



Judgment

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

CRIMINAL WRIT PETITION No. 657/2024.

M/s. AU Small Finance Bank Limited,
Formerly Known as
M/s. AU Financiers (India) Limited,
having its registered office at 19 A,
Dhuleshwar Garden Ajner Road,
Jaipur 302001 (Rajasthan).

Having its Branch Office at Madhu
Malti Vihar, 1st Floor, Necklace Road,
Ratanlal Plot Square, Akola
(Maharashtra), through its Authorized
Person Mr.Vijay s/o Ramdas Kamble.

...

PETITIONER.

VERSUS

1.State of Maharashtra,
through Officer in charge, Police Station
Rajapeth, Amravati District Amravati.

2.Shri Sunil Shrikrishna Nandhe,
Aged 39 years, Occupation Agriculture,
resident of Pimpri – Thugaon, Tq.
Chandur Bazar, District Amravati.

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3. Shri Ravi Pradiprao Dange,
Aged 25 years, Occupation Business,
resident of Asegaon Purna, Tq. Chandur
Bazar, District Amravati.

.. **RESPONDENTS.**

Mr. A. Tripathi, Advocate h/f. Shri A. Nawab Navi Mohd. Ansari,
Advocate for the Petitioner.

Ms. S.V. Kolhe, A.P.P. for Respondent No.1.
Mr. P.R. Agrawal, Advocate for Respondent No.2.

CORAM : M.M. NERLIKAR, J.

DATE : OCTOBER 17, 2025.

ORAL JUDGMENT :

Heard. Rule. Rule is made returnable forthwith and by consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. This Writ Petition filed under Article 227 of the Constitution of India challenging the common order dated 30.08.2022 passed below Exh.No.1 in Misc. Criminal Application Nos.64/2022 and 73/2022 passed by the Judicial Magistrate First Rgd.

Class, Court No.9 Amravati, and order passed on 06.03.2024 in Criminal Revision No.105/2022 by the Additional Sessions Judge, Amravati, whereby the custody of vehicle i.e. Bolero Pick-up bearing registration No. MH 30 BD 0266, was declined to be released on supratnama by both the Courts below in favour of the present petitioner. The petitioner Bank has filed a complaint alleging offence punishable under Sections 420, 464, 468, 469 read with Section 34 of the Indian Penal Code. Pursuant to the said complaint, an order under Section 156[3] of the Code of Criminal Procedure was passed and the Court directed to register the crime against one Ravi Dange. Accordingly, Rajapeth Police Station registered Crime No.1449/2021. It is alleged by the petitioner that Ravi Dange [respondent no.3] purchased a vehicle and the petitioner Bank has provided finance for the same. Hypothication agreement was executed between them, however, without repayment of the said loan, respondent no.3 by using forged documents sold the said vehicle to respondent no.2. Based on these allegations, an investigation was carried out and the police seized the vehicle from respondent no.2.

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An application bearing No.64/2022 was moved by the respondent no.2 seeking interim custody of the seized vehicle. Another application bearing No.73/2022 was filed by the petitioner herein also seeking interim custody. Both these applications are filed under Section 454 of the Code of Criminal Procedure.

3. Upon hearing the parties, the learned Judicial Magistrate First Class, Court No.9 was pleased to reject the said application of the petitioner- Bank by passing common order below Exh.1 in Misc. Criminal Application Nos.64 and 73 of 2022 on 30.08.2022, and the application filed by the respondent no.2 seeking interim custody was allowed. This order dated 30.08.2022 was challenged by the petitioner by filing Criminal Revision No.105/2022. The said revision was dismissed by the Additional Sessions Judge, Amravati on 06.03.2024. Both these orders are subject matter of challenge in this petition at the instance of petitioner Bank.

4. I have heard the learned Counsel for the parties. Though respondent no.3 is served, he has chosen not to appear. It appears

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from the record that, the petitioner Bank advanced a loan to respondent no.3 for purchase of the vehicle. It further appears that the said vehicle was sold by respondent no.3 to respondent no.2, and the said vehicle was registered in the name of respondent no.2. It is argued by the learned counsel for the petitioner that the transfer of the vehicle was effected on the basis of forged and fabricated documents, and in that regard the petitioner had already lodged the first information report with the police. He further submits that Form no.35 and No Objection Certificate are forged by respondent no.3 and on the basis of these forged documents, transfer has been effected, and till repayment of the loan amount, the Bank is having ownership rights over the said vehicle. My attention is invited to the contents of first information report which is lodged by the Bank against respondent no.3. He further submits that it has become a modus operandi of the hirers, that by preparing forged documents, the vehicles are being sold though they are defaulter. To buttress the submissions, learned Counsel has relied on the judgment of this Court in case of **B.C.L. Financial Services Ltd .vrs. State of Maharashtra and**

others – 1999 (3) Mh.L.J. 173, more particularly paragraph no.13 thereof.

