

CHAPTER III
RIGHT OF REPOSSESSION

Case No. 15

C.R.R. No. 1404 of 2003

IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

MAGMA LEASING LIMITED

V.

THE STATE OF WEST BENGAL & ANR.

Hire purchase agreement - hirer commits default - financier repossessed the vehicle -hirer gives criminal complaint - police seized the vehicle - the Magistrate directs handing over custody to the hirer - Magistrate's order bad in law - financier's powers of repossession under the hire purchase agreement - upheld - decisions to the contrary overruled.

In the Matter of :

An application under section 401 read with section 482 of the Code of Criminal Procedure, 1973 ;

And

In the Matter of :

Order dated 27-06-2003 passed by Sri R. Chakarabarty, the learned Judicial magistrate, 9th Court, Alipore in Case No. C-3 168 of 2003 rejecting thereby your petitioner's prayer for return of the vehicle bearing registration no. WB-02M/5989 and directing it to be returned to the respondent no. 2 ;

And

In the Matter of :

Magma Leasing Ltd., a company incorporated under the Companies Act, 1956 having its registered office situated at 24 Park Street, Police Station Park Street, Kolkata - 700 016 being represented by Kushal Pollay

Petitioner

VS

1. The State of West Bengal,
2. Ranjan Sengupta, son of Late M. Sengupta 7A, Apurba Mitra Road, Police Station Kalighat, Kolkata - 700 026.

Respondents

Mr. D. Roy
Mr. P.K. Srivastava
Mr. Mainak Bose

... .. for the petitioner.

Mr.S.S. Roy
Mr.L.M.Dutta

... .. for the State

This revisional application is directed against the order dated 27.6.2003 passed by the learned Judicial Magistrate, 9th Court, Alipore in case No. C-3168/2003 thereby rejecting petitioner's prayer for return of the vehicle bearing Registration No. WB-02M/5989 and directing that the vehicle be returned to respondent no.2.

The facts of the case as it appears from the averments of the revisional application is that, the petitioner is a company incorporated under Companies Act. Complaint case No. C-3168/2003, now pending in the court of learned Judicial Magistrate, 9th Court, Alipore was initiated on the basis of complaint filed by respondent no. 2 alleging theft of his vehicle by his driver Motuk Chowdhury and others and on the basis of it a case under Sections 406/379/34 of I.P.C. was started. In the complaint respondent no. 2 alleged that he is the registered owner of the vehicle bearing Registration No. WB-02M/5989 and the vehicle was entrusted to driver Motuk Chowdhury for driving. On 22.5.03 the said Motuk Chowdhury took away the vehicle from residence of complainant at morning and did not return the vehicle to him. Complainant apprehended that his vehicle was stolen away by Motuk Chowdhury and others and, he was of the notion that the said vehicle has been kept under the jurisdiction of Park Street Police Station at 24, Park Street. The complainant also prayed for issue of search warrant for the recovery of his vehicle under Section 94 of cr. P. C. and the learned Magistrate allowed the prayer. On execution of the search warrant the vehicle was seized by the police authorities attached to Kalighat Police Station and, at the time of seizure the police personnel informed the office bearers of petitioner company that the said vehicle was seized in connection with the aforesaid complaint case.

It has been further contended by the petitioner that respondent no. 2 entered into an agreement with the petitioner for purchasing a Maruti make WagonR model on hire purchase agreement and it was agreed by and between the parties that amount of hire charge was to be Rs. 7,350/- for the first month and Rs. 7,950/- for the remaining 35 months. The hirer respondent no. 2 was to make a

down payment of Rs.1,58,591/- as initial payment and the balance consideration of the price of the vehicle would be arranged by the petitioner company. After execution of such agreement the petitioner on behalf of respondent no. 2 procured the said vehicle and got it registered with the Registering Authority. The respondent no.2, the hirer-cum-complainant of complaint case failed and neglected to pay the instalment dues and on failure of respondent no. 2 to make payment of instalments as had been agreed between the parties, the petitioner's representatives in accordance with the provisions of hire purchase agreement took possession of the said vehicle from near Fancy Market, Khidderpore on 22.5.03. The petitioner duly intimated this fact of taking possession of the vehicle to respondent no. 2.

