

Case No. 44

(1996) 7 Supreme Court Cases 212

(BEFORE M.M PUNCHHI AND K. JAYACHANDRA REDDY, JJ)

K.A MATHAI ALIAS BABU AND ANOTHER	Appellants
Vs	
KORA BIBBIKUTTY AND ANOTHER	Respondents

Criminal appeal No. 563 Of 1991, decided on February 15, 1995

Repossession by financier of the vehicle does not amount to theft - No mens rea requiring dishonest intention - assertion of rights and obligations under the agreement wipes out the dishonest element.- Financier acquitted.

ORDER

1. The facts giving rise to this appeal are that the appellants before us are the driver A-1 and the registered owner of the bus (No. KLB 946) A-2, holding a state carriage permit over it. The said bus had been purchased by A-2 with the help of a financier under a hire-purchase agreement. Sometime thereafter, on 2-6-1986, A-2, sold the bus with the state carriage permit to the complainant but subject to the hire-purchase agreement with the financier. The complainant paid a sum of Rs.38,000 to A-2 as part payment of the price and agreed to pay the instalments to the financier. The complainant defalcated in the payment of the instalment whereupon, on 11-11-1986, the vehicle was taken possession of by the financier and at that juncture statedly both A-1 And A-2 were present in the bus - A-1 having driven it away. This, in sum, is the total prosecution case.
2. The trial court charged the appellants for offence punishable under Section 379 read with Section 114 IPC and had sentenced them to one year's RI and to pay a fine of Rs. 2000 in default of payment of which to undergo RI for nine months. The Court of Session allowed their appeal acquitting them. On further appeal by the complainant to the High Court, the orders of conviction passed by the trial court were restored. Hence, this appeal.
3. It is more than clear that the hire-purchase agreement with the financier was entered into much prior in time, whereafter the agreement of sale between

A-2 and the complainant took place, and which was subject to the rights of the financier. It is even otherwise understandable that A-2 could not have passed a better title of the bus to the complainant than that she had acquired for herself under the hire-purchase agreement. Though we do not have the advantage of reading the hire-purchase agreement, but as normally drawn it would have contained the clause that in the event of the failure to make payment of instalment/s the financier had the right to resume possession of the vehicle. Since the financier's agreement with A-2 contained that clause of resumption of possession, which has to be read, if not specifically provided in the agreement, as part of the sale agreement between A-2 and the complainant. It is, in these circumstance, the financier took possession of the bus from complainant with the aid of the appellants. It cannot thus be said that the appellants, in any way, had committed the offence of theft and that too with the requisite Mens rea and requisite dishonest intention. The assertion of rights and obligations, accruing to the appellants under the aforesaid two agreements, wiped out any dishonest pretence in that regard from which could be inferred that they had done so with a guilty intention. In this view of the matter, we think that the High Court was in error in upsetting the well-considered judgement of the Court of Session. We thus set aside the impugned judgement and order of the High Court and acquit the appellants of the charges. They are on bail. Their bail bonds stand cancelled. Fine if already paid, be refunded to the appellants. The appeal is, thus allowed.