

(1997) 12 KL CK 0037

High Court Of Kerala

Case No: Criminal M.C. No. 1344 of 1996

Ashok Kumar Kothari

APPELLANT

Vs

Balaraman and Another

RESPONDENT

Date of Decision: Dec. 9, 1997**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156, 482
- Penal Code, 1860 (IPC) - Section 395

Citation: (1998) 1 KLJ 159**Hon'ble Judges:** B.N. Patnaik, J**Bench:** Single Bench**Advocate:** Sunny Mathew, for the Appellant; P.V. Kunhikrishnan and Public Prosecutor (P.N. Sukumaran), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B.N. Patnaik, J.

This is a petition filed u/s 482 of the Code of Criminal Procedure for quashing the F.I.R. in Crime No. 42/96 of Mukkom Police Station. The petitioner is the proprietor of M/s. Kothari Investment, Madras. The firm is engaged in the business of financing the intending purchasers of motor vehicles. The firm advanced certain amounts to one Chandran to purchase the vehicle KLZ 8145 on a hire purchase agreement. The petitioner also advanced a loan to one Balakrishnan to purchase vehicle No. KRD 2799 on hire purchase agreement. Sri. Balakrishnan stood as surety for the loan amount taken by Chandran. One of the conditions of the hire purchase agreement with Balakrishnan is that in case of default in payment of instalment dues by Chandran his vehicle (KLZ 8145) can also be seized. While the hire purchase agreement was in force, Chandran sold the vehicle to one Raghupathi. Raghupathi in turn sold the vehicle to the complainant in the said crime case, who is the first respondent herein. It is admitted in the complaint petition that a sum of Rs. 4,500/-

was still due to the petitioner in terms of the hire purchase agreement in respect of vehicle No. KLZ 8145. It is alleged by the first respondent that he had sent the vehicle to the workshop for some repairs. While the vehicle was being kept in the premises of the workshop, namely, Vanamali Body Builders, Mukkom, the petitioner along with 7 others forcibly took away the vehicle without heeding to the protest of the workers employed in the workshop. It is further stated in the F.I.R. that the first respondent came to know that the vehicle was seized on account of fact that the owner of the vehicle K.R.D. 2799, namely, Balakrishnan had committed default in payment of the instalment dues to the petitioner. The first respondent requested the petitioner and others to return the vehicle but it was not done. Hence a complaint petition was filed in the court of the Judicial First Class Magistrate, Thamarassery-I alleging an offence u/s 395 I.P.C. against the petitioner and others. It was sent to the police u/s 156 CrI.P.C. for investigation. Accordingly, the police registered the crime case.

2. Learned counsel for the petitioner has contended that no prima facie case has been made out u/s 395 I.P.C. against the petitioner. The petitioner re-possessed the vehicle in terms of the conditions of the hire purchase agreement.

3. Learned counsel for the first respondent has contended that the matter is still under investigation and since the first respondent is not a party to the agreement between the petitioner and Chandran, he is not bound by the terms and conditions of the hire purchase agreement. Further, it is contended that the provisions of section 482 CrI.P.C. cannot be invoked inasmuch as the allegations in the complaint petition show that the petitioner is guilty of the crime u/s 395 I.P.C.

4. The only point for consideration is whether this is a fit case in which the criminal proceedings deserve to be quashed.

5. There is no dispute that the vehicle in question was purchased by Chandran on getting a loan from the petitioner under a hire purchase agreement. A copy of the hire purchase agreement has been produced. As usual, one of the conditions laid down therein is that the petitioner shall be at liberty to re-possess the vehicle in the event of any default in payment of any instalment dues. It has been clearly stated in the F.I.R. that some instalment dues were outstanding against Sri. Chandran when he sold the vehicle to Raghupathi. It is also pointed out in the F.I.R. that at least one instalment amount was due to be paid to the petitioner when the vehicle was re-possessed by him. In view of these undisputed facts, it cannot be said that any crime has been committed by the petitioner. The Supreme Court as well as this Court had occasion to consider such questions. In [Sardar Trilok Singh and Others Vs. Satya Deo Tripathi](#), the Supreme Court held that when a financier under a hire purchase scheme seizes the vehicle on default in payment of instalment, no criminal prosecution can be launched by the buyer. It is essentially a dispute of civil nature. Launching of criminal prosecution is an abuse of process of the court under such circumstances and the High Court should quash the proceeding u/s 482 CrI.P.C. to

prevent the abuse of process of the court. The facts of the S.C. case are similar to this case. The dictum laid down therein is squarely applicable to this case also.

In *Bharudan Dugar v. S.I. of Police* (1986 KLT 430), this Court observed as follows:

There is no specific statute governing the rights and liabilities of parties to a transaction of hire purchase. The law allows the parties to have their own agreement in respect of various incidents of the hire purchase agreement. Parties are at liberty to provide in their agreement for particular situations and can prescribe the procedure which are to be adopted by them. Such provisions in the agreement if they do not contravene the provisions of the Indian Contract Act are lawful. It is seen that the petitioners, in pursuance of the terms contained in Ext.P1 agreement terminated the contract of hire purchase and repossessed the vehicle as the owners of the vehicle. Then it cannot be said that the petitioners dishonestly moved the vehicle. Further once the hire purchase agreement was terminated the hirer was not legally entitled to be in possession of the vehicle and the petitioners as owners were entitled to possess the same. Agreement allows the owners to repossess the vehicle from any other person using or possessing the same. An irrevocable licence has been granted to the owners to repossess it. Such a licence tantamounts to the hirer's consent to the owner to repossess the vehicle. Therefore the taking of the vehicle in pursuance to that provision of the agreement cannot amount to taking without consent which is an ingredient of the offence of theft.

In view of the clear position of law as laid down by the Supreme Court and this Court, launching of criminal proceeding against the petitioner tantamounts to abuse of process of court. Hence, the said criminal proceeding deserves to be quashed.

The Crl. M.C. is allowed. The proceeding in Crime No. 42/96 of Mukkom Police Station against the petitioner is quashed.