After coming to know about taking of possession of the vehicle by petitioner, the respondent no.2 filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 in the City Civil Court at Calcutta which was registered as Misc. Case No. 2090/2003. The petitioners prayed for injunction so that the respondent i.e. present petitioner and its employees cannot sell, transfer or dispose of the said vehicle and also prayed for appointment of receiver to take possession and custody of the vehicle. Learned Judge, 13th Bench, City Civil Court, Calcutta did not grant any ad interim order as prayed for by the respondent no. 2. Thereafter, the respondent no. 2, when his attempt to take possession of the vehicle failed in City Sessions Court, Calcutta, suppressing the said fact filed the false complaint in the Court of learned S.D.J.M., Alipore making his driver as one of the accused and therein in the petition for issue of search warrant mentioned the address of petitioner's company situated at 24, Park Street, where he alleged that the vehicle may be kept concealed. On the basis of search warrant the vehicle was seized by Kalighat Police Station and the petitioner filed an application before the learned Magistrate praying for return of the said vehicle. The complainant respondent no. 2-cum-hirer also filed an application before the learned Magistrate for return of the said vehicle and the learned Magistrate by the impugned order dated 27.6.03 rejected the prayer of the petitioner and directed that the seized Maruti WagonR bearing Registration No. WB-02M/5989 be returned to respondent no. 2 on his executing a bond of Rs.4 lakhs. Challenging the said order the petitioner company has filed the instant revisional application.

Learned advocate for the petitioner contended that company is the financier and the respondent no. 2 is the hirer. The respondent no. 2 entered into an hire purchase agreement with the petitioner on 16.5.01 and in terms of the agreement the respondent no. 2 was to pay Rs. 7,350/- for the first month and Rs.7,950/- as instalments for the remaining 35 months. In respect of the price of the vehicle the respondent no. 2 made down payment of Rs.1,58,591/- as initial payment and the

balance consideration price was arranged by the financier i.e. petitioner company and the petitioner also took steps for registration of the vehicle. The respondent no. 2 did not make payment of instalments and as such in terms of the hire purchase agreement the agent or representative of petitioner company took possession of the vehicle. Respondent no. 2 moved City Civil and Sessions Court at Calcutta by filing an application under Section 9 of the Arbitration and Conciliation Act and prayed for injunction and appointment of receiver but, the learned Judge, 13th Bench, City Civil Court, Calcutta did not pass any ad interim order. Thereafter, the respondent no. 2 suppressing everything filed the complaint being case no. C-3168 of 2003 making his driver falsely as accused alleging that the driver Motuk Chowdhury fled away with the vehicle and kept it at 24, Park Street, Incidentally it may be mentioned that 24, Park street is the address of the registered office of petitioner and petitioner company after taking possession of the vehicle duly informed the respondent no. 2 about taking of possession of the vehicle. For this reason respondent no. 2 in the complaint and in application for issue of search warrant cleverly mentioned that the vehicle has been concealed at 24, Park street. The petitioner by filing a fictitious and false case showing his driver in the disguise of the accused obtained the search warrant and the police after executing it produced before the learned magistrate but, the learned magistrate failed to apply judicial mind and directed that the vehicle should be returned to the respondent no. 2.

He contended that the learned Magistrate did not realise that sale was not complete and respondent no. 2 did not become full owner of the vehicle. When there is hire purchase agreement between the parties i.e. financier and hirer, the sale does not become complete unless and until the hirer i.e. purchaser makes full payment of entire dues of the financier. In the instant case the hirer made default in making payment and as such he was not full owner of the vehicle and sale was not complete. He contended that decisions of the different high courts and the Apex Court are in favor of the financier as it has been held that in case of non - payment of dues in terms of hire purchase agreement if there is a clause to take possession by the financier, the financier can take possession of the vehicle . Accordingly, the order of the learned Magistrate should be set aside and the vehicle should be returned to the petitioner and when the respondent no. 2 would make full payment the petitioner would return the vehicle to him. In support of his contention he cited the decisions reported in 2001(3) Arb. LR 497 (SC), A.I.R. 1965 SC 1082, 1998 C Cr LR (Cal) 405 , 1989 Cri. L. J. 749, 2000 C Cr LR (Cal) 114 and unreported indecision of the Supreme Court passed in criminal appeal No.401 of 1993 and one unreported decision of this Court passed in CRR No. 702 of 1998.

