

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 814/2021

The Akola Janata Commercial Co-operative Bank Ltd., Akola Branch
Telhara, through its Branch Manager,
Vinayak Bhaskarrao Wakode,
aged about 54 years, Occ. Service,
R/o. Telhara, Tq. Telhara, Dist. Akola.

... **APPLICANT**

VERSUS

1. State of Maharashtra,
Police Station Officer,
Ramdaspath Police Station,
Akola, Tq. & Dist. Akola.
2. Prahsant Sudhakarao
Deshmukh, aged about 50 years,
Occ. Agriculturist, R/o. Behind
the Akola Janata Comm. Co-Op.
Bank Ltd., Telhara, Tq. Telhara,
Dist. Akola.
3. Khizar Ahmed Hafiz Abdul
Hamid, aged about 47 years,
Occ. Business, R/o. Firdoz
Colony, Akola, Tq. & Dist. Akola.

... **NON-APPLCANTS**

Mr. R.L. Khapare, Sr. Advocate assisted by Mr. D. R. Goenka,
Advocate for the applicant.

Mr. S. M. Ukey, APP for non-applicant No.1/State.

Mr. M.N. Ali, Advocate for non-applicant No. 3.

<u>CORAM</u>	: <u>VINAY JOSHI, J.</u>
<u>RESERVING THE JUDGMENT ON</u>	: <u>12/07/2022</u>
<u>PRONOUNCING THE JUDGMENT ON</u>	: <u>09/11/2022.0</u>

JUDGMENT :

Heard.

2. **Admit.**

3. Principal challenge in this application is to the order dated 04.08.2021 in Criminal Revision No. 42/2021, whereby the Revisional Court by reversing the order of the learned Magistrate, handed over the custody of the motor vehicle to the subsequent purchaser.

4. The facts in brief are that non-applicant No. 2 Prashant Deshmukh (Purchaser) has purchased motor vehicle Hyundai Car bearing registration No. MH-30-AT-1007 under Hire Purchase Agreement dated 18.07.2016 with the applicant – the Akola Janata Commercial Co-operative Bank Ltd., (Financier). The purchaser undertook to repay regular monthly installment of Rs. 10,124/- to the

Financier towards the finance of Rs. 4,50,000/-. On such condition, motor vehicle was entrusted to the purchaser for plying on the road. Later on, the purchaser has sold the motor vehicle to the non-applicant No. 3 Khizar Hamid (subsequent purchaser) under certain terms and conditions. Since the subsequent purchaser has failed to pay agreed installments with Financier Bank, the Purchaser has lodged a report registered as Crime No. 172/2021 for the offence punishable under Sections 420, 406, 294, 504, 506 of the Indian Penal Code against subsequent purchaser. In the said crime, the concerned motor vehicle was seized by the Police.

5. In above background, all of them, have claimed interim custody of vehicle in terms of Section 451 read with Section 457 of the Code of Criminal Procedure to the Magistrate. Having regard to the facts and circumstances of the case, the learned Magistrate was pleased to allow the application of Financier Bank handing over interim custody to the bank with certain terms and conditions as specified in the order dated 03.05.2021. Being aggrieved by the said order, subsequent purchaser Khizar has filed criminal revision No. 42/2021 which was allowed by impugned order dated 04.08.2021. The said order is subject matter of challenge raised by the applicant Bank before this Court.

6. It emerges that in the year 2016, Bank has advanced sum of Rs. 4,50,000/- to the purchaser on executing hire purchase agreement for purchase of Hyundai Car. Accordingly, hire purchase agreement dated 18.07.2016 was executed. The vehicle was registered in the name of purchaser Prashant Deshmukh. The purchaser did not pay the agreed installments, however, sold concerned vehicle to the subsequent purchaser on 22.11.2019 on certain terms and conditions. It was agreed that the subsequent purchaser shall pay Rs. 48,500/- to the purchaser and shall clear arrears of loan directly to the Bank. Since the subsequent purchaser has not abided by the agreed terms, the purchaser (registered owner) has lodged report with the Police as aforementioned. The vehicle was seized by the Police and lying at the Police Station.

7. There is no quarrel between the parties that in view of the law laid down by the Supreme Court in case of ***Sunderbhai Ambalal Desai Vs. State of Gujrat, 2002 Supp(3) SCR 39***, there is no necessity to keep the seized vehicle lying in Police Station and the custody may be handed over thereof. The principal question arose for consideration is as to who is entitled for the interim custody of the vehicle. The Bank claims that though the purchaser is the registered owner of the vehicle, however in law, Bank is owner since the vehicle was handed over to the

purchaser under the Hire Purchase Agreement. It is the contention of Bank that under said agreement, the purchaser has agreed to pay regular monthly installment of Rs. 10,124/- which latter did not. According to Bank, the purchaser has abided by several conditions as incorporated in the agreement by which the purchaser agreed for not to dispose of the vehicle to the third party. The purchaser has authorized the Bank to take possession of the vehicle in case of default in two consecutive installments. The purchaser also agreed and authorized Bank to take possession and sell the vehicle and to credit sale proceeds in the loan account. It is contended that since the purchaser defaulted in payment of installment as well as acted in defiance with the terms of contract by selling vehicle to the third party, the Bank is entitled for custody of vehicle.

