

Case No. 17

100 (2002) DELHI LAW TIMES 581 (DB)

DELHI HIGH COURT

Dalveer Bhandari & H.R.Malhotra, JJ

DR. AMITABH VARMA

Petitioner

Vs

COMMISSIONER OF POLICE & ORS

Respondents

Criminal Writ Petition No. 761 of 2002- Decided on 23.10.2002

Alleged wrongful repossession of vehicle by financier - vehicle plying on road at the time of repossession - Writ petition filed by borrower - compensation awarded and directions regarding repossession issued -

COMMENTS: Writ petition clearly not maintainable since it is essentially a private dispute between parties regarding contractual matters - No jurisdiction to issue general guidelines.

Result: Petition disposed of accordingly.

Counsel for the Parties:

For the Petitioner: Mr. Ashok Arora and Mr. Saurabh Chauham, Advocates.

For the Respondents: Mr. Ravinder Chadha, Advocate.

JUDGMENT

Dalveer Bhandari, J. - It is alleged that the petitioner under most extraordinary circumstances has filed this petition with the prayer that the respondents be directed to register an FIR under Section 323,327,347,352,356,365,379,384,392,420, and 506, IPC. It is also prayed that on the basis of the petitioner's complaints dated 28.6.2002 and 1.7.2002 investigation be carried out and action be taken in accordance with law. It is also prayed that the petitioner be awarded exemplary costs and compensation.

2. Brief facts which are necessary to dispose of this writ petition are recapitulated as under:

3. It is alleged that the petitioner is a leading and an eminent Neurologist of the country and he is the Honorary Physician to the President of India. On 20.3.1999

he purchased a Tata Safari vehicle on hire purchase basis with a loan of Rs 6,23,000/- from the 3rd respondent finance company. It is mentioned in the petition that against the said loan a total sum of Rs. 7,38,692.10 has been paid by the petitioner.

4. It is also incorporated in the petition that the petitioner has paid all the 36 instalments. The last instalment was paid on 20.02.2002. In April 2002 the petitioner sought NOC for removal of hypothecation endorsement from the registration papers. On 23.4.2002 the 3rd respondent issued a statement of accounts of all the payments made and also showed a balance of Rs.41, 046.10. The petitioner desired to know the basis on which debit balance is shown whereas there was no default in payment of any of the instalments according to him.

5. It is alleged that on explanation was received from the third respondent. On 28.6.2002 the petitioner on his own, deposited a sum of Rs. 41,000/-. Even according to the third respondent the entire amount has been paid on 28.6.2002.No amount whatsoever remained outstanding and payable by the petitioner.

6. It is alleged that on 28.6.2002 around 9 p.m.in the night when the petitioner was returning home from his clinic, four unidentified persons stopped his vehicle and after forcibly pulling the driver out of the seat, drove away the car. It is alleged that the driver's arm was twisted and he was forcibly pulled out of the car and he was told not to interfere. It is also mentioned that one of the persons snatched the car keys from the driver and started driving and did not allow the petitioner to come out of the car. The petitioner was pushed out of the car after some distance. They drove away the car along with a bag containing Rs. 50,000/-, which the petitioner had with drawn from his account from the Punjab and Sind Bank in the same morning. The photocopy of the pass book showing the withdrawal of Rs 50,000/- by the petitioner from his bank account on 28.6.2002 has been annexed with the petition.

7. The petitioner despite his persistent efforts did not get any relief from any quarter, then on 1.7.2002 made a complaint to the Commissioner of Police, but even from there he received no response.

8. It is also alleged that respondent No.3 before illegally taking the car away from the petitioner informed the police and requested them not to entertain any complaint which may be filed by the petitioner. It is beyond comprehension how the finance agency dictate to the police whether to entertain the complaint or not? This Clearly demonstrates the clout of respondent No.3, finance company. This also shows

that the accused and the police were acting hand in glove in the whole episode. It is also alleged that after great persuasion the police officials recorded his complaint but no FIR has been registered.

