IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.417 OF 2024

1. Ronak s/o Anil Kochar,
Aged about 38 Years,
Occupation : Business,
R/o. Gandhi Putala, C. A. Road,
Nagpur.

2. Mohhamad Sadik Ashik Husen,
Age about 40 Years,
Occupation : Business,
R/o. Near Jijkar Mangal Karyalaya,
Itwari Peth, Umred Road,
Nagpur. **..... PETITIONERS**

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Kardha,
Tahsil and District Bhandara.

2. Madhusudan Yashwant Uparkar,
Aged about 63 Years,
Occupation : Business,
R/o Andhalgaon,
Tahsil and District Bhandara. **.... RESPONDENTS**

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Mr. R. M. Patwardhan, Counsel for the petitioners.
Mr. M. J. Khan, APP for respondent No1/State.
Mr. A. M. Chandekar, Counsel for the respondent No.2.

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CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 21.08.2025
PRONOUNCED ON : 11.09.2025

JUDGMENT :

1. **Rule**. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioner No.1 is dealing in the business of finance in the name and style of K. Finance having its office situated at Gandhi Putala Chowk, Nagpur and the petitioner No.2 is working as an agent of the petitioner No.1. The respondent no.2 had approached the petitioner No.1 to seek finance for the purpose of purchasing a Tavera Car bearing Registration No.MH-28/V-l854 in the year 2016 and as the terms and conditions put-forth by the petitioner No.1 were accepted by the respondent No.2, a hypothecation agreement was executed between the parties on 21.11.2016 and by virtue of the said agreement, the petitioner No.1 had provided loan amount of Rs.4,00,000/- to the respondent No.2 for the above transaction. The respondent No.2 had agreed to repay the amount of loan in easy installments of Rs.16,200/- per month. The respondent No.2 had repaid partial amount out of the loan borrowed from the petitioner No.1, however failed to repay the rest of the amount. On 22.07.2018 the respondent No.2 had given an assurance in writing to repay the outstanding loan amount against him or to deliver the possession of the vehicle in custody of the petitioner No.1 on 30.07.2018. As the respondent No.2 assured, petitioner No.1 had not taken any action however, there was no response from the respondent No.2, and therefore, the petitioner No.1 was constrained to issue notices to the respondent No.2 time to time and the last notice on 01.08.2018 was given to the respondent No.2. On receipt of the notice also neither the reply

was given nor the amount was paid and therefore, the petitioner No.1 was constrained to give authority to the petitioner No.2 to take possession of the vehicle from the custody of respondent No.2. Therefore, petitioner No.2 had gone to Andhalgaon, Tahsil Mohadi, District Bhandara for taking action against the respondent No.2 and on 17.10.2018 the petitioner No.2 informed the respondent No.2 to handover the possession of the vehicle. In pursuance of the defaults committed by him in making the payment towards the due amount, the respondent No.2 handed over the possession of the vehicle to the petitioner No.2 and the petitioner No.1 informed the Police Station, Andhalgaon, District Bhandara regarding the fact of seizure of the vehicle.

3. Subsequently, the respondent No.2 with malafide intention to harass them while handing over the custody of vehicle and the petitioners were shocked to note that the respondent No.2 lodged false report on 29.10.2018 with respondent No.1 - Police Station Kardha, District Bhandara that on 28.10.2018 at about 7.00 p.m. when the respondent No.2 had been to Kardha for some work and had alighted from the vehicle for the purpose of answering the natures call, and at the relevant time, some unknown persons stole his vehicle bearing Registration No.MH-28-V-l854. As such, the respondent No.1 took cognizance of the said complaint and registered the Crime No.398/2018 under Section 379 of the Indian

Penal Code against the unknown person. After registration of the crime, the investigation was conducted and during the course of investigation, the statement of petitioner No.1 was recorded by the police and all the *bona fide* documents were shown by the petitioner No.1 to the respondent No.1 i.e. the concerned Police Officer of the concerned Police Station. Therefore, the Investigating Officer has collected the C.C.T.V. footage from the toll plaza and it was noticed that, the above vehicle did not pass through the said toll plaza on that date and as such did not support the claim of the respondent No.2. Therefore, the respondent No.1 closed the investigation and filed 'B' Summary report before the learned Judicial Magistrate First Class Court No.3, Bhandara. After considering the material submitted by the respondent No.1, the learned Magistrate, Court No.3, Bhandara accepted the 'B' summary report by order dated 18.07.2020.

