IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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1. Zahir Abbas Son of Heshamuddin Residents of Village: Pakrihar, P.s Sathi, District West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The D.G Champaran Range, Bettiah.
3. The Superintendent of Police, West Champaran ,Bettiah.
4. The Officer-in-Charge, Mufassil Bettiah, West Champaran Bettiah.
5. Managing Director, Zenith Cooperation 17, R.N. Mukherji Road, Kolkata.
6. Manager, Suruchi Finance , 209, 4th Floor, Adharshila Complex, South Gandhi Maidan , Near RBI , Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Adya Singh
For the Respondent State : Mr. Anil Kumar Sinha, A.C. to S.C. 5
For Respondent Nos. 5 & 6 : Mr. Akhileshwar Pd. Singh, Sr.Adv.
Mr. Ranjan Kumar Sharma.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

ORAL JUDGMENT

Date: 18-05-2016

The petitioner has claimed that his Bolero vehicle bearing registration No. BR-22P 4256 has been possessed by respondent nos. 5 and 6 and, therefore, a direction is sought from this Court for production of the said vehicle before the court of the learned Chief Judicial Magistrate, Bettiah in connection with Bettiah Mufassil P.S. Case No. 525 of 2014 and to be released in favour of the petitioner's father who is the registered owner.

2. As per the petitioner, one Bolero vehicle bearing

registration no. BR-22 P – 4256 was purchased on 03.02.2012 at the cost of Rs.5,44,000/- in the name of the father of the petitioner. Father of the petitioner gave Rs.2.50,000/- to respondent no. 6 and the rest of the amount of Rs.2,94,000/- was financed by respondent no. 5.As per the petitioner, the vehicle was purchased on the basis of hire purchase agreement.

3. As per the petitioner, the loan amount has been paid along with interest thereon but some more money was demanded when 'No Objection certificate' was sought by the petitioner. It was further alleged that on 01.12.2014 when the petitioner went to Khasuar on the aforesaid Bolero to attend a marriage ceremony under Mufassil Police Station, Bettiah, one Guddu Mian and four other miscreants forcibly snatched the aforesaid Bolero on the point of knife and assaulted the petitioner. The petitioner informed his father. The father of the petitioner informed the police and the vehicle was seized along with said Guddu Mian. He claimed himself to be a man of the Finance Company. Even though the report was lodged but the police refused to register the first information report nor prepared the seizure memo of recovery of the vehicle.

4. On the direction of the Superintendent of Police, the first information report was lodged on 09.12.2014. Father of the petitioner submitted an application before the D.I.G. Champaran

range on 23.12.2014 alleging therein that the Officer-in-charge of Bettiah Mufassil police station in collusion with the Financer delivered the said vehicle to the Financer illegally without producing the same to the court concerned. There is specific allegation of the petitioner that the Manager of Suruchi Finance is patronizing a group of miscreants to seize the vehicles and sell the same at the instance of the Financer. Since the police has not seized the vehicle nor has taken any action, therefore, this writ petition has been filed.

5. Learned counsel for the petitioner referred to three Judges Bench judgment reported in A.I.R. 2012 S.C. 509 (Citicorp. Maruti Finance Ltd. Vs. S Vijayalaxmi) as also the judgment reported as AIR 2007 SC 1349 ICICI Bank Ltd. Vs. Prakash Kaur to contend that the Finance Company cannot forcefully seize a vehicle sold under the hire purchase agreement.

6. Earlier the names of the financer respondent nos. 5 and 6 were struck off from the array of the respondents but later on at the instance of the learned Senior Counsel representing respondent nos. 5 & 6, they were ordered to be restored as respondent nos. 5 and 6 and was granted time to file counter affidavit.

7. In the counter affidavit dated 16.05.2016 filed on behalf of the said respondents, they have attached the agreement of hire purchase dated 03.02.2012 and also a copy of the information