Learned advocates appearing for the opposite party No. 2 contended that the O.P. No. 2 has made payment of entire dues to the petitioner and no installment is due till the month of May, 2003 and an affidavit has been filed in this behalf on 15.01.04 which was affirmed on 13.08.03. When all the payments have been made by the O.P. No. 2, he is not only registered owner but true owner and, he has complied with all the terms and conditions of the hire purchase agreement. The petitioner cannot claim now that installments of hire purchase agreement is still due and he is not the real owner. Order of the learned Magistrate was correct and it requires no interference. O.P. is also the registered owner and learned Magistrate rightly directed that during pendency of the criminal trial the custody of the vehicle should be with the registered owner. They further contended that this court in cases of **Amal Kumar Bose vs. state of west Bengal & Ors.** reported in 2003 c Cr LR (Cal) 1025 and **Ashok Kumar Singh Vs. State of West Bengal & Ors.** reported in 2003(4) CHN 496 has observed that nobody can be deprived of possession of any property without due process of law. The same view was again followed in the case of **Mintu Mukherjee V. State of West Bengal & Ors.** reported in 2003 C Cr LR (Cal) 1028. It was contended by them that without obtaining any order from competent court the financier cannot take possession of the vehicle when the hirer makes default in making payment. Accordingly, the revisional application is liable to be dismissed.

After hearing the submissions of the learned advocates for petitioner and the learned advocates appearing for appearing for the opposite parties and going through the revisional application and annexures I find that, there is no dispute that opposite party no. 2 approached the petitioner company for giving him finance in purchasing a Maruti make WagonR vehicle on hire purchase agreement and the agreement was executed on 16.5.01, The O.P. No. 2 made down payment of Rs.1,58,591/- and it was agreed that the petitioner company would make payment of the balance consideration for the said vehicle and O.P. No. 2 would repay the said amount advanced by financier in 36 installments out of which the amount of first instalments was Rs. 7,350/- and the amount of balance 35 installments was fixed at Rs. 7,950/- each. It is the case of the petitioner that the O.P. No. 2 failed and neglected to pay the installment dues and so in terms of hire purchase agreement they took possession of the vehicle from fancy Market, Khidderpore on 22.05.03 and duly informed the O.P. No. 2 about taking possession of the vehicle.

The O.P. No. 2 moved the City Civil and Sessions Court in an application under Section 9 of the Arbitration and conciliation act which was registered as

Misc. Case No. 2090 of 2003 and opposite party no. 2's prayer for injunction and receiver over the vehicle was rejected. It further appears that thereafter the O.P. No. 2 as complainant lodged a complaint before the learned S.D.J.M., Alipore alleging that his Driver Motuk Chowdhury in connivance with some others fled away with his vehicle and secretly kept the vehicle at 24, Park street. It is worthwhile to mention here that 24, park street is the registered office of the petitioner company. It gives an indication that the respondent no. 2 knowing well that petitioner company took possession of the vehicle on 22.5.2003, cleverly mentioned in his complaint petition that it has been kept concealed at address of the registered office of the petitioner company . It is also admitted that on the basis of prayer of respondent no. 2 for issue of search warrant for the recovery of the said vehicle it was seized by police. Thereafter, both the petitioner and the opposite party approached learned Magistrate when the learned Judicial Magistrate, 9th Court by his order dated 27.06.03. ordered that during pendency of the trial let the vehicle be returned to O.P. No. 2 on his jimma on executing a bond of Rs. 4 lakh. Challenging the said order the financier company has moved this Court in this revisional application.

In the instant matter the crux for consideration is whether in terms of the hire purchase agreement the financier company can take possession of the vehicle when the hirer purchaser failed or neglected to make payment of instalments to the financier for adjusting the loan amount. Another point for consideration is whether in such matter a Magistrate can direct that the vehicle in question be returned to the registered owner-cum-hirer purchaser in connection with a criminal proceeding started on the basis of complaint lodged by the hirer purchaser. On behalf of both the petitioner and opposite parties certain decisions have been placed before me which are as follows:

The petitioner referred to the decisions namely **Charnanjit Singh Chadha V. Sidhar Mehra** reported in 2001(3) Arb. LR 497(SC), **M/s. K.L.Johar V. Deputy commercial Tax Officer, Coimbatore** reported in A.I.R. 1965 SC 1082, **M/s. Jyoti International V. State of West Bengal** reported in 1998 C Cr LR (Cal) 405, **Sanjoy Roy V. State of West Bengal** reported in 2000 C Cr LR(Cal) 114, **Ph. Arunachalam V. State of Orissa** reported in 1989 Cri. L. J. 739 and the unreported decision of the Supreme Court dated 30.4.93 in **Manipal Finance Corporation Ltd. V. T. Bangarappa** in connection with **Criminal Appeal No. 601 of 1993** and unreported decision of this Court in the matter of **Anjan Mazumder V. Keshab Ghosh** dated 21.5.99 in C.R.R No. 702 of 1998. The opposite parties have referred to the decisions of **Amal Kr. Bose (supra)**, **Asok Kumar Singh (supra)**

and Mintu Mukherjee (supra).

The Supreme Court in **Trikok Singh V. Satya Deo Tripathy** reported in **A.I.R. 1979 SC 850** held that a hirer is within his rights to seize a property hired by him from the hirer purchaser if the instalments are not paid as per agreement. The said view was reiterated by the Hon'ble Apex Court of India in several other later decisions.

Even before 1979 the Supreme Court in *M/s, K. L. Johar's case* (supra) in 1965 held that, " A hire purchase agreement is distinct from sale in which the price is to be paid later by instalments. In the case of a sale in which the price is to be paid by instalments, the property passes as soon as the sale is made, even though the price has not been fully paid and may later be paid in instalments. This follows from the definition of sale in Section 4 of the Indian Sale of Goods Act as distinguished from an agreement to sell which requires that the seller transfers the property in the goods to the buyer for a price. The essence of a sale is that property is transferred from the seller to the buyer for a price, whether paid to at once or paid later in instalments. On the other hand, a hire purchase agreement, as its very name implies, has two aspects. There is first an aspect of bailment of the goods subjected to the hire purchase agreement and there is next an element of sale which fructifies when the option to purchase, which is usually a term of hire purchase agreements, is exercised by the intending purchaser. Thus, the intending purchaser is known as the hirer so long as the option to purchase is not exercised and the essence of a hire purchase agreement properly so called is that the property in the goods does not pass at the time of the agreement but remains to the intending seller, and only passes later when the option is exercised by the intending purchaser. The distinguishing feature of a hire purchase agreement, therefore, is that the property does not pass when the agreement is made but only passes when the option is finally exercised after complying with all the terms of the agreement."

In the said case it was further observed, "When the sale takes place it will be liable to sale tax under the Act for the taxable event under the Act is the taking place of the sale, the Act is providing for a multi point sales tax at the relevant time. Where, however, option is not exercised or cannot be exercised because of the inability of the intending purchaser to fulfil the terms of the agreement there is no sale at all."

In Charanjit Chandha's case (supra) it was held, "The hire purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of the goods as per the term of the agreement may not amount to any criminal offence. The agreement (annexure P-1) specifically gave authority to the appellants to repossess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them."

This Court in the case of M/S. Jyoti International (supra) has held that as per clause of the hire purchase agreement the financier is empowered to take possession of the vehicle in case instalments are not paid in time by the hirer purchaser.

The Supreme Court in the unreported case in Manipal Finance Corporation Limited (supra) set aside the order of the learned Magistrate, the learned Sessions Judge as well as the High Court and directed that the vehicle in question be restored to the possession of the appellant. In the said matter appellant was a financier company and its contention was that it has a right to obtain possession under the hire purchase agreement i.e. under the clause permitting re-entry as the hirer purchaser failed to pay the instalments and committed defaults. It was observed by the Supreme Court that possession was assumed under the terms of the hire purchase agreement and the hirer had misused the forum and did not take recourse to civil proceeding.

The Orissa High Court in Ph. Arunachalam's case (supra) considered identical matter regarding return of the truck when dispute arose between hirer and financier and the High Court set aside the order of the learned Magistrate directing return of the vehicle to hirer purchaser. The High Court relied upon the decision of the Supreme Court in K. L. Johar's case and observed that order of the learned Magistrate was bad in law as the truck was purchased under hire purchase agreement and there was default committed by the hirer owner and the learned Magistrate did not take into consideration the claim of the financier who was the real owner till all the instalments were paid.

