of loan and that is why the vehicle was repossessed.

15. It is quite natural that TATA Motors Finance Limited or its Branch Manager would never personally go to repossess a vehicle. They will obviously engage an agent to repossess the vehicle for them. If the agent uses force, how TATA Motors Finance Limited or its Branch Manager can be held liable for the act of its agent.

16. Thus, I am of the considered opinion that there is no *prima facie* case under Sections 120B/341/379/414 of the Indian Penal Code along with Section 34 of the said Code against TATA Motors Finance Limited and the present petitioner Mr. P. Prakash.

17. Regarding the power under Section 482 of the CrPC, in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604, the Supreme Court has held as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently

improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

18. Reverting to the case in hand, this Court is of the opinion that allowing the criminal proceeding to continue against TATA Motors Finance Limited and its Manager Mr. P. Prakash would be an abuse of the process of the court as because there is no possibility of their future conviction in this case. Therefore, it is a fit case for exercising power under Section 482 of the CrPC.

19. Resultantly, the criminal petition is allowed. The criminal proceeding of CR Case No.534/2016 pending in the court of learned Judicial Magistrate First Class, Kamrup (M), Guwahati, is quashed and set aside against TATA Motors Finance Limited and its Manager Mr. P. Prakash.

The criminal petition is disposed of accordingly.

JUDGE

Comparing Assistant