

24.06.2025

Sl. no. 427

Ct. No. 29

P.M.

C.R.R. 1288 OF 2018
M/s. Shriram Transport Finance Company Limited
Vs
The State of West Bengal & Anr.

Mr. Saurabh Guhathakurata,
Mr. Abhratanu Sarkar
... for the Petitioner

Mr. Joydeep Roy,
Mr. Dipankar Paramanick
... for the State.

Report dated 13.06.2025 filed by O.C.
Nischinda P.S. is taken on record.

Being aggrieved by and dissatisfied with the order dated 12th March, 2018 passed by learned Chief Judicial Magistrate, Howrah in connection with G.R. Case No. 2912 of 2016, arising out of Nischinda P.S. Case No. 112 of 2016 dated 06.05.2016, present application has been preferred by the petitioner.

It is submitted on behalf of the petitioner that the petitioner is a non-banking finance company, who advanced loan to the opposite party No. 2 herein for purchasing a commercial vehicle on the basis of their representation that opposite party No. 2 would duly repay the entire amount under the loan account without any failure.

Accordingly the petitioner company entered into a loan cum hypothecation agreement on 29.06.2015 with the opposite party No. 2 and hypothecated the commercial vehicle and parted with the dominion of the said vehicle in favour of the opposite party No. 2. The hypothecation of the collateral took place on the execution of the said agreement, which also contained an arbitration clause. The loan was repayable by 47 monthly installments but the opposite party No. 2 herein had paid only two installments for a sum of Rs. 60,800/- only and despite repeated requests and reminders by the petitioner company the opposite party No. 2 did not make any payment of the outstanding amount nor produced the said vehicle lying entrusted with them.

It is further alleged that on enquiry it was learnt that opposite party No. 2 along with other unknown person, in collusion with each other has removed, concealed and transferred the hypothecated vehicle to other company, which resulted wrongful loss to petitioner and wrongful gain to opposite party No. 2.

That on 01.03.2016, petitioner came to know that said vehicle was entrusted to unknown person by the opposite party no. 2, who has changed the number of the vehicle. On the basis of lodging general diary by the petitioner, the said vehicle was moved from parking place and since then it is under custody and control of Nischinda Police Station.

The opposite party No. 2 in the meantime filed three suits against the petitioner. In the meantime petitioner had also invoked arbitration in terms of said agreement and learned Arbitrator vide order dated 18.02.2016 allowed the application of the petitioner/company and appointed Sri Krishna Singh, Advocate as the custodian to take possession of the said vehicle. However said Krishna Singh never got custody of said vehicle. Thereafter on 02.05.2016 the petitioner company filed a complaint seeking direction for investigation under Section 156(3) of the Code of Criminal Procedure against the opposite party No. 2 and another, which was allowed by Magistrate. During investigation of the said case on 21.06.2016 the opposite party No. 2 made a prayer for return of the seized vehicle bearing registration No. W.B 23C/ 3741 in favour of opposite party No. 2 and the trial Court was pleased

to call for a report from the Investigating Officer. The petitioner herein being the Financier also made a prayer for return of the same seized vehicle in his favour but learned Court below by the impugned order rejected the prayer of opposite party No. 2/borrower Surendra Kumar Chourasia in connection with prayer made by him for return of the vehicle. However, the Court below while disposing petitioner's application gave liberty to the Finance company/petitioner herein to proceed as per arbitral award in accordance with law.

Being aggrieved by the said order Mr. Guhathakurata, learned counsel appearing on behalf of the petitioner submits that the order impugned is legally perverse and devoid of any merit.