9. The petitioner also wrote to the Managing Director of the finance company informing about the entire episode and demanded his vehicle, and Rs. 50,000/- contained in a bag, which was also taken away along with the car. The petitioner also demanded that he should be adequately compensated for the immense suffering caused to him.

10. It is also alleged in the petition that on 4.7.2002 three officials of the finance company, namely, Vandamani, Raju and Mishra came to the petitioner's residence and admitted that no amount in fact was due from the petitioner and the actions taken by their agents/ employees were wrong and illegal. It is alleged that they were acting under the instructions of respondent No. 4, who is the in-charge and responsible for running of the finance company.

11. The petitioner submitted that the police alone has been entrusted with the authority and responsibilities of registering the FIR, investigating and booking the culprits, and since the police agency is refusing to discharge its statutory duties, the petitioner is compelled to approach this Court with the prayer of issuing directions or necessary writ.

12. The petitioner categorically mentioned in his letter to the Managing Director of the finance company that no notice of any kind was received by him that any instalment is due and payable by him. It is further stated that he never received any notice that his car would be repossessed on account of non- payment of one instalment. He submitted that on 28.6.2002 all of a sudden while the petitioner was returning from his clinic around 9 p.m, his car was stopped by four persons of repossession agency and the driver was forcibly pulled out of the car, and thereafter even the petitioner was pushed out of the car. The car was taken away by those people along with Rs. 50,000/- which the petitioner had withdrawn from his bank account on that very day.

13. A Counter affidavit has been filed on behalf of the finance company. It is mentioned in the reply that 3rd respondent company has not committed any illegality in repossessing the vehicle because the petitioner had to pay an outstanding amount of Rs. 41,046/- According to 3rd respondent the last instalment was paid after the car

was repossessed, whereas according to the petitioner it was paid before the car was repossessed. The repossession of the car had admittedly taken place around 9 p.m. it is difficult to comprehend how the payment was made and accepted after 9 p.m. when offices are closed by that time.

14. Admittedly, the parties are governed by the agreement-dated 20.5.1999 entered into between the petitioner and the respondent finance company. Relevant Clause 18 of the agreement reads as under:

“ Upon the occurrence of any event of any default and at any time thereafter, the owners shall be entitled to declare all sums due and to become due hereunder for the full term of the agreement as immediately due and payable and upon the hirer failing to make the said payment in full within 14 days thereof, the owners may, at their sole discretion, do any one or more of the following:

- (a) Upon notice to the hirer terminate this agreement.
- (b) Demand that the hirer return the vehicle to the owner at the risk and expense of the hirer, in the same condition as delivered (ordinary wear and tear excepted), at such location as the owner may designate and upon failure of the hirer to do so within 14 days from the date of demand, enter upon premises where the vehicle is located and take immediate possession of and remove the same without liability to the owners or their agents for such entry or for damage to property or otherwise
- (c) On such terms and conditions and for such consideration as the owners may deem fit and with or without any notice to the hirer sell the vehicle at a public or private sale, otherwise dispose off, hold, use, operate, lease, to others or to keep idle such vehicle, all free and clear of any rights to the hirer and without any duty to account to the hirer for such action or inaction or for any proceeds in respect thereof.
- (d) By written notice to the hirer require the hirer to pay the owners (as liquidated damages or loss of a bargain and not as penalty)(plus interest @ 30% per annum for the period until receipt of the said amount) equal to all unpaid hire charges payments and all other payments which, in the absence of a default would have been payable by the hirer hereunder for the full term hereof, or
- (e) Exercise any other legal right or remedy which may be available to them under the applicable law.

2. In addition, and without prejudice, to what is stated above, the hirer shall be liable for all legal and other cause and expenses resulting from the foregoing defaults and from exercise of owners' remedies, including possession of any of the vehicle.

3. No remedy referred to herein above is intended to be exclusive, but the same shall be in addition to any other remedy available to the owners at law. The owners reserve the right to appoint banker or financial institutions as their attorney or agent for the purpose of enforcing their rights and remedies under this agreement.

