

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.836 of 2015

Amandeep Singh Bains, Aged about 30 years, S/o Late Kalminder Singh,
R/o 27 Kholi, Vikash Nagar, Bilaspur, P.S. Civil Line, Bilaspur, District
Bilaspur (C.G.)

---- Petitioner

Versus

State of Chhattisgarh, Through S.H.O. Seepat, District Bilaspur (C.G.)

---- Respondent

For Petitioner: Mr. Manoj Paranjpe and Mr. Hemant Gupta, Advocates.
For Respondent / State: -
Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/05/2019

1. Shriram Equipment Finance Company Limited (SEFC) – a non-banking finance company, financed a vehicle Tipper bearing registration No.CG-10/C-5834 to borrower Sanjay Kumar Sahu under hire purchase agreement by lending a loan of ₹ 21,50,000/- to be repaid in 46 monthly installments and the total amount to be repaid was ₹ 30,07,398/-. The said vehicle was registered with a clear indication that the vehicle is hypothecated with the said finance Company. The said loan was paid to Mr. Sahu by executing hypothecation agreement on 30-5-2011 with clause 6(b) in the shape of Repossession of Asset entitling the financier to take possession of the hypothecated assets by the company or its authorised representative. The said borrower defaulted in making payment of installments of the borrowed amount and all the 22 cheques given became dishonoured leading to issuance of

registered notice dated 4-5-2013 and 4-6-2013 to the owner informing him that cheques issued to the company have become dishonoured and the owner was asked to make payment of installments on account of the defaults. Ultimately, getting no result, the matter was referred to the Arbitral Tribunal appointed in terms of the arbitration clause contained in the Loan cum Hypothecation Agreement in which after hearing, the learned Arbitrator on 4-10-2014 passed an order in favour of the said company (SEFC) granting the application under Section 17(1) of the Arbitration and Conciliation Act, 1996 and authorising the finance Company to take possession of the said vehicle from the person in possession. Thereafter, SEFC on 5-1-2015, 4-2-2015 and 22-2-2015 authorised Aman Repo Agency to take repossession of the vehicle, as the said agency is authorised to act as a recovery agent. The finance company SEFC informed on 6-2-2015 its intention to invoke clause 6(b) of the agreement and ultimately, the vehicle was seized from the possession of the driver on 23-2-2015 in accordance with clause 6(b) of the agreement and the same was duly informed to the borrower and the owner of the truck to take back the coal which was loaded in the Tipper at the time of seizure. But, therefore, on 1-3-2015, one Chhatram Nirmalkar claiming to be driver of the owner of the vehicle i.e. Sanjay Kumar Sahu, lodged a report in Police Station Seepat for the offence punishable under Sections 394 & 365 read with Section 34 of the IPC pursuant to which the said offences have been registered against the petitioner herein and two other persons.

2. Now, only the petitioner who is the Proprietor of Aman Repo Agency

seeks quashment of the first information report (FIR) registered against him for the aforesaid offences in which return has been filed by the State opposing the petition and controverting the allegations made in the petition and justifying the action of police.

3. Mr. Manoj Paranjpe with Mr. Hemant Gupta, learned counsel appearing for the petitioner, would submit that the hypothecation agreement entered into between SEFC and the borrower clearly provides authorising the finance company to take possession in the event the installments are not paid and it is not in dispute that the borrower did not pay any of the installments and remained fully defaulter and after giving due notice, the company has invoked clause 6(b) of the agreement and has repossessed the vehicle after the order of the Arbitral Tribunal for which no offence is said to have been committed and the FIR registered against the petitioner for the offences alleged against him is nothing but a sheer abuse of the process of the court and taking the allegations in the FIR in its entirety, no offence under Sections 365 & 394 read with Section 34 of the IPC is made out as per the parameters indicated by the Supreme Court in the matter of **State of Haryana and others v. Bhajan Lal and others**¹, therefore, the FIR deserves to be quashed, qua the petitioner by granting the petition.
4. Mr. Ravi Kumar Bhagat, learned State counsel, would support the impugned FIR and would submit that the Supreme Court in the matter of **ICICI Bank Ltd. v. Prakash Kaur**² has deprecated the procedure resorted to by the lending bank / financial institution for recovering possession of the vehicles taken on hire-purchase basis

¹ 1992 Supp (1) SCC 335

² (2007) 2 SCC 711

forcibly on the ground that the borrower has defaulted in paying certain installments. Therefore, the action taken by the State police in registering the above-stated offences against the petitioner cannot be subjected to any exception, as the same is strictly in accordance with law and this petition deserves to be dismissed.

