

**(2012) 03 GAU CK 0040**

**Gauhati High Court**

**Case No:** Criminal Petition No. 135 of 2008

Sri Balkrishna Tripathi and  
others

APPELLANT

Vs

State of Assam and others

RESPONDENT

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**Date of Decision:** March 2, 2012

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 120B, 323, 34, 379, 387

**Citation:** (2012) 2 GLD 443

**Hon'ble Judges:** Iqbal Ahmed Ansari, J

**Bench:** Single Bench

**Advocate:** P. Bora, for the Appellant; K. Munir, Addl. PP, for the Respondent

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### **Judgement**

I.A. Ansari, J.

With the help of this application, made u/s 482, Cr PC, the petitioners have sought for quashing of the First Information Report (in short, "FIR")/ which came to be registered as Jorhat Police Station Case No. 177 of 2008, under Sections 406/420/120B/387, IPC, corresponding to GR Case No. 410/2008. Heard Mr. P. Bora, learned counsel for the petitioners, and Mr. K. Munir, learned Additional Public Prosecutor, Assam. None has appeared on behalf of the opposite party No. 2, who is the informant.

2. The case of the informant may, in brief, be described thus:

The informant purchased a Bus bearing Registration No. AS-04-E- 2400 with the help of finance made available, under a hire- purchase agreement, by M/s. Ashok Leyland, which is presently known as Indusland Bank, total amount of loan being Rs. 15,90,000/-. The complainant has been paying installments regularly and has paid, till 29.02.2008, as much as Rs. 13,00,000/- but of the principal amount of Rs. 15,90,000/-. On 20.03.2008, when the said vehicle, with passengers, on board, was

returning from Guwahati to. Jorhat, accused No. 1, namely, Dipankar Talukdar, Branch Manager, Indusland Bank Ltd., J.B. Road, Jorhat, accused No. 3, namely, Paresh Das, Manager, P.B. Enterprise, Sibsagar, and accused No. 4, namely, Manager, Hazarika Motors, Sibsagar, entered into, the Bus as passengers at A.T. Road, Jorhat, the accused persons threatened the driver and handyman of the vehicle to, stop the vehicle, but when the driver and handyman refused to, stop the vehicle, the accused persons stated that as installments had not been paid by the complainant, they had the authority to repossess the vehicle. Though the driver of the Bus requested the accused persons not to re-possess the Bus by stating that since the Bus was on the way to, Nazira, the re-possessed and re-possession, if required, be had at Jorhat, the accused asked the driver to take the vehicle to. Sibsagar or else, he (driver) would face dire consequences. Out of fear, the driver followed the directions of the accused persons and when the vehicle reached near Kenduguri, accused No. 1, namely, Dipankar Talukdar, (who is petitioner No. 2 herein) went out of the Bus. Accused No. 3, namely, Paresh Das, then, asked the passengers to come down from the Bus. The passengers, out of fear, came down from the Bus at Sibsagar. The accused persons, thereafter, issued an inventory list, as regards re- possession of the vehicle, to the handyman of the vehicle, wherein it was stated that P.B. Enterprise, Sibsagar, had re- possessed the vehicle for, and on behalf of, Indusland Bank, Jorhat, The accused No. 3, namely, Paresh Das, and some other SULFA persons assaulted the handyman of the vehicle and took away Rs. 3,000/- from him, which was in the form of daily collection of the bus. Accused No. 3, under the directions of accused Nos. 1 and 2, took away the driving licence of the driver of the vehicle and, out of fear, the driver and handyman fled away from the place of occurrence.

3. It has been submitted, on behalf of the accused-petitioners, that the vehicle, in question, was, admittedly, obtained by the informant on the basis of a hire-purchase agreement and though he claims to have paid Rs. 13,00,000/- towards liquidating his loan, a bare reading of the complaint itself would reveal that he had not cleared his dues and that is why, the vehicle was required to be re-possessed. It is also submitted, on behalf of the accused- petitioners, that the informant, in the present case, defaulted in making re-payment of the dues and the vehicle had to be re-possessed and was, therefore, re-possessed. It is further submitted, on behalf of the accused-petitioners, that the act of repossession of the vehicle, in the facts and attending circumstances of the present case, did not constitute any offence under Sections 406/420/ 120B/387, IPC and, hence, registration of the case, under the said penal provisions, is wholly illegal and impermissible in law and the FIR may, therefore, be set aside and quashed.