The position of law is, therefore, clear that the intending purchaser under hire

purchase agreement is known as the hirer and so long as the option to purchase is not exercised property in the goods does not pass to the intending purchaser at the time of agreement but remains in the intending seller and only passes later when the option is exercised by the intending purchaser after fully complying with the terms and conditions of the hire purchase agreement and making payment of all the instalments. Under hire purchase agreement the property does not pass when the agreement is made but it only passes when the option is finally exercised after complying with all the terms of the agreement.

In the instant matter in terms of clause 15 of the hire purchase agreement (annexure P-3) the financier company or its agent had the authority to enter into the premises of the hirer at such place the vehicle may be lying and remove and take possession of the hired article situated in any land or place or house whenever the same may then be without being liable to any proceeding. In terms of clause 15 of the hire purchase agreement the financier, therefore, had the authority in the instant case to take possession of the vehicle when the hirer opposite party failed to make payment of instalments as per terms of hire purchase agreement,. It is also clear that the opposite party no. 2 hirer made default in making payment of the instalment.

By filing an affidavit on the date of hearing which was affirmed on 13.8.2003 the hirer has stated that he has subsequently made payment of all instalments and no instalment is now pending though there may be some delayed payment in respect of some of the instalments. It makes clear that when the petitioner financier took possession of the vehicle it had acted within its jurisdiction to take possession of the vehicle due to failure on the part of the hirer to make payment of instalments in terms of the hire purchase agreement. Subsequent payment by the hirer of instalment dues in the manner of late payment cannot make the action of financier regarding taking possession of the vehicle as illegal. In the above stated decisions the Supreme Court has made it clear that a financier is within his right to seize a property hired by him from the hire purchaser if the instalments are not paid as per agreement. In the above stated reported cases the hirer initiated criminal proceeding against the financier alleging theft or dacoity when the financier took possession of the vehicle. While disposing of the matters in the aforesaid decisions the Supreme court observed that no criminal offence can be said to have been made by the financier in taking possession of the vehicle. It was further observed by the Supreme Court that in terms of the agreement the financier has a right to take possession of the vehicle in case of default of payment made by the hirer. It was

also observed that when the agreement specifically says that the owner i.e. financier has got a right to repossess the vehicle, there cannot be any basis alleging that he has committed criminal breach of trust or cheating or theft.

In the unreported decision in Manipal Finance Corporation Limited (supra) it was observed by the Supreme Court that, "We think that the learned Magistrate was not right in passing the impugned order and thereby giving relief to a party which had invoked jurisdiction on false acquisition. The appellant had, under the terms of the hire purchase agreement, taken possession of the vehicle. While observing that, prima facie this action could be supported by the contract, the learned Magistrate directed the vehicle to be returned to the hirer on a mere indemnity bond. It is indeed surprising that without making good the charge of theft the hirer by using the state instrumentality, namely, the police, obtained possession of the vehicle and., thereafter, obtained its custody through the order of the learned Magistrate without making good his allegation that he was deprived of the possession of the vehicle by theft. We are indeed surprised at the approach of the Courts below which is totally unsustainable. We, therefore, set aside the order passed by the learned Magistrate and affirmed by the learned sessions judge as well as the high Court and direct that the vehicle in question be restored to the possession of the appellant, if necessary, by police help."

When the decision of the Supreme Court is available in this respect and which decision is binding on all the Courts of India including the High Court, in my considered view, the decision of the Supreme Court should be followed in matters relating to hire purchase agreement. In view of clause 15 of the hire purchase agreement (annexure P-3) the petitioner financier was entitled to take possession of the vehicle in case of failure by the hirer to make payment of instalments. It is also admitted that O.P. No. 2, the hirer, made default in making payment of instalment as a consequence of which in terms of an agreement the financier took possession of the vehicle when the hirer was in default and did not make payment of instalments. His subsequent payment as stated through the affidavit filed in court at the time of hearing and argument is subject matter of accounting because, in terms of the agreement the financier can claim some interest due to delayed payment and unless those amounts are cleared and the hirer exercises option after fully complying with the terms and conditions of hire purchase agreement and making payment of all the dues, the vehicle in question cannot pass to the intending purchaser i.e., hirer.