5. On the other hand, the learned Counsel for respondent no.2 submits that the respondent no.2 has purchased the said vehicle for a consideration of Rs.5,53,000/- by borrowing a loan from Mahindra and Mahindra Finance Company Limited. Thereafter, the RTO Amravati has also registered his name on record. He submits that though complaint was filed against respondent nos.2 and 3, the Magistrate directed the police to register offence only against the respondent no.3 and no case was made out against the respondent no.2. He therefore, submits that the vehicle was seized from respondent no.2 and therefore, the transaction cannot be said to be illegal, as the respondent no.2 is the bonafide purchaser who has paid the consideration amount. He further submits that the entire family of respondent no.2 is dependent upon the income derived from the said vehicle, and that the respondent no.2 is the only bread earner of the family. It is submitted that after examination and verification of documents, the RTO Amravati has issued registration certificate in

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the name of the respondent no.2. Not only that, the respondent no.2 has paid 20 installments against the loan borrowed from Mahindra and Mahindra Finance Company Ltd. for the purchase of the said vehicle. In these facts, it is the submission of the learned Counsel for respondent no.2 that if custody of the vehicle is not ordered in his favour, he will suffer an irreparable loss and prayed for dismissal of the petition. He relied on the judgment of Supreme Court in case of **Vaibhav Jain .vrs. Hindustan Motors Pvt. Ltd. - [2024] 9 SCR 16**, more particularly paragraph no.14, wherein while interpreting Section 2[30] of the Motor Vehicles Act, it is held that 'owner' of a vehicle is not limited to categories specified under Section 2[30] of the Motor Vehicles Act. By laying hands on the observations recorded in para no.19, he submits that the possession or control of a vehicle plays a vital role.

6. After going through the impugned order and material placed on record, and the judgments on which reliance has been placed by the learned Counsel for the parties, it appears that it is not in dispute that at the instance of Bank, police has registered an offence

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for forgery and allied offences. It is also not in dispute that the vehicle was seized from respondent no.2. It is also not in dispute that the registration certificate was issued in the name of respondent no.2. Similarly, it is also not disputed that respondent no.2 has availed a loan from the Mahindra and Mahindra Finance Company Ltd., for the purchase of the said vehicle and 20 installments have been paid. It also appears from the record, that the transfer of the said vehicle was effected on the basis of Form No.35 and No Objection Certificate. The said No Objection Certificate was issued by the Bank, and it has been mentioned therein that the Bank has no objection to remove 'HPN'.

7. In the matter of B.C.L. Financial (supra), this Court in paragraph no.13 has held as under :

“13. The law laid down by the Apex Court in the case of M/s.Damodar Valley Corporation .vrs. State of Bihar, reported in AIR 1961 SC 440 in my opinion is applicable in the instant case. In para 8 of the above referred judgment, it has been observed by the Apex Court :

8. It is well settled 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 century or more and has introduced a number of variations, thus, leading the categories and it becomes a question of some nicety as to which category a particular contract between the parties come under. Ordinarily a contract of hire-purchase confers no title on the hirer, but a mere option to purchase on fulfilment of certain conditions.

On the basis of the above referred ratio laid down by the Apex Court, the Division Bench of Karnataka High Court in M/s. Shriram Transport Finance Co.Ltd. .vrs. Shri R. Khaishiulla Khan and others (Judgment reported in 1993 Cri.L.J. 1069), has held thus :

“The solemn agreement entered into by the parties under which rights and obligations are created cannot be brushed aside simply because section 2[30] of the Act widens the meaning of the word “owner” to include the person in possession of the vehicle under the Hire-purchase agreement. If the hirer in possession of the vehicle has agreed that the financier or the owner would be at liberty to seize the vehicle whenever defaults are committed by him it becomes the obligation of the hirer to honour his commitment and pay the instalments

as stipulated without committing any defaults. Having come in actual possession of the vehicle in pursuance of such agreement and the financier reposes confidence in him and entrust the vehicle to his possession to run it and make earnings and the hirer taking advantage of the position in which he is placed by virtue of the agreement makes out a case of financier committing theft when he seizes the vehicle under the hire-purchase agreement in fact commits betrayal of the trust reposed in him by the financier on the real owner. It has become a modus operandi of the hirers, as we come across such instances frequently, to commit defaults either wilfully or otherwise, scuttle the rights of the financier to seize the vehicle under the agreement by filing complaints of theft, take possession of the vehicle through court relying on registration certificates and drive the financiers or absolute owners to Civil courts to recover the money advanced to the hirers. Such a course of open breach of solemn agreements cannot be encouraged by Courts, but the Courts on the contrary, should give effect to such agreements voluntarily entered into. In our view, therefore, the learned Magistrate in the case giving rise to Criminal Petition No.110/92 was wrong in entrusting custody of the vehicle to the hirer-respondent.”