4. Considering the fact that the hire purchase agreement, in question, admittedly, provides for re-possession of vehicle by the financier on default in making payment of the installments by the loanee, i.e., the complainant, the re-possession of the vehicle, in the facts and attending circumstances of the present case, cannot, at this

stage, be described as an offence of theft. However, in Para 8 of the FIR, the informant has clearly alleged that Paresh Das and other SULFA persons badly assaulted the handyman of the vehicle and took away a sum of Rs. 3,000/- from him, which was the daily collection of the vehicle. It is further alleged in the complaint that accused No. 3, namely, Paresh Das, on the direction of accused Nos. 1 and 2, namely, Dipankar Talukdar (who is petitioner No. 2 herein), Bal Krishna Tripathi, (who is petitioner No. 1 herein) respectively, took away the driving licence of the driver of the vehicle and, out of fear, driver and handyman of the vehicle fled away from the place of occurrence. In other words, what the complainant has alleged is that the driving licence from his driver has been taken away by the accused No. 3, namely, Paresh Das, at the instruction of accused No. 1, namely, Dipankar Talukdar (who is petitioner No. 2 herein).

5. From what have been reproduced above, it becomes clear that the handyman of the vehicle was allegedly assaulted by the accused No. 3, namely, Paresh Das, and his associates and they also took away Rs. 3,000/- from the handyman, the said sum of Rs. 3,000/- being the daily collection of the vehicle. While the act of re-possession simpliciter does not amount to theft, the fact remains that if, in the process of re-possession, a person commits any offence, he would remain liable for prosecution. Whether the allegations, made in the FIR, are true or not, is a question, which can be answered by investigation and not in this quashing proceeding, for, in the quashing proceeding, this Court has to proceed on the assumption that the allegations, made in the FIR, are true and correct. If so assumed, it becomes clear that the FIR does not make out a case of commission of theft against the accused-petitioners.

6. What is, now, extremely important to note is that the informant alleges that the accused No. 3, namely, Paresh Das, took away the driving licence of the driver and this act of taking away of the licence was, according to the complainant, under the direction of the accused Nos. 1 and 2, namely, Dipankar Talukdar and B.K. Triparthi. In effect, what these allegations convey is that it is under the direction of accused Nos. 1 and 2, namely, Dipankar Talukdar and B.K. Triparthi (who are petitioner Nos. 2 and I herein) that the accused No. 3, namely, Paresh Das, took away the driving licence of the driver. The act of taking away of the driving licence, in the facts and attending circumstances of the present case, make out an offence of theft having been committed as per direction of the accused Nos. 1 and 2. Thus, the case of theft, u/s 379 read with Section 34, IPC, is made out against the present petitioners too. Whether the allegation of theft, having been committed by the present petitioners, are or are not true will be a question, which can be decided, if by investigation or at the trial and not in the present proceeding for quashing.

7. What is, however, of utmost important to note is that the case has been registered on the basis of the FIR under Sections 406/420/120B/387, IPC; whereas in the FIR, there is no allegations even remotely touching the ingredients of the said

penal provisions. The registration of the case, therefore, u/s 406/420/120B/ 387, IPC, is misconceived and untenable in law. In fact, the case ought to have been registered under Sections 379/323/34, IPC inasmuch as no case has been made out by the complainant as regards commission of robbery, for, it is not alleged that the assault by the accused on the driver was for the purpose of taking away the driving license. If, however, the investigation reveals that the assault on the driver was for the purpose of taking away the driving license, the police shall remain at liberty to register a case, u/s 392, IPC, and do the needful in accordance with law. At any rate, when the FIR discloses commission of cognizable offence of theft, the FIR cannot be quashed. It, however, remains completely open for the police to investigate and determine if the allegations, which have been made by the informant that the driving licence of the vehicle had been taken away by the accused No. 3 under the direction of accused Nos. 1 and 2, are true or not. Even if the driving licence is found to have been taken away by the accused Paresh Das, the present accused-petitioners would not be liable unless there is material to show that the driving licence was taken away by accused No. 3 on the directions/instructions of the present accused-petitioners.

8. In the result and for the reasons discussed above, while the FIR is not quashed, the police is directed to register a case under Sections 379/323/34, IPC, investigate the case expeditiously and do the needful in accordance with law. If, however, the investigation, at any subsequent stage, reveals that the assault on the driver was, as indicated above, for the purpose of taking way the driving licence, the police shall remain at liberty to add Section 392, IPC and do the needful in accordance with law. While conducting the investigation, the police shall determine if the allegation, that the act of taking away of the driving licence from the driver by the accused No. 3 was under the direction of the accused Nos. 1 and 2 is or is not true, provided that the allegation of taking away of the driving licence from the driver by the accused No. 3 is, otherwise, found by the police to be true. With the above observations and directions, this criminal petition shall stand disposed of.