given to the Officer-in-charge of the police station that they have re-possessed the vehicle. In the counter affidavit in paragraph 6 it is asserted that it has been regular practice of the financer to seize the vehicle if loan amount is not paid by the purchaser. The present vehicle was seized due to default in payment of loan amount and the vehicles seized by the present respondent was immediately handed over to Bettiah Mufassail Police station to keep the vehicle safely and the same is still in the possession of concerned police station. The respondents also referred to two Supreme Court's judgments reported in AIR 1979 SC 850 (Sardar Trilok Singh Vs. Satya Deo Tripathi) and 2001(7) SCC 417 (Charanjit Singh Chadda and others V. Sudhir Mehra to contend that the Financer is entitled to take possession of the vehicle delivered to the hirer under the hire purchase agreement. It is pointed out that the judgment in ICICI Bank's case (supra) referred to by the petitioner is not binding judgment in view of judgment reported in 2005(2) SCC 673 (Central Board of DWOD Bohra Community Vs. State of Maharashtra) wherein it has been held that a coordinate Bench cannot disagree or dissent from the view of law laid down by another Bench and it is to be decided only by a larger Bench.

8. Learned counsel for the respondents has vehemently argued that since there is specific clause in the hire purchase agreement that the Finance company is entitled to take

possession of the vehicle, therefore the action in taking over the possession of the vehicle cannot be faulted with. It is contended that the Finance Company is a registered owner and it is allowed to take possession of the vehicle in terms of the agreement and such action cannot be said to be illegal in any manner.

9. I have heard learned counsel for the parties and found that the action of taking possession by the Finance Company of the vehicle in question of the borrower or his family members is illegal, un-just unwarranted and against the judgment of the Hon'ble Supreme Court in the cases of Prakash Kaur's case (supra) and Citicorp. Maruti Finance Ltd. (Supra).

10. In Prakash Kaur's case (supra), the Hon'ble Supreme Court held that the vehicles cannot be recovered by use of force. It is so held:-

> "16. Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong arm tactics."

11. Later, the three Judges Bench in Citicorp. Maruti Finance Ltd.'s case (Supra) has approved the view taken by the Supreme Court in the case of Prakash Kaur's case (Supra). The Court held as follows:-

> "21. Since during the pendency of the Special Leave Petitions before this Court, the Appellant had complied with the orders of the District Forum and the National Commission had already set aside the punitive damages imposed by the State Commission, the reliefs prayed for on behalf of the Appellant had been rendered ineffective and the submissions were, therefore, channeled towards the question of whether the fora below were right in holding that the vehicles had been illegally and/or wrongfully recovered by use of force from the loanees. The aforesaid question has since been settled by several decisions of this Court and in particular in the decision rendered in ICICI Bank Ltd. Vs. Prakash Kaur (AIR 2007 SC 1349: 2007 AIR SCW 1667) (supra). It is, not, therefore, necessary for us to go into the said question all over again and we reiterate the earlier view taken that even in case of mortgaged goods subject to Hire Purchase Agreements, the recovery process has to be in accordance with law and the recovery process referred to in the Agreements also contemplates such recovery to be effected in due process of law and not by use of force. Till such time as the ownership is transferred to the purchaser, the hirer normally continues to be the owner of the goods, but that does not entitle him on the strength of the agreement to take back possession of the vehicle by use of force. The guidelines which had been laid down by the Reserve Bank of India as well as the Appellant Bank itself, in fact, support and make a virtue of such conduct. If any action is taken for recovery in violation of such guidelines or the principles as laid down by this Court, such an action cannot but be struck down."

12. In the judgment in Sardar Trilok Singh and others' case (supra), the issue was seizure of property when the offence was under sections 390 and 391 of the Indian Penal Code. The said judgment does not deal with the issues arising out of hire purchase agreement.

13. In the case of Charanjit Singh Chadha and others' case (supra), the Court was examining whether re-possession of vehicle in terms of hypothecation agreement discloses an offence. That is not the issue raised in the present writ petition.

14. Thus the reliance of respondent nos. 5 and 6 on the decisions of Sardar Trilok Singh's case (supra) and Charanjit Singh Chadha's case (Supra) are not tenable when specific issue has been raised and decided in the case of Prakash Kaur's case (supra) and Citicorp. Maruti Finance Ltd.'s case (Supra).

15. In view of the above, the present writ petition is allowed. The respondents including respondent nos. 5 and 6 are directed to release the vehicle to the father of the petitioner forthwith. In addition to handing over possession of the vehicle to the father of the petitioner, the Finance Company shall also pay damages to the extent of Rs.5000/- (Rupees five thousand) per month to the petitioner from the date the possession of the vehicle was taken till it is handed over to the father of the petitioner.

16. With the aforesaid direction, this writ petition stands disposed of.

(Hemant Gupta, J)

Amin/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	