

06 31.07.2023
NB Ct. 14

WPA 16168 of 2023

Saif Khan
Vs.
The State of West Bengal & Ors.

Mr. Mohinoor Rahaman,
Sk. Abu Musa,
Ms. Maria Rahaman.
...for the petitioner.

Mr. Amal Kr. Sen Id. AGP,
Mr. Jaladhi Das.
....for the State.

Mr. Iftekar Munshi,
Mr. Ranjit Singh.
...for the respondent nos.7 to 11.

This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent authorities to extend all possible assistance and by conducting investigation in an impartial manner.

Report filed on behalf of the State is taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner had taken a loan from a non-banking financial institution for purchasing three vehicles. There was a purported default in making payment during the Covid period. After that, negotiations were going on. By an email dated 30.12.2022, the petitioner wrote to the Hire Purchase concern that he was willing to cooperate and hand over the two vehicles in question after getting acknowledgment receipt. However, the representatives of the company did not issue any receipt. On the contrary, they forcibly took away the vehicles in question on a particular day. It is germane to mention that the

arbitration that was earlier going on was set aside by this Court, who appointed a new arbitrator and an arbitration is going on. It is more a case of police overaction because it was the police who had cooperated with the musclemen in taking away of the vehicles. The petitioner had not received any notice for repossession.

Learned counsel appearing on behalf of the private respondents submits as follows. Clause 11 of the Agreement of the Hire Purchase gives the power to the non-banking financial institution to reposses the vehicles in case of default. A seven days notice by an email was given. In fact, the petitioner has himself referred to an email by which he was giving consent for taking delivery of the vehicles. But, the question of arbitration is quite independent.

Learned senior counsel appearing on behalf of the State submits that police have not colluded with anyone for taking possession of any vehicle as alleged.

I have heard the submissions of the learned counsels appearing on behalf of the parties and have perused the writ petition and the report filed by the State.

It is not contended by the petitioner that repossession of the vehicle could not be taken because of pendency of the arbitration. So, these two issues are separate.

It is the prime allegation of the petitioner that by using of musclemen and force the non-banking financial institution took away two vehicles from the possession of the petitioner, which was not permissible in law. It is further alleged that the police colluded in this.

It appears to be clear that the issue of repossession of vehicles was being considered and the petitioner voluntarily asked for taking repossession of the vehicles upon giving receipt. So, the only fact that is now being questioned is that no notice was given. This is a disputed fact that cannot be decided here.

It is also clear from the report of the State and the submissions made by the learned senior counsel that the police has nothing to do with these. They have never colluded with anyone for repossession of vehicles.

In any event, if a vehicle is repossessed as per Repossession Clause contained in an agreement of Hire Purchase, it does not amount to an offence. Reliance is placed on the case of **Sardar Trilok Singh & Ors.**, (1979) 4 SCC 396 and **Charanjit Singh Chadha & Ors.**, (2001) 7 SCC 417.

Therefore, I do not find any reason to interfere with the present proceeding.

Accordingly, the writ petition is disposed of without costs.

Since affidavits were not called for, the allegations contained in the writ petition are deemed not to have been admitted.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)