15. It is mentioned that the owners at their sole discretion, may do one or more of the following upon notice to the hirer to terminate this agreement. In this case admittedly no notice whatsoever has been given to the petitioner demanding the hirer to return the vehicle to the owner at such location as the owner may designate and upon failure of the hirer to do so within 14 days from the date of demand, enter upon premises where the vehicle is located and take immediate possession of and remove the same without liability to the owners or their agents for such entry or for damage to property or otherwise. In this case no demand notice was ever sent to the petitioner to return the vehicle because of non- payment of Rs.41,046/-. Even according to this clause the owner after giving demand notice of 14 days enter upon the premises where the vehicle is located and take immediate possession. In this case admittedly no such notice was given to the petitioner and the vehicle has not been repossessed from the premises of the petitioner, but the vehicle was admittedly repossessed while the petitioner was returning in the night from his clinic on the road far away from the house of the petitioner by some persons of repossession agency by forcibly pulling out the driver and pushing out of the petitioner from the car.

16. According to the petitioner the manner in which respondent No.3 finance company took repossession of vehicle is totally contrary to the terms of the agreement and against all the statutory provisions and laws. The petitioner submitted that the repossession agency engaged by the finance company has acted in the most arbitrary and uncivilized manner and clearly violated all provisions of law. They have taken law into their own hands and against all norms of a civilized legal system forcibly took repossession of the vehicle.

17. The learned Counsel appearing for the petitioner, Mr. Ashok Arora submitted in fact that no instalment was due and payable by the petitioner and even then

the vehicle has been snatched from the petitioner in a most barbaric manner. He submitted that admittedly all instalments were paid by 28.6.2002 and thereafter the vehicle could not have been repossessed by the finance company.

18. Mr. Arora also submitted that respondent No.3 finance company was not justified in repossessing the vehicle in this manner against all provisions of law even if one instalment was due and payable by the petitioner. Mr.Arora submitted that the petitioner never received any notice that one instalment is due and payable by him and the failure to pay the same would lead to repossession of the vehicle. Mr. Arora submitted that admittedly entire amount has been paid on 28.6.2002, but even then the repossessed vehicle was not handed over to the petitioner till this Court passed the order on 30.7.2002. This clearly demonstrates that illegal and arbitrary functioning of respondent No. 3. He submitted that this country is governed by the rule of law. Even for recovery of one instalment, there are adequate provisions in the law. Respondent No. 3 finance company cannot be permitted to hire goondas and anti-social elements to stop the vehicle in the night on the main road and forcibly take possession in such a clandestine manner. Mr. Arora further submitted that if this illegal action of the respondent finance company is given approval, then there will be total chaos and anarchy in the country.

19. Mr. Arora also submitted that the manner in which the vehicle was repossessed constitutes serious criminal offences of theft, attempt to abduct, cheating and misappropriation of property. He also submitted that the police to whom information disclosing cognizable offences was given has failed to register FIR and to take any action against the accused. To these contentions the reply of the respondent is vague, irrelevant and wholly frivolous. It is also argued that the respondent is guilty of misleading the Court. He submitted that three affidavits of Subir Dasgupta, Ramakar Thakur and Chandra Kant Vats are contradictory. He referred to Subir Dasgupta's affidavit in which it is stated that the payment of Rs. 41,000/- was made between 8.30 and 9 pm. Respondent No.3 informed the officer incharge of Police Station Mehrauli at 9.45 p.m. that the said vehicle was repossessed at 8.28 pm. on 28.6.2002. Therefore, it is abundantly clear that the payment of Rs. 41,000/- was made before the car was repossessed.

20. The learned Counsel for the petitioner Mr. Arora also pointed out that Ramakar Thakur claims to have submitted a letter that the vehicle will be repossessed at 5.30 to 6 p.m. whereas according to the record of the Police Station Mehrauli respondent No.3 informed the police at 8.30 p.m. The Counsel for the petitioner

submitted that from the above contradictory statement it is established that the payment was made during the office hours and the car was repossessed by another agency without further verifying whether any payment is due from the petitioner.

