

**THE HIGH COURT OF MADHYA PRADESH    1**  
**MCRC 36279 of 2020**  
**Jitendra Singh Dhillon vs. State of MP & Anr.**

**Gwalior, Dated :01/10/2020**

Shri Sameer Kumar Shrivastava, counsel for the applicant.

Shri Abhishek Sharma, Panel Lawyer for the respondent No.1/  
State.

Heard finally through Video Conferencing.

This application under Section 482 of CrPC has been filed against the order dated 06/03/2020 passed by Second Additional Sessions Judge, Mungawali, District Ashok Nagar in Criminal Revision No.35/2019 arising out of order dated 05/09/2017 passed by JMFC, Mungawali, District Ashok Nagar in Criminal Case No.349/ 2017 by which charges (Substance of accusation) under Sections 294, 341, 323 r/w Section 34 of IPC have been framed.

The necessary facts for disposal of present application in short are that the applicant claims to be an employee of Cholamandalam Finance Company Limitedr. The complainant Jameel Khan got an auto-rickshaw financed from the Company and when the complainant committed default and did not deposit the installments, then the vehicle was seized by the authorized agency of the Company. Accordingly, the complainant lodged a report against the applicant and other accused persons. The police after completing the investigation, filed the charge sheet and the Trial Court by order dated 5-9-2017, framed charges under Sections 294, 341, 323 r/w Section 34 of IPC.

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Being aggrieved by the order of the Trial Court, the applicant filed a revision, which too has been dismissed by the impugned order dated 06/03/2020.

It is the case of the applicant that the applicant has no role to play in the seizure of the vehicle. The complainant had also filed a complaint before the Consumer Forum, Ashok Nagar in which a compromise was arrived at between the parties and it was decided that the complainant would deposit an amount of Rs.40,000/- out of the outstanding amount of more than Rs.50,000/-, however, the complainant has not respected the compromise order passed by the Consumer Forum.

It is submitted by the counsel for the applicant that the complainant lodged a FIR on 04/03/2017 on the allegation that on 03/03/2017 at about 04:30 pm when he was coming on his auto-rickshaw No. MP-67-R0680, he was stopped by a white- coloured Travera Four Wheeler and Santosh Raghuvanshi, Jaspal Singh, applicant and one more person deboarded from the Travera Vehicle and on the pretext that the complainant has not deposited the installments, started abusing him. The co-accused Jaspal Singh twisted his hand and these persons took away the auto-rickshaw and an amount of Rs.1500/- which was kept in his pocket, had fallen down. It is submitted that before seizure of the vehicle due notice was given to the complainant as

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well as to the concerning Police Station. It is submitted by the counsel for the applicant that since the financier is the owner of the vehicle till all the installments are repaid, therefore, the financier is well within its rights to take the possession of the vehicle back. To buttress his contention, the counsel for the applicant has relied upon the judgment passed by the Supreme Court in the case of **Charanjit Singh Chadha and Others vs. Sudhir Mehra**, reported in (2001)7 SCC 417 and the judgment passed by this Court in the case of **Santosh Gaharwar vs. State and Others**, reported in 2012(4) MPHT 208.

Heard the learned counsel for the applicant.

So far as the contention of the applicant that he has no role to play in the seizure of the vehicle is concerned, it is suffice to mention here that he has been specifically named in the FIR. It is specifically mentioned that the applicant was also sitting in the Travera Vehicle and deboarded from the same and forcibly seized the vehicle. The applicant has filed a copy of the intimation dated 03/03/2017 which was given to the Inspector of Police Station, Ashok Nagar, thereby informing that the auto-rickshaw shall be seized from the complainant. The applicant has also filed a paper payment requisition in favour of Sekhon Enterprises for seizure of auto-rickshaw from the complainant and a receipt dated 03/03/2017 issued by the Sekhon Enterprises for seizure of the vehicle has also been placed on record. The seizure report as well as the

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inventory of the vehicle have also been placed on record. The applicant has also filed an authorization letter issued by Cholamandalam Finance Company Limited in favour of Sekhon Enterprises, thereby authorizing it to seize the vehicle on behalf of the financier. The applicant has also filed a copy of pre sale letters issued to the customer on 03/03/2017 & 09/03/2018. The compromise order dated 01/12/2019 passed by the Consumer Forum has also been placed on record. The applicant has also filed certain notices which were issued to the complainant after the compromise order was passed by the Consumer Forum.

From the orders which have been placed on record, it is clear that before seizure of the vehicle, no notice was given to the complainant. It is also clear that the seizure was effected by the recovery agent and not by the Bank as per the guidelines issued by the RBI.

The Supreme Court in the case **Charanjit Singh Chadha (Supra)** has held as under :

6. Though in India, Parliament has passed the Hire Purchase Act, 1972, the same has not been notified in the Official Gazette by the Central Government so far. An initial notification was issued and the same was withdrawn later. The rules relating to hire-purchase agreements are delineated by the decisions of higher courts. There are a series of decisions of this Court explaining the nature of the hire-purchase agreement and mostly these decisions were rendered when the question arose whether there was a sale so as to attract payment of tax under the Sales Tax Act.