The decision of Amal Kumar Bose, Mintu Mukherjee and Ashok Singh are not applicable as in the said decisions the pronouncement of Supreme Court regarding hire purchase agreement was not considered. In the said decisions it was considered that the registered owner is the owner and without due process of law no one can be deprived of the possession of any property. On the other hand, the supreme court in the aforesaid decisions made it clear that an intending purchaser i.e. hirer under the hire purchase agreement has to exercise option to purchase the property and he has to fully comply with the terms and conditions of hire purchase agreement and to make payment of all instalments and so long he does not exercise option and does not make payment of all instalments the property in goods does not pass to him. It cannot be regarded that the decision of the Supreme Court was silent in this respect. The Supreme Court nowhere stated that the registered owner of a vehicle which he obtained under hire purchase agreement becomes full owner without making payment of instalment dues. It has been categorically decided by the Supreme Court that in case of non-payment of instalments by the hirer under hire purchase agreement, the financier has authority to take possession of the vehicle.

The Supreme Court in **State of U.P. V. Synthetic and Chemicals Limited** reported in (1991) 4 SCC 139 observed that, 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young V. Bristol Aero plane Co. Ltd). Same has been accepted, approved and adopted by this court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu V. Rajdewan Dubey* this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding."

The Supreme Court in **Municipal Corporation of Delhi V. Gurnam kaur** reported in (1989) 1 SCC 101 held that, " 'precedents sub - silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for reliving from injustice perpetrated by unjust precedents. A decision which is not express not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline." The Supreme Court in **B. Shama Rao V. Union Territory of Pondicherry** reported in

AIR 1967 sc 1480 observed that, "It is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein." Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature blinding as a precedent".

Keeping in mind the observations of the Supreme Court in the aforesaid decisions I am of opinion that the decisions referred to by the O.P. No. 2, namely, Amal Kumar Bose (supra), Mintu Mukherjee (Supra) and Ashok Singh (supra) are not applicable in the instant case and the said decisions should be regarded as sub-silentio as in the said decisions the concept of hire purchase agreement and the basic features of hire purchase agreement and the basic features of hire purchase agreement and passing of goods on the basis of hire purchase agreement were not considered.

In view of the aforesaid decision it is clear that the order of the learned Magistrate regarding return of the seized vehicle is bad in law. The entire facts and circumstances makes it clear that O.P. No. 2 very cleverly and suppressing that the financier took possession of the vehicle due to his failure to make instalments field the complaint case making a false allegation that his driver Motuk Chowdhury in connivance with others committed theft of his vehicle and kept it concealed at 24, Park Street which is the address of registered office of financier. The financier being empowered under the terms of the agreement to take possession of the vehicle took the possession on 22.5.03 in front of Fancy Market and intimated the hirer about taking possession of the vehicle. Thereafter, on 24.06.03. respondent no.2 field the complaint alleging that on 22.5.03 his driver committed theft of the vehicle. Incidentally, the financier took possession of the vehicle on 22.5.03. in terms of clause 15 of the hire purchase agreement when hirer was in default in making payment of instalments. It is clear , that the learned Magistrate made mistake and failed to realise that unless all the terms and conditions of the hire purchase agreement are fulfilled by the hirer the goods i.e., vehicle in question cannot pass to him.

The order of the learned Magistrate being bad in law should be set aside. Accordingly, I set aside the order of the learned judicial Magistrate and direct that the vehicle in question being Registration No. WB - 02M/ 5989 be restored to the possession of the petitioner financier, if necessary, by police help. The learned Magistrate is directed to instruct the police authorities to return the seized vehicle

to the financier petitioner and the police, if approached by the present petitioner, will ensure restoration of the vehicle to the petitioner.

However, I make it clear by directing the petitioner to make account of the hire purchase agreement in view of the affidavit affirmed by the respondent no. 2 stating that all payment has been made and no instalment is due, and if, after accounting any amount is found payable by the hirer respondent no. 2 the financier shall duly intimate the same to respondent no. 2 and on payment of such amount must deliver the vehicle to respondent no. 2 when respondent no. 2 would exercise his option in the matter and would fulfil all the terms and conditions of hire purchase agreement .

The revisional application succeeds and is disposed of accordingly in view of the observations made above in the body of order.

Send a copy of this order to the learned judicial Magistrate, 9th court, Alipore for information and necessary instruction.

Urgent certified copy be given to the parties, if applied for, expeditiously.