4. The said order was challenged by the respondent No.2 by preferring a Criminal Revision No.42/2020 before the learned Sessions Court, Bhandara. The learned Sessions Court, Bhandara decided the matter and set aside the order of the learned Magistrate Court No.3, Bhandara and directed the respondent No.1 to file charge-sheet in the matter under Section 379 of the Indian Penal Code. Being aggrieved and dissatisfied with the same, the present writ petition is filed by the petitioners.

5. Heard learned Counsel Mr. Patwardhan for the petitioners, who submitted that it is not disputed that the respondent No.2 has obtained the loan from the petitioner No.1 for purchasing a Tavera Car bearing Registration No.MH-28/V-l854 in the year 2016. As per the terms and conditions put-forth by the petitioner No.1, the respondent No.2 executed a hypothecation agreement. There was a default in payment the loan amount as agreed and therefore, the action was taken by the petitioner No.1 to the petitioner No.2 and the vehicle was seized and also informed to the concerned Police Station, but subsequently the false complaint was lodged by the respondent No.2. He submitted that the information given by the petitioner No.1 to the Police Station Andhalgaon supported the *bona fides* of the petitioners, but the false story was concocted by the respondent No.2 while lodging the report. The C.C.T.V. footage collected during the investigation shows the innocence of the present petitioners and therefore, 'B' summary was filed. He submitted that recovery of possession of goods by owner-financier as per terms of the hire-purchase agreement does not amount to a criminal offence. In support his contention he placed reliance on **Charanjeetsingh Chhadha and others Vs. Sudhir Mehara** reported in **(2001) 7 SCC 417**.

6. Per contra, learned APP submitted that the Investigating Officer has collected the C.C.T.V. footage and thereafter, recorded

the statements of relevant witnesses and came to the conclusion that no case is made out and filed 'B' summary report. Thus, no illegality is committed by the Investigating Officer, therefore, appropriate orders be passed.

7. Per contra, learned Counsel Mr. Chandekar for the respondent No.2 strongly opposed the contention on the ground that the petitioners have no right to take the vehicle without knowledge of the respondent No.1. The petitioners have taken the vehicle without knowledge of the present respondent No.2 which is an offence committed by the petitioner No.1, and therefore, learned Sessions Judge has rightly considered the aspect that the vehicle was in possession of the informant, the finance company removed the vehicle from the possession of the informant without his consent. The material on record *prima facie* shows that finance company seized the vehicle of the applicant without following due procedure of law, and therefore, the offence is made out and hence, the order passed by the Sessions Judge requires no interference.

8. On hearing both sides, it is undisputed that the respondent No.2 has obtained the loan from the petitioner No.1 and there was a default committed by him in repayment of the said loan amount. After issuance of the notice, respondent No.2 has not paid the amount therefore, the vehicle was seized by the petitioner No.1 through the petitioner No.2. Due to the constant default, K. Gyan

Finance Company repossessed the vehicle on 17.10.2018 by completing all the formalities. Thus, it is within the knowledge of the informant that the aforesaid four wheeler had been seized by the finance company. But the respondent No.2 has lodged a First Information Report. The Investigating Officer has carried out the investigation and seized the documents. It is apparent that there was hypothecation agreement between the informant and K Finance Company and the installments are outstanding, the informant did not pay the total amount. The notice of seizing/repossessing the above said four wheeler was given to the informant. The vehicle seized by the K Finance on 17.10.2018 and the report was lodged by the informant on 28.10.2018. It further appears that the Investigating Officer has collected the C.C.T.V. footage from Mathani Toll plaza to ascertain whether four wheeler crossed the Mathani Toll plaza on 28.10.2018 and it revealed that no such vehicle crossed the Mathani Toll plaza on 28.10.2018 and the Investigating Officer also recorded the statements of the witnesses during the investigation. On the basis of the investigation, the Investigation Officer come to the conclusion that no such act was committed by the petitioners. It further revealed that the intimation was given to the concerned Police Station by the K Finance Company that the respondent No.2 voluntarily handed over the four wheeler to the petitioners. Thus, from the fact, it appears that the informant had noticed of the fact of seizing above said four wheeler but then afterthought he filed a complaint and therefore, 'B' summary report was filed.