8. The second claim is of purchaser Prashant Deshmukh who claims certain excuses for not paying timely installments. He expressed his willingness to pay installments and claims the custody. The third claimant subsequent purchaser would submit that he has paid some amount to the Bank which they did accept. He has also paid part consideration to the purchaser. It is his contention that he is bonafide purchaser of the vehicle. According to him, the purchaser was registered owner of vehicle from whom he took lawful custody and

therefore, he is entitled for custody of the vehicle.

9. The learned Magistrate held that in case of Hire Purchase Agreement, the ownership and title remain with Financier until hirer pays amount agreed between them is paid and till that, the hirer is only trustee of the goods. It is observed that undisputedly the purchaser (registered owner) has not paid agreed amount to the Bank as well as sold vehicle in breach of agreement, therefore, Bank is entitled for custody of vehicle. The Revisional Court has reversed the order by holding that the real nature of transaction was a loan transaction though the document was styled as Hire Purchase Agreement. It is held that there is no clause in the agreement giving option to the purchaser of buying the vehicle or return, therefore, it being a finance transaction, the Bank has no right to claim possession by superseding the remedy of the Civil Court.

10. As stated above, the facts are not in dispute. The purchaser has not disputed that he has committed default in payment of installments as well as conceded that he has sold the vehicle to the third party. The learned counsel appearing for the purchaser would submit that the remedy for Bank is to approach the Civil Court and for this purpose, he relied on the decisions of the Supreme Court in case of *Manoj and another Vs. Shiram Tpt. Finance Company Ltd. and others*,

2003 ALL MR (Cri) 1754 (S.C.). In the said case the ownership dispute was pending in the Civil Court. What was the nature of transaction has not come on record and thus, the observations made in different context cannot be applied to the facts of this case. The purchaser further relied on the decision of this Court in case of ***Vishnu S/o. Ramchandra Bhagwat Vs. the State of Maharashtra and another*, 2016 ALL MR (Cri) 2101**, wherein it is held that Bank cannot take benefit from seizure of vehicle by the Police of a crime unconnected between the purchaser and Bank. In said case, in some different crimes, the vehicle was seized. The Bank had advanced money for purchasing the vehicles. It is not clear as to what was the nature of transaction in between the parties. In that context, it has been observed that without crystallizing a civil rights in competent Court, the Bank cannot take benefit. On the same line, the purchaser relied on the decision in case of ***Shri Julio alias Francis K. Bugde Vs. State and another*, 2007 ALL MR (Cri) 1069**. The said case is distinguishable on facts since it was not a case in between borrower and financier. There appears to be a private transaction of sell and thus, the said decision is of no help.

11. On the other hand, the learned senior counsel appearing for Bank would submit that in the contract of hire purchase, no title is conferred on the hirer, but an option to purchase on fulfillment on

certain conditions. He would submit that the solemn agreement entered into the parties under which obligations are created, cannot be brushed aside simply because Section 2(30) of the Motor Vehicles Act, defines the term 'owner' widely. In this regard, he relied on the decision of this Court in case of *B.C.L. Financial Services Ltd. Nagpur Vs. State of Maharashtra and others, 1999(3) Mh.L.J.173*. In the said case, this Court has considered the decision of the Supreme Court in case of *M/s. Damodar Valley Corporation Vs. State of Bihar, AIR 1961 SC 440*, in which it has been observed that mere contract of hiring without more, is a species of the contract of bailment which does not create a title in the bailee.

12. Ordinarily a contract of hire purchase confers no title on the hirer, but a mere option to purchase on fulfillment on certain conditions. The learned senior counsel appearing for the Bank relied on the decision of the Supreme Court in case of *Charanjit Singh Chadha and others Vs. Sudhir Mehra, (2001) 7 SCC 417* to contend that recovery of possession of goods by the Financier as per terms of the Hire Purchase Agreement does not amount to a criminal offence. It is observed that the hirer had defaulted in installments and agreement specifically provided that the Financier was entitled to re-possess the vehicle. Therefore, no criminal liability could be fastened. In the said

case, the Supreme Court referred its earlier decision and held that hirer would not become owner of the property until he pays the entire installments. He has further relied on the decision of the Supreme Court in case of *M/s. Magma Fincorp Ltd. Vs. Rajesh Kumar Tiwari, 2021 ALL SCR 317*, wherein in context of deficiency of services, it has been held that repossession of vehicle by Financier in default in payment of hire installments does not attract the liability. The Supreme Court has taken a review of earlier decisions and observed that Hire Purchase Agreement is an executed contract of sale which confers no right on the hirer until the conditions are fulfilled. The purchaser remains merely a trustee/bailee on behalf of Financier. If the agreement permits the Financier to take possession, there is no legal impediment in such possession being taken. The useful reference can be made to para 76 to 78 and 87 which read as below:-