8. In Vaibhav Jain (supra), the Hon’ble Supreme Court in

paragraph nos.14 and 19 has held as under :

“14. In Godavari Finance Company v. Degala Satyanarayanaamma & Ors. a question arose whether a financier would be an owner of a motor vehicle within the meaning of Section 2(30) of the M. V. Act, 1988. In that case, the accident took place on 29.5.1995 and, admittedly, the vehicle was not in control of the financier though its name was entered in the registration book of the vehicle. The extract of the registration book, however, revealed that the vehicle was registered in the name of fourth respondent therein (i.e., not the financier) and that the hirepurchase agreement with the financier had also been cancelled on 10.11.1995. In that context, while holding that financier was not liable, interpreting the definition of ‘owner’, as provided in Section 2(30), this Court observed:

“12. Section 2 of the Act provides for interpretation of various terms enumerated therein. It starts with the phrase unless the context otherwise requires. The definition of owner is a comprehensive one. The interpretation clause itself states that the vehicle which is the subject matter of hire purchase agreement, the person in possession of the vehicle under that agreement shall be the owner. Thus, the name of financier in the registration certificate would not be decisive for determination as to who was the owner of the vehicle. We are not unmindful of the fact that ordinarily the person in whose name

the registration certificate stands should be presumed to be the owner, but such a presumption can be drawn only in the absence of any other material brought on record or unless the context otherwise requires.

13. In case of a motor vehicle which is subjected to a hire purchase agreement, the financier cannot ordinarily be treated to be the owner. The person who is in possession of the vehicle, and not the financier being the owner would be liable to pay damages for the motor accident.

15. An application for payment of compensation is filed before the Tribunal constituted under Section 165 of the Act for adjudicating upon the claim for compensation in respect of accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Use of the motor vehicle is a sine qua non for entertaining a claim for compensation. Ordinarily if driver of the vehicle would use the same, he remains in possession or control thereof. Owner of the vehicle, although may not have anything to do with the use of vehicle at the time of the accident, actually he may be held to be constructively liable as the employer of the driver. What is, therefore, essential for passing an award is to find out the liabilities of the persons who are involved in the use of the vehicle or the persons who

are vicariously liable. The insurance company becomes a necessary party to such claims as in the event the owner of vehicle found to be liable, it would have to reimburse the owner in as much as a vehicle is compulsorily insurable so far as the third party is concerned, as contemplated under section 147 thereof. Therefore, there cannot be any doubt whatsoever that the possession or control of a vehicle plays a vital role.”

“19. What is clear from the decisions noticed above, is that ‘owner’ of a vehicle is not limited to the categories specified in Section 2(30) of the M.V. Act. If the context so requires, even a person at whose command or control the vehicle is, could be treated as its owner for the purposes of fixing tortious liability for payment of compensation. In this light, we shall now examine whether at the time of accident the vehicle in question was under the command and control of the appellant (i.e., the dealer).”

9. From the above undisputed facts, it is clear that the petitioner has lodged First Information Report against respondent no.3. The allegations in the said First Information Report are in respect of forgery of the documents by which the transfer of the vehicle was effected. However, at this stage of deciding interim

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custody, forgery of those documents cannot be discussed. For deciding interim custody, firstly it is necessary to see whether the respondent no.2 is the owner and secondly, whether the seizure of the vehicle is from the possession of respondent no.2. These are two important conditions which needs consideration.

10. When facts of this case are considered, the ration laid down by the Supreme Court in case of Vaibhav Jain (supra) would be applicable, as both factors are in favour of respondent no.2. Therefore, after perusal of both the impugned orders, it is found that necessary care was taken by the Magistrate by imposing certain terms and conditions, which takes care of interest of both the parties. It is to be further noted that if the interim custody is not handed over to the respondent no.2, an irreparable loss would be caused to him, and not only that, it would be difficult for him to repay the loan to the finance company. Therefore, considering the above facts and circumstances of the case, I find that both the Courts below have rightly held that the respondent no.2 would be entitled for an interim custody, and in my

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opinion it is not necessary to disturb the said concurrent findings recorded by both the Courts below. Writ Petition therefore, fails and is dismissed. Rule discharged.

JUDGE