

(2014) 08 CAL CK 0106

Calcutta High Court

Case No: W.P. No. 19292 (W) of 2012

Asim Bhattacharya

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Aug. 13, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3)
- Motor Vehicles Act, 1988 - Section 197
- Penal Code, 1860 (IPC) - Section 120B, 323, 387, 397, 406
- Police Act, 1861 - Section 23

Hon'ble Judges: Asim Kumar Roy, J**Bench:** Single Bench**Advocate:** Amitava Ghosh, Advocate for the Appellant; Aurobindo Chatterjee, Supriyo Chattopadhyaya, Ranjana Guha, Billawdal Bhattacharyya, Dolon Dasgupta and Snehashis Sen, Advocate for the Respondent**Final Decision:** Dismissed

Judgement

Ashim Kumar Roy, J.

Alleging police inaction, this writ application has been brought before this court. It is the case of the writ petitioner that he obtained an auto loan from the HDFC Bank under an agreement and by utilizing the loan amount purchased a second hand Toyota Qualis vehicle. It is his further case that after purchase due to some unforeseen circumstances the petitioner could not pay back the monthly installments. When the respondent nos. 5 and 6 forcibly re-possessed the said vehicle without taking recourse to law. He further submitted the incident was immediately reported to the local police station as police took no action, he made a complaint to the Learned Chief Judicial Magistrate, Alipore against the private respondent no. 6 and other unknown persons for commission of offences punishable under Sections 120B/387/323/406/506 IPC, whereupon the Learned Magistrate forwarded the same to the Officer-in-Charge of the Alipore Police Station

invoking his power u/s 156(3) Cr.P.C. and directed him to treat the same as FIR and to investigate the matter. He further submitted besides the offences punishable under the Indian Penal Code, the offence punishable u/s 197 of the Motor Vehicles Act, was also committed. Then he vehemently contended in terms of Section 23 of the Police Act, 1861, the police is obliged to carry out all lawful orders passed by any competent court, still in this case neither any FIR was registered nor any investigation was started. He further submitted according to the provision of Police Act, the Officer-in-Charge of Alipore Police Station ought to have registered the FIR for the offences committed by the private respondents, as referred in his petition of complaint and also under the provision of Motor Vehicles Act and then to take steps for recovery of the vehicle. Now, it is submitted the police be directed to at once register an FIR against the accused persons and take steps for recovery of the vehicles.

2. In this connection, the learned counsel of the petitioner relied on a decision of a Division Bench of this court in the case of Bhanu Pratap Singh vs. State of West Bengal & Ors. reported in 2007(3) CHN 975.

3. On the other hand, the learned Counsel appearing on behalf of the private respondents submitted that there cannot be any offences punishable either under the Indian Penal Code or under the Motor Vehicles Act on the allegations made in the complaint. He further submitted there was a default clause in the auto loan agreement which entitled the private respondents, the financier, to re-possess the vehicle and in the present case even the first installment was not paid. He further submitted even after disposal of the vehicle after its re-possession, since re-sale value of the vehicle did not cover the loan amount, the bank moved the Arbitrator and an award has been passed in its favour.

4. The learned Counsel for the State vehemently refuted the allegation of police inaction and submitted that upon receipt of the order from the court concerned, the police at once registered the FIR being Alipore P.S. Case No. 259/12 under Sections 120B/397/323/406/506 IPC and undertook the investigation and already investigation is over and as it was found the dispute was absolutely civil in nature, the police has submitted final report seeking discharge of the accused persons from the case.

5. In this case, since a question arose whether beside the offences punishable under the Indian Penal Code any offence under the Motor Vehicles Act, has been committed or not and as to whether still the petitioner has a right to lodge the complaint to the court for commission of offence punishable u/s 197 of the Motor Vehicles Act, this court requested Mr. Aurobindo Chatterjee, Senior Advocate to assist this court on this score.

6. Mr. Chatterjee submitted that vehicle in question was purchased under a hire purchase scheme and unless the entire financial assistance, the hirer obtained from

the bank is liquidated, he has no claim over the same as absolute owner and as such no offence punishable u/s 197 of the Motor Vehicles Act, can said to be committed by the Financier, who still remains to be the owner thereof. He further added that according to the settled position of law when the vehicle is re-possessed by the Financier invoking default clause, no offence punishable under the Indian Penal Code is committed.

7. Heard the learned Counsel appearing on behalf of the parties as also Mr. Chatterjee. Considered their respective submissions and the ruling cited from the side of the writ petitioner.

8. Having regard to the facts that already police pursuant to the order passed by the Learned Chief Judicial Magistrate, Alipore registered the FIR, undertook investigation and investigation is completed and report in final form has been filed, no case of police inaction can said to be made out.

9. Now, coming to the other questions in the light of the ratio of the decision of the Hon"ble Supreme Court in the case of K. Mathai @ Babu & Anr. vs. Kora Bibi Kutty & Anr. reported in (1996) 7 SCC 212 and in the case of Trilok Singh & Ors. vs. Satya Deo Tripathi, reported in 1997 SC 850, no case of theft or criminal breach of trust can said to be made out or any other offences punishable under the Indian Penal Code, when the Financier repossessed the vehicle on the failure of the borrower in making payment of installments by invoking the default clause. In the case of Manipal Finance Corporation Ltd. vs. T. Bangarappa & Anr. reported in 1994 SCC Cri. 588, it was also held when the borrower committed default in payment of purchase price, i.e. the monthly installments, the Company giving financial facilities for purchasing the vehicle under an agreement, if repossessed the vehicle invoking the default clause, no criminal offence is committed and the order of returning the vehicle to the default borrower is not sustainable. Therefore, the question of restoring the vehicle to the possession of the writ petitioner, as prayed for, does not at all arise.

10. On the face of the aforesaid two decisions of the Hon"ble Supreme Court, the ruling cited from the side of the writ petitioner is of no help to him.

11. This writ application has no merit and accordingly stands dismissed.

12. Office is directed to supply urgent photostat certified copy of this order to the parties, if applied for, as early as possible.