“76. In Sundaram Finance Ltd. [1965 ALL MR ONLINE 538 (S.C.)] (supra), Subba Rao, J. Delivered a dissenting judgment holding:-

“6. The object of the hire-purchase system was to help to finance the customer in order that he might purchase the property. Though that was the object, the transaction took the form of hire-purchase agreement. The main feature of the agreement, apart from small variations, was that the dealer or the financier continued to be the owner till the terms of the agreement were fully complied with by the customer and the option to purchase the same was exercised by him. If the terms were not complied with, the dealer or the financier, as the case may be, could terminate the agreement and take back the goods. In such a transaction, the common intention of the dealer, the

financier and the customer was that the transaction should take the form of a hire-purchase agreement which would become a sale on the compliance of the terms of that agreement. No doubt the financing operation could have taken the form of a mortgage or pledge, but the parties, for their mutual benefit and convenience, entered into a hire- purchase transaction.

7. In the absence of any fraud or undue influence, the question resolves itself into a simple question of intention. The transactions were in accordance with the mercantile usage. Both the financier and the customers with open eyes entered into the transactions of hire-purchase. Their intention was expressed in clear terms. They could have executed hypothecation bonds, but they did not, and instead entered into hire-purchase transactions. There was no reason to camouflage the real nature of the transactions. None was suggested. They were, therefore, bound by the terms of the agreements.”

77. *The law which emerges from the judgments of the Court referred to above, is that goods are let out on hire under a Hire Purchase Agreement, with an option to purchase, in accordance with the terms and conditions of the Hire Purchase Agreement. The hirer simply pays for the use of the goods and for the option to purchase them.*

78. *Until the option to purchase is exercised by the hirer, upon payment of all amounts agreed upon between the hirer and the Financier, the financier continues to be owner of the goods being the subject of hire purchase. Till such time the hirer remains a trustee and/or bailee of the goods covered by the Hire Purchase Agreement.*

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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 (supra)**, **K.L. Johar & Co. [1964 ALL MR ONLINE 420 (S.C.) (supra)]** and **Anup Sarmah [2013 ALL MR (Cri) 789 (S.C.) (supra)]**. 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.”

13. Besides that, the learned senior counsel appearing for Bank has placed reliance on some decisions of this Court to contend that there is no necessity to detain the vehicle in the Police Station, but it can be permitted to be sold.

14. Reverting to the facts, it is necessary to see what was the real nature of transaction. The copy of Hire Purchase Agreement has been produced on record. The contents have been carefully examined to find out as to what was the intention of the parties behind entering into contract. Document is titled as an agreement of hire purchase. No doubt, one cannot go by title, however i.e. one of the indicator. The purchaser has been referred as a borrower as well as there is reference at several places that Bank has purchased the vehicle and given the same on hire basis enabling the purchaser to do business. Clause 12 of the agreement indicates that purchaser would not become the owner of the vehicle until he pays the entire installments. It is specifically stated that the Bank would be absolute owner of the vehicle and the purchaser agrees to pay periodical installments. Clause 7 of the

agreement says that the Bank is entitled to enter into premises and inspect the vehicle without prior notice. Clause 8 gives right to the Bank to re-possess the vehicle in case of default in two installments. Clause 9 gives Bank an authority to take possession and sell the vehicle.

15. The Revisional Court has much swayed on the aspect that there is no specific clause in the agreement that the purchaser has option to purchase the vehicle. As a matter of fact, this is a typical transaction of hire purchase. The agreement specifies that the Bank has agreed to purchase the vehicle and gives the same on hire basis to the purchaser. The authority was given to the Bank to take possession of the vehicle in case of default in payment of installments with further authority to sell. The last clause clarifies that till the full amount is paid, the hirer (purchaser) has no right to the vehicle taken on hire. These clauses convey that it is a contract of hire purchase. Mere absence of express term of option of the hirer, does not change the real nature of transaction.

16. Undeniably, the agreement bears a specific clause that in case of default, the Bank has authority to take possession and sell the vehicle. In law, the ownership remains with the Bank, until all the conditions are fulfilled. The solemn obligation has been created in favour of the purchaser, which cannot be brushed aside apparently in

defiance with the conditions and undertaking given by the purchaser. He has sold the vehicle to third party, that too with conscious knowledge about prior agreement with the Bank. In the light of said position, the discretion cannot be used in favour of the purchaser as well as a party claiming through purchaser who in breach of undertaking entered into further transaction. As referred above, unless and until entire payment is made, it does not create right, title or interest in favour of the purchaser as it was a contract of hire purchase.

17. In view of above, the order of the Revisional Court is unsustainable in the eyes of law. The learned Magistrate has rightly considered the position of law which needs to be upheld. In that view of the matter, application is allowed. The impugned order dated 04.08.2021 passed in Criminal Revision No. 42/2021 is hereby quashed and set aside. The order of learned Magistrate is hereby maintained. Application is disposed of accordingly.

(VINAY JOSHI, J.)

Gohane

Digitally
signed by
JITENDRA
BHARAT
GOHANE
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