5. I have heard learned counsel for the parties and considered the rival submissions made herein and gone through the record with utmost circumspection.
6. The question for consideration is, whether the petitioner on behalf of SEFC is justified in taking possession of the vehicle in question on account of the default committed by the borrower in making payment of installments as promised pursuant to the Loan cum Hypothecation Agreement and despite service of notice issued to him from time to time asking him to repay the amount paid to him?
7. In order to decide the plea, it would be appropriate to notice the relevant judgments of the Supreme Court on the point, as the issue is no longer res integra and stands concluded by the series of judgments rendered by their Lordships of the Supreme Court in this regard laying down the law clearly.
8. First of all, in the matter of Sardar Trilok Singh and others v. Satya Deo Tripathi³, the financier seized the truck in question on default in payment of installment and the buyer therein launched criminal prosecution for offence under Section 395 of the IPC. Their Lordships of the Supreme Court considered the issue threadbare and held the dispute to be a bona fide civil dispute between the parties and quashed the prosecution holding to be

³ (1979) 4 SCC 396

undeserving fully covered by Section 482 of the CrPC as to be necessary to prevent the abuse of the process of the court and pertinently observed as under: -

“5. We are clearly of the view that it was not a case where any processes ought to have been directed to be issued against any of the accused. On the well-settled principles of law it was very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct. Money must have been advanced to him and his partner by the financier on the basis of some terms settled between the parties. ... Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on 30-7-1973 from the house of the respondent they could and did claim to have done so in exercise of their bona fide right of seizing the truck on the respondent's failure to pay the third monthly instalment in time. It was, therefore, a bona fide civil dispute which led to the seizure of the truck. ...”

9. Similarly, the Supreme Court in the matter of **K.A. Mathai alias Babu and another v. Kora Bibbikutty and another**⁴ has held that in case of hire-purchase agreement, in the event of failure to make payment of installment, financier has right to resume possession even if the agreement does not contain a clause of resumption of possession, that has to be read in the agreement and financier taking possession of the bus with the help of appellants No.1 and 2, no offence of theft is made out.
10. In the matter of **Orix Auto Finance (India) Ltd. v. Jagminder Singh and another**⁵ while considering the financier's right to take possession of financed vehicle in terms of hire-purchase agreement, it was held that if agreement permits the financier to take possession of financed vehicle, there is no legal impediment

⁴ (1996) 7 SCC 212

⁵ (2006) 2 SCC 598

on such possession being taken, though the hirer can avail statutory remedy.

11. Thereafter, again the Supreme Court in the matter of **Charanjit Singh Chadha and others v. Sudhir Mehra**⁶ considered the issue and the meaning and scope of hire-purchase agreement holding the same to be an executory contract of sale and further held that the repossession of goods as per the term of the agreement does not amount to any criminal offence and such agreement being an executory contract of sale confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled.

It was observed as under: -

“5. 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 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.

17. The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence. The agreement (Annexure P-1)

6 (2001) 7 SCC 417

specifically gave authority to the appellants to repossess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire-purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. ...”

12. Thereafter, the Supreme Court in the matter of Anup Sarmah v.

Bhola Nath Sharma and others⁷ took note of the principle of law laid down in Sardar Trilok Singh (supra) and Charanjit Singh Chadha (supra) and held that in an agreement of hire-purchase, purchaser remains merely a trustee/ballee on behalf of financier/ financial institution and ownership remains with latter, thus, in case vehicle is seized by financier, no criminal action can be taken against him as he is repossessing goods owned by him.