7. In *Damodar Valley Corpn. v. State of Bihar*<sup>1</sup> this Court took the view that a mere contract of hiring,

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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.

The Supreme Court in the case of **Anup Sarmah v. Bhola Nath**

**Sharma** reported in **(2013) 1 SCC 400** has held as under :

7. In view of the above, the law can be summarised that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is repossessing the goods owned by him.

The Supreme Court in the case of **Citicorp Maruti Finance Ltd.**

**v. S. Vijayalaxmi**, reported in **(2012) 1 SCC** has held as under :

27. Till such time as the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods, but that does not entitle him on the strength of the agreement to take back possession of the vehicle by use of force. The guidelines which had been laid down by Reserve Bank of India as well as the appellat Bank itself, in fact, support and make a virtue

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of such conduct. If any action is taken for recovery in violation of such guidelines or the principles as laid down by this Court, such an action cannot but be struck down.

The Supreme Court in the case of **ICICI Bank Ltd. v. Prakash**

**Kaur** reported in **(2007) 2 SCC 711** has held as under :

**28.** In conclusion, we say that we are governed by the rule of law in the country. The recovery of loans or seizure of vehicles could be done only through legal means. The banks cannot employ goondas to take possession by force.

The Supreme Court in the case of **M/s Magma Fincorp Ltd. Vs.**

**Rajesh Kumar Tiwari** by order passed **today (1-10-2020)** in **C.A.**

**No. 5622 of 2019** has held as under :

87. The question raised by the Financier in this appeal, that is, whether the Financier is the real owner of the vehicle, which is the subject of a Hire Purchase Agreement, has to be answered in the affirmative in view of the law enunciated by this Court in **Haranjit Singh Chadha (supra)**, **K.L. Johar & Co. (supra)** and **Anup Sarmah (supra)**. The Financier being the owner of the vehicle which is the subject of a Hire Purchase Agreement, there can be no impediment to the Financier taking possession of the vehicle when the hirer does not make payment of instalments/hire charges in terms of the Hire Purchase Agreement. However, such repossession cannot be taken by recourse to physical violence, assault and/or criminal intimidation. Nor can such possession be taken by engaging gangsters, goons and musclemen as so called Recovery Agents.

(Underline supplied)

From the above mentioned judgments, it is clear that although the Financier continues to remain the owner of the vehicle and is

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entitled to take back the possession (if it is provided in the Hire-purchase Agreement) but cannot take recourse to physical violence by engaging gangsters, goons and musclemen as so called Recovery Agent.

In the present case, the applicant has not filed a copy of the Hire Purchase Agreement. Although in the application, the applicant has claimed himself to be a Branch Manager of the Financer Company, but no document has been filed. Further, it is the case of the applicant, that when the borrower committed default in making payment of installments, then a notice was given to him, prior to seizure of vehicle. In support of this contention, the applicant has filed copies of two notices as **Annexure P/5** which are dated 9-3-2017 and 9-3-2018. It is not out of place to mention here that both these notices are **Pre Sale Letter** which were issued to the Customer subsequent to the seizure of vehicle. The relevant portion of the above mentioned notices read as under :

We find from our recods that inspite of the final notices and repeated follow ups, you had failed to pay the outstanding amount and your account was still in arrears wherein you have not taken any effort to regularize the same till date. IN view of the neglect and omission from your end, **we were constrained to take peaceful possession of the assesst..... bearing registration no. MP 67 R 0680.**

No document has been placed on record to suggest that any

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notice prior to seizure of vehicle was given to the complainant. The only document in this regard, which has been filed is the intimation given to the police department on 3-3-2017 and the vehicle was re-possessed on the same day. Thus, it is clear that the re-possession of the autorickshaw was taken without giving any prior notice to the complainant.

Further, it is clear that the re-possession of the vehicle was taken by using muscle power by hiring a recovery agent, which has already been deprecated by the Supreme Court in the case of **S. Vijayalaxmi (Supra), Prakash Kaur (Supra) and Rajesh Kumar Tiwari (Supra)**.

Thus, it is clear that the re-possession of the autorickshaw was taken not only through a recovery agent by using physical violence, but no prior notice was also given to the complainant and therefore, the financier has acted contrary to the guidelines issued by the RBI as well as against the judgments passed by the Supreme Court.

Accordingly, this Court is of the considered opinion, that the J.M.F.C., Mungaoli, Distt. Ashoknagar didnot commit any mistake by framing charge under Sections 294,341,323/24 of I.P.C., by order dated 5-9-2017 passed in criminal case No. 349 of 2017 as well as 2<sup>nd</sup> Additional Sessions Judge, Mungaoli, Distt. Ashoknagar, didnot commit any mistake by dismissing the Criminal Revision No. 35/2019



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by order dated 6-3-2020.

Accordingly, the application fails and is hereby **Dismissed**.

**(G.S. Ahluwalia)**  
**Judge**

MKB