21. We have heard the learned Counsel for the parties at length and perused the pleadings and documents placed before us. On the basis of the documents on record it is abundantly clear that on 28.6.2002 admittedly the petitioner had paid all the instalments of the hire purchase including the disputed amount of Rs. 41,000/- It is also clear that admittedly the car was repossessed at 8.28 p.m. on 28.6.2002 in the night about 400 meters away from the house of the petitioner. Despite the fact that the entire amount was paid on 28.6.2002 the car was not returned to the petitioner till this Court passed a specific order to that effect on 30.07.2002. Admittedly, no notice was given to the petitioner calling upon him to pay the balance instalment of Rs. 41,000/- Admittedly, the petitioner had already paid Rs. 6,97,646. 10 towards the repayment of the hire purchase of the vehicle and even the balance of Rs.41,000/- was paid on 28.6.2002. Admittedly, no notice was given to the petitioner indicating the time when the respondent No.3 was to come and take repossession of the car.

22. On the basis of the aforesaid averments, some important questions of general public importance arise in this petition

- (a) Whether the respondent in total violation of the terms of Clause 18(b) of the agreement can take possession of the vehicle in a clandestine manner. Clause (b) envisages notice of 14 days and on hirer's failure to return the vehicle within 14 days can take possession of the vehicle. In the instant case admittedly no such notice was sent to the petitioner.
- (b) Whether even after the total amount of Rs. 41,000/- had been paid could respondent No.3 repossess the vehicle?
- (c) Whether respondent No.3 could repossess the vehicle by stopping it (the vehicle) on the road in the night in this manner?
- (d) Whether respondent No.3 in disregard of all the provisions of law can take repossession of the vehicle in such a crude, arbitrary, clandestine and illegal manner?
- (e) Whether the finance companies are not bound by the provisions of law and can be permitted to take law into their hands?

(f) Whether the Court can give sanctity to such repossession agencies ignoring the provisions of law?

23. It is not clear under what provisions of law the finance company or any of its repossession agency can forcibly stop the running vehicle, push the driver and hirer out of the car and take possession of the car. These acts of the respondent can never be supported on the anvil of the settled provisions of law.

24. The finance company must consider the facts of each case in proper perspective. The case of the hirer who has not paid any instalment or substantial number of instalments cannot be equated with the case of a hirer who has to pay only one instalment or a very small amount.

25. The following basic facts are not in dispute:

- (a) The petitioner was not given any notice or any written communication that one instalment of Rs. 46,046/- is due and payable by the petitioner.
- (b) The vehicle was repossessed by stopping the running vehicle on the road when the petitioner was returning from his clinic in the night of 28.06.2002 by pushing the driver and the petitioner out of the car.
- (c) Despite the fact that the entire amount was paid on 28.6.2002 the repossessed vehicle was not returned to the petitioner till this Court passed the specific order to that effect on 30.07.2002

26. Therefore, we have no difficulty in arriving at the definite conclusion that the petitioner has suffered grave mental ignominy, tremendous harassment and humiliation at the hands of respondent No.3. We direct the respondent No 3 to pay Rs.50,000/- as symbolic compensation for undue harassment and grave humiliation caused to the petitioner. We direct respondent No.3 to ensure that the aforesaid amount is paid within two weeks from today.

27. The Registrar General is directed to place the matter before this Court in case our directions are not complied with.

28. Before we part with this judgment, we would like to observe that a large number of similar cases are being filed in Courts. Therefore, apart from deciding the controversy involved in this case, we deem it appropriate to formulate general guide-

lines so that similar problems are not be encountered or repeated in similar cases

- i. The Finance companies must inform the hirers regarding the details of instalments due and payable by a written communication.
- ii. Even before repossession another written notice must be sent to the hirers and only thereafter the vehicles be repossessed.
- iii. Finance companies are restrained from stopping the running vehicles on the roads and forcibly pulling out the driver and take possession of the vehicle against all provisions of law.

29. We direct respondent No. 1 Commissioner of Police, to issue necessary circular within three weeks for ensuring compliance of our directions. The petition is accordingly disposed of.

Petition disposed of accordingly.