13. Reverting to the facts of the present case in light of the principles of law enunciated herein-above, it would be appropriate to notice clause 6(b) of the Loan cum Hypothecation Agreement (page 27 of the petition) which reads as under: -

“6. SHRIRAM'S RIGHT ON DEFAULT:

In the event of the Borrower(s) committing any act of default, as aforesaid, then, notwithstanding anything to the contrary herein contained, Shriram shall be entitled at this absolute discretion to inter alia:

(a) xxx xxx xxx

(b) **REPOSSESSION OF ASSET:** To take possession of the hypothecated assets from where so ever it may be and remove the hypothecated asset including all accessories, bodywork and fittings and for the said purpose, it shall be lawful for Shriram or Shriram authorized representatives, servants, officers and agents forthwith or at any time and without notice to the Borrower(s) to enter upon the premises, or factory, office, garage or godown where the hypothecated assets shall be lying or kept and to take possession or recover or receive the same and if necessary to break open such

⁷ (2013) 1 SCC 400

place of storage; Shriram will be within its rights to use a tow-van to carry away the assets. Any damage to the land or building or factory, office, godown or other equipment / assets kept there, caused by removal of the asset shall be the sole responsibility of the Borrower(s). Shriram shall be authorized to cause any operations involving the asset to be stopped in order to take possession of the hypothecated asset. Shriram shall not be liable for any damage or loss caused to the Borrower on account of the same.”

14. A careful perusal of the aforesaid provision clearly entitles and authorises the non-banking company to take possession or recover possession, in case the borrower commits any act of default. “Events of default” have been enumerated prior to clause 6 of the agreement (page 26 of the petition) which read as under: -

“EVENTS OF DEFAULT:

The Borrower(s) shall be deemed to have committed an act of default on the happening of, inter-alia, any one or more of the following events, namely:

(a) Failure to make payment to Shriram of any part of the loan amount on demand or any other rate or charge due and payable under these presents or in respect of the said credit facilities.

(b) The Borrower(s) misusing the said credit facilities or any part thereof for any purpose other than for which the said credit facilities have been sanctioned.

(c) The Borrower(s) creating any manner of interest in the Hypothecated assets or any part thereof.

(d) The representations made by the Borrower(s) being found to be untrue in any manner, whatsoever.

(e) The Borrower(s) committing a breach of any of the terms, covenants and conditions herein contained.

(f) The Borrower(s) committing a default in respect of any of the other obligations of the Borrower(s) towards Shriram either under this agreement or under any other agreement and /or under the law or otherwise howsoever.

(g) The Borrower(s) fails or neglects to observe, perform, adhere to and comply with or commits a breach of any of the terms and conditions of this agreement or of any other agreement entered into by the Borrower(s) with

Shriram, and on the Borrower(s) part to be observed, performed, adhered to or complied with.

(h) The Borrower(s) committing a breach of any other agreement entered into by the Borrower(s) with any other bank or financial institution or non-banking finance company or any other person body or entity.

(i) Any of the group companies/associates of the Borrower(s) defaulting in the terms of any of the agreements entered into between any of them and Shriram.

(j) The Hypothecated assets or any part or portion thereof, being confiscated, attached or taken into custody by any authority or becoming the subject of any legal proceedings;

(k) An insolvency notice or a winding up notice is served on the Borrower(s) or a receiver is appointed or attachment is levied on any of the Borrower's properties or assets; or

(l) The hypothecated assets or any part of them are distrained, endangered or damaged or bodily injury is caused to any third party by an accident involving the hypothecated asset or otherwise, or

(m) The hypothecated assets or any part of them are stolen or is/ are a total loss in the opinion of Shriram, or

(n) Whenever in the absolute discretion of Shriram there is a likelihood of the due money not being paid and/or the hypothecated assets or any of them are likely to be transferred to defeat the security and the due amounts of Shriram.

(o) On Shriram being informed or in the event that information comes to the knowledge of Shriram that there is a change in the management and /or constitution of the Borrower(s) or that there is likely to be a change in the management and/or constitution of the Borrower(s) and such change in the opinion of Shriram would adversely affect the interest of Shriram.

(p) There existing any other circumstances which in the sole opinion of Shriram would adversely affect the interest of Shriram.

