

Case No. 4

1994 Supp (1) Supreme Court Cases 507

(BEFORE A.M. AHMADI AND YOGESHWAR DAYAL., JJ.)

MANIPAL FINANCE CORPN. LTD.

Appellant

Vs

T.BANGARAPPA AND ANOTHER

Respondents

Criminal Appeal No. ... of 1993, Decided on April 30, 1993

Hire purchase agreement - default by hirer - financier repossess the vehicle - theft complaint lodged by hirer - police seized the vehicle and produce before the magistrate -magistrate directs delivery of custody to the hirer-Magistrate's order affirmed by Sessions Court and High Court -Supreme Court castigates the orders of the courts below as unsustainable - possession directed to be handed over to the financier, if necessary with police help.

Appeal allowed

ORDER

1. Special leave granted.

2. The basic facts show that the appellant-Company had given financial facility on hire- purchase basis to respondent 1 for the purchase of a Matador MEZ-6502. As the hirer failed to pay the instalments and committed successive defaults, the appellant - Company took possession of the vehicle on June 6, 1987 under the terms of the hire-purchase agreement. Thereupon the hirer lodged a complaint of theft against the two employees of the appellant- Company who had seized the vehicle. In that proceeding the police took charge of the vehicle and produced the same before the learned Magistrate. The learned Magistrate directed that the custody of the vehicle be delivered to the hirer on his executing an indemnity bond in the sum of Rs 80,000 (Rupees eighty thousand only) with one surety of like amount and directed the appellant to have the question of title determined by a civil court. By the very same order the complaint was dropped. The effect of this order was that without the charge of theft having been proved the possession of the vehicle was delivered to the hirer notwithstanding the findings in the negative recorded on both the points. The appellant's contention that it had a right to obtain possession under the hire-purchase agreement i.e.under the clause permitting re-entry, had in fact been prima facie

accepted by the learned Magistrate but since he could not go into the question of title, he passed the impugned order. Now, if the learned Magistrate found that the possession was assumed under the terms of the hire-purchase agreement and the allegation of theft was not proved, he should have realised that the hirer had misused the forum instead of taking recourse to civil proceedings and should not have aided him by the impugned order. The appellant filed an appeal against the impugned order but it was dismissed by Sessions Court and even the revision petition was dismissed by the High Court. Hence this appeal.

3. The hirer has not appeared in response to the notice even though it was clearly stated that the matter will be disposed of finally at the notice stage itself. He has, however, sent a counter by post with his forwarding letter dated October 6, 1989 which we have perused. He is in possession of the vehicle and is plying the same. In the facts and circumstances mentioned above 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 accusations. 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. The police if approached by the appellant will ensure restoration of the vehicle to the appellant. The appeal is allowed accordingly. This order will not prejudice the civil rights of the parties, if any.