9. Admittedly, the respondent No.2 entered into a hire-purchase agreement with the petitioners, owners of non banking financial institution in respect of motor vehicle. Total consideration amount which was obtained by the respondent No.2 from the finance company was Rs.4,00,000/- it was agreed that the installment is to be paid at the rate of Rs.16,200/- per month. As the respondent No.2 failed to pay the loan amount, therefore, a dispute developed and despite the notice issued, the amount was not repaid therefore, further action was taken. As per the allegations of the respondent No.2, the petitioners have committed the offence of theft. This aspect is dealt by the Hon'ble Apex Court in the case of **Charanjit Singh Chadha and others Vs. Sudhir Mehra** reported in **(2001) 7 SCC 417**.

10. The Hon'ble Apex Court in the case of **Charanjit Singh Chadha and others Vs. Sudhir Mehra** (referred supra) observed that 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 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.

11. It is further observed by the Hon'ble Apex Court by referring the decision in **Damodar Valley Corporation Vs. State of Bihar, AIR 1961 SC 440**, that a mere contract of hiring, without more, is a species of the contract of bailment, which does not create a title in the bailee, but the law of hire purchase has undergone considerable development during the last half a century or more and has introduced a number of variations, thus leading to categories and it becomes a question of some nicety as to which category a particular contract between the parties comes under. Ordinarily, a contract of hire purchase confers no title on the hirer,

but a mere option to purchase on fulfilment of certain conditions. But a contract of hire purchase may also provide for the agreement to purchase the thing hired by deferred payments subject to the condition that title to the thing shall not pass until all the instalments have been paid. There may be other variations of a contract of hire purchase depending upon the terms agreed between the parties. When rights in third parties have been created by acts of parties or by operation of law, the question may arise as to what exactly were the rights and obligations of the parties to the original contract.

12. In **K. L. Johar and Co. Vs. CTO AIR 1965 SC 1082**, the Hon'ble Apex Court took the view that a hire purchase agreement has two elements: (1) element of bailment; and (2) element of sale, in the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then had been hired.

13. The agreement executed by the parties in this case also is to the effect that the hirer would not become the owner of the property until he pays the entire instalments. The whole case put forward by the respondent No.2-complainant is to be appreciated in

view of the stringent terms incorporated in the agreement. If the hirer himself has committed default by not paying the instalments and under the agreement the petitioners have taken re-possession of the vehicle, the respondent No.2 cannot have any grievance. He is not permitted to say that the owner of the vehicle has committed theft of the vehicle or criminal breach of trust or cheating or criminal conspiracy as alleged in the complaint.

14. In the instant case, the allegation levelled by the respondent No.2 itself is not substantiated by any material. The C.C.T.V. footage collected by the Investigating Officer falsifies the version of the complainant that his vehicle was stolen by the present petitioners. The hire-purchase agreement in law is an executory contract of sale and confers no right on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the re-possession of goods as per the term of the agreement may not amount to any criminal offence. The agreement specifically gave authority to the appellants to re-possess 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. The report filed by the Investigating Officer shows that the allegation of the complainant that the vehicle was stolen appears to be false reveals during the investigation. It also appears that the informant had noticed the seizing of the aforesaid four wheeler as

one letter given by the informant to K. Finance Company that he will voluntarily hand over the above said four wheeler. Thus, from the fact it appears that the informant had noticed the fact of seizing of the aforesaid four wheeler vehicle and thereafter lodged the false report.

15. Thus, in the light of the above said facts and the statement of various witnesses including the report of the Investigating Officer, there is no material to have substantiation of the allegations against the accused, in view of the circumstances the order passed by the learned Additional Sessions Judge reversing the order passed by the learned Judicial Magistrate First Class is wrong and illegal. The learned Additional Sessions Judge has not considered the fact of hire-purchase agreement and the Investigation and the report which shows that a *prima facie* the allegation levelled by the informant appears to be false. In such circumstances, if the petitioners are compelled to face the trial it would amount to abuse of process of law. In this view of the matter, I proceed to pass following order:

ORDER

(i) The writ petition is allowed.

(ii) The order dated 12.01.2024 passed by the learned Additional Sessions Judge, Bhandara, in Criminal Revision No.42/2020, rejecting the 'B' summary report is hereby quashed and set aside.

(iii) The ‘B’ summary report is accepted.

Rule is made absolute in the above said terms.

(URMILA JOSHI-PHALKE, J.)

Sarkate.