He further submits that learned Magistrate failed to consider that when specific prayer was made by the petitioner/company for return of the seized vehicle then the learned Magistrate ought to have considered the said prayer of the petitioner on merit and ought to have directed to release the said vehicle in favour of the petitioner/company. In fact, both the reports dated 27.06.2016 and 26.08.2016 supported the case of the petitioner, in returning the said vehicle in favour of the petitioner/company. He further

submits that the Court below also failed to consider that the hire purchase agreement is distinct from a sale in which the price is to be paid later by installments and under hire-purchase agreement, the ownership/title vests upon the purchaser only on the fulfillment of the terms and conditions of the agreement. The Court below failed to consider that the moment the opposite party No. 2 failed to pay the EMIs to the petitioner on regular basis, the petitioner is entitled to possession of the said vehicle and as such said vehicle seized by the police ought to have been returned to the petitioner on furnishing bond, keeping it in mind that Arbitral award dated 06.07.2017 has nothing to do with Section 451/457 of the Cr.P.C. and that said award could in no way affect the petitioners right to get possession of the said vehicle in exercise of Court's power envisaged under Section 451/457 of Cr.P.C.

The opposite party is not represented. Learned counsel appearing on behalf of the State leaves the prayer for discretion of the Court.

I have considered the submissions made on behalf of both the parties. This court during hearing of the case had called for a report from the Investigating agency about the present custody of the

said vehicle and by the aforesaid report dated 13.06.2025, the Investigating agency informed that the said vehicle is still under the custody of Nischinda P.S.

In a series of decision the Supreme Court and the High courts have deprecated the practice of keeping such seized vehicle in the police malkhana for an indefinite period. In the present case the seizure was made in 2016 and for last nine years it is lying in the compound of police station and is allowed unnecessarily to get it damaged.

In the case of Trilok Singh & Ors. Vs. Satya Deo Tripathi, reported in 1979 SCC(Cri) 987, Apex Court categorically held that it is within the right of the financier to seize and repossess a vehicle, which was purchased by the hirer at the finance provided by the financier, if the installment amounts are not paid within the stipulated time, more particularly, when the hire purchase agreement contain a specific default clause permitting the financier to repossess the vehicle in such default. The Apex Court also in Charanjit Singh Chaddya Vs. Sudhir Mehera reported in 2001 SCC (Cri) 1557 reiterated the said view.

Under Section 451 read with Section 457 of Cr.P.C., when a prayer is made before a Magistrate for

return of seized vehicle, he has to take one of the three recourses : -

- i) He has discretion to pass any order, he thinks fit for disposal of the property.
- ii) To deliver it to the person entitled to proper custody subject to such condition, if any, that he may impose.
- iii) If there is no such person, pass an order for it's custody and production.

In the instant case, it is not under challenge before this Court that petitioner is financier and opposite party No. 2/purchaser has defaulted in payment of installment amounts and as such petitioner/financier is *“the person entitled to possession thereof”*.

Under the hire purchase agreement, the petitioner is continued to be the owner, for non-payment of installment amount. Learned Court below seriously flawed in his decision in making direction like a civil Court to execute Arbitral award. In fact by the impugned order he failed to exercise jurisdiction vested in him under Section 451 read with Section 457 Cr.P.C. In such context he had to decide who was entitled to possession at the time of

seizure, rather than to avoid to perform his duty. As was observed in the case of Smt. Mahamaya Dasi – Vs – Sanat Kumar Law, reported in AIR 1968 CAL 564, motor vehicles are not just ordinary “chattels personal” and the owner thereof has got rights as well as liabilities under the statute.

In view of unchallenged submissions made by the petitioner, it being the financier, vehicle in question should be made over to him instead of getting it damaged further by lying in the compound of a police station exposed to sun and rain.

In the result the application being CRR 1288 of 2018 is allowed. The order impugned, so far it relates to refusal of petitioner’s prayer for return of seized vehicle in his custody is hereby set aside. The court below is directed to deliver the vehicle in question to the petitioner herein and/or his authorised agent, on his furnishing the requisite bonds to the satisfaction of Court below and also on such terms and conditions as he may deem fit and proper to impose and also upon petitioner’s undertaking to produce the vehicle whenever called upon to do so by the court below.

Urgent photostat certified copy of this order,
duly applied for, be given to the parties upon
compliance of all usual requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)