(q) The Borrower(s) using the Hypothecated assets, transporting goods generally not permitted by law.

(r) The Borrower(s) fails to produce the asset for inspection or verification thereof or making valuation by Shriram or its officers, auditors, technical experts,

management consultant, valuers or any other person authorised for the purpose by Shriram.

(s) Any instruction given by the Borrower(s) for stop payment of the post dated cheques, for any reason whatsoever including instructions for revocation of instructions under ECs and SI mode of repayment.

(t) If without approval of Shriram the asset and/or other security provided under this agreement are sold, transferred, disposed off, charged, encumbered, alienated etc; or there is reasonable apprehension that the Borrower(s) or Guarantor are likely to transfer, sell etc; the asset and /or other security.

(u) Any defect/infirmary in the Guarantee provided by the Guarantor which renders the guarantee ineffective/inoperative.”

15. Thus, it is quite vivid that the non-banking company (SEFC) was entitled to take repossession of the vehicle in question from borrower Sanjay Kumar Sahu and admittedly, it is the case of SEFC that the borrower defaulted in making payment of monthly installments and all the cheques issued to SEFC become dishonoured by which SEFC invoked clause 6(b) of the agreement to take repossession of the vehicle by authorising Aman Repo Agency of which the petitioner was Proprietor. After complying the formalities and issuing notices to the owner of the vehicle and informing the concerned police station, the said agency proceeded to take possession of the vehicle pursuant to which FIR has been lodged with a delay of eight days.

16. It would be appropriate to mention that in the present case, the non-banking company SEFC approached the Arbitral Tribunal under Section 17(1) of the Arbitration and Conciliation Act, 1996 in which the Tribunal passed order directing the said company to take repossession of the vehicle by holding as under: -

“In the facts and circumstances it appears to us to be just

convenient and expedient in the interest of justice to order interim measure of protection of the vehicle in question which is the subject matter of arbitration agreement and appoint a receiver of that vehicle. Accordingly allow the application of the Applicant-Claimant u/s 17(1) of the Arbitration and Conciliation Act, 1996 and appoint Mr. Shrikant Verma, officer of the applicant-claimant as a Receiver to take the possession of vehicle/equipment AMW4018FBT.T Tipper bearing Registration No. CG10C5834 and having Engine No.11C63118083 & Chassis No.MBYB37900BDA16445 from the custody of the Non-applicant or any person who may be found in possession of the same and shall make arrangement for its safety. In case he feels necessary he may seek police help at his own level. The receiver shall also obtain valuation report of the vehicle/ equipment from authorized valuer on the condition of the vehicle. The receiver shall also make an inventory of the said vehicle. The receiver so appointed shall be responsible for any loss occasioned to the property by his willful default or gross negligence. The receiver is directed to submit a report this tribunal. This Order shall remain in force till the date of award of the arbitral tribunal.”

17. In my considered opinion, the said company SEFC has exercised clause 6 of the agreement i.e. right of the company on default to take repossession of the assets and that too after the order of the Arbitral Tribunal granted under Section 17(1) of the Arbitration and Conciliation Act, 1996 duly ordered and authorised by the Tribunal. The said company SEFC has acted strictly in accordance with law and took possession of the vehicle under clause 6(b) of the agreement pursuant to the order of the Arbitral Tribunal. The principles of law laid down by the Supreme Court in Sardar Trilok Singh (supra), K.A. Mathai alias Babu (supra), Charanjit Singh Chadha (supra) and Anup Sarmah (supra) squarely apply to the facts of the present case and by taking repossession of the vehicle in question, no offences are made out against the petitioner who was acting as a recovery agent on behalf of the non-banking company i.e. SEFC. Thus, it is a fit case in which in terms of clause

(1) of paragraph 102 of **Bhajan Lal's** case (supra), it can be held that no prima facie case constituting any offence or making out a case against the petitioner, is made out, as the allegations made in the FIR, 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.

18. As a fallout and consequence of the aforesaid discussion, the FIR for offence punishable under Sections 394 & 365 read with Section 34 of the IPC registered at Police Station Seepat, Distt. Bilaspur, qua the petitioner only, stands quashed.

19. The petition is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge