
(15) We are further of the view that the pendency of appeals arising out of the awards passed by the District Judge in other cases relating to the same acquisition constituted a valid ground for condonation of delay in filing of the R.F.A. by the appellant and the learned Single Judge erred in declining his prayer.

(16) Hence, the appeal is allowed. The order of the learned Single Judge is set aside. The delay in filing of the R.F.A. is condoned. The R.F.A. may now be listed for hearing before the learned Single Judge along with other similar appeals.

R.N.R.

Before R.C. Kathuria, J

M/S ASHOK LEYLAND FINANCE LTD.—*Petitioner*

versus

RAMESH KUMAR—*Respondent*

CrI. R.No. 486 of 2001

9th May, 2002

Code of Criminal Procedure, 1973—Section 451—Motor Vehicles Act, 1988—Ss.41 & 230—Hire purchase agreement—Default in payment of instalments by the hirer—Whether the Company/ financier has a right to take possession of the vehicle—Held, yes—Registration certificate issued in his name confers no right on hirer to become an absolute owner untill he fulfils the terms & conditions of the hire purchase agreement—Petition allowed while setting aside the orders of the Distt. Judge directing the release of vehicle to the hirer.

Held, that the net consequence of the provisions of S.230 of the Motor Vehicles Act would be that despite there being hire purchase agreement, the person in possession under the hire-purchase agreement will be entitled to move an application under section 41 of the Act so as to enable him to get his name entered as registered owner in the certificate of Registration. The object of enabling these provisions under the Act of 1988 appears to recognize the hirer as an owner not only to retain the Registration Certificate in respect of the vehicle

which is the subject matter of the hire purchase agreement but also to help him to obtain the fitness certificate get the vehicle insured route permit etc. the necessary compliance of which required to be done under the 1988 Act so as to run the vehicle without any hindrance from any quarter. But that does not mean that he becomes the absolute owner because as per conditions of the hire purchase the agreement, the hirer has to fulfil the conditions laid down therein and to pay the amount of instalments so as to become the absolute owner in terms of the hire purchase agreement.

(Para 15)

Further held, that as the claim for custody of the vehicle was put up by the hirer and the financier-petitioner, the Magistrate was duty bound to examine the terms of the hire purchase agreement because a definite stand was taken by the financier that the default in payment of the instalment amount has been made by the hirer and merely because the Registration Certificate has been issued in the name of the hirer who would, but for this hire-purchase agreement, have been entitled to possession of the vehicle in question would not in any manner take away the right of the financier under the hire-purchase agreement to obtain interim custody of the vehicle in question because by that time the hirer had not become the absolute owner of the property.

(Para 15)

A.S. Virk, Advocate *for the Petitioner*

J.S. Yadav, Advocate *for the respondent.*

JUDGMENT

B.C. KATHURIA, J

(1) Petitioner has filed the present revision challenging legality of order dated 23rd December, 2000 passed by the Session Judge, Bhiwani, whereby order dated 7th June, 2000 passed by the Sub Divisional Judicial Magistrate, Charkhi Dadri, directing the release of jeep bearing registration No. HR-34/7486 on superdari to M/s. Ashok Leyland, Hisar (petitioner herein) was set aside and the vehicle was directed to be released on superdari to Ramesh Kumar, respondent.

(2) A few facts need to be noticed in order to focus the controversy raised in the present petition.

(3) Ramesh Kumar (respondent herein) has entered into hire-purchase agreement dated 27th February, 1998 with the petitioner so as to avail finance facility for the purchase of Mahindra & Mahindra jeep bearing registration No. HR-34/7486. Out the the total invoice value of the jeep amounting to Rs. 3,06,000, a sum of Rs. 2,00,000 was financed by the petitioner at the finance charges rate 12.92 per cent flat per annum, which was repayable in 23 hire money instalments commencing from 27th February, 1998 upto 27th December, 1999. Respondent had also agreed to pay additional finance charges at the rate of 36 per cent per annum in the vent of default in making payment of any instalment until final payment. Under agreement dated 27th February, 1998 (Annuxure P-1), petitioner was termed as owner and respondent as the hirer. It was stipulated in the agreement that if any of the terms of the agreement was contravened by the respondent, petitioner shall be entitled to take possession of the vehicle. The respondent did not maintain the schedule of payment of instalments, a sum of Rs. 1,08,122 became due and outstanding from him as per accounts settled on 27th October, 2000. In view of the default in payment of instalments by the respondent, the petitioner authorised Chhotu Ram on 19th May, 2000 to take possession of the vehicle in qeustion from the respondent as per office letter dated 19th May, 2000. The said vehicle was taken into possession by the police in a criminal case bearing FIR No. 101 dated 25th February, 2002 registered under Sections 323/506/341/500/506/147/149 IPC with Police Station Badhra, District Bhiwani. According to the stand of the petitioner, this FIR was manipulated and got registered by the respondent in order to frustrate repossession of the vehicle. The petitioner applied for release of the vehicle in question on Superdari and as per order dated 7th June, 2000 passed by the Sub Divisional Judicial Magistrate, Charkhi Dadri, the application filed by the petitioner was accepted and the vehicle was ordered to be released to the petitioner on furnishing necessary surety bonds. The order dated 7th June, 2000 passed by the Sub Divisional Judicial Magistrate was challenged in revision petition filed by the respondent which was accepted by the Sessions Judge, Bhiwani, as per order dated 23rd December, 2000 and the order dated 7th June, 2000 of the Sub Divisional Judicial Magistrate, Charkhi Dadri was set aside and the

vehicle in question was directed to be released to the respondent on Superdari. It is under these circumstances, order dated 23rd December 2000 passed by the Sessions Judge, Bhiwani, has been challenged in the present revision petition.

(4) I have heard learned counsel for the parties at length.

(5) It has been strenuously urged by the counsel for the petitioner that in terms of agreement dated 27th February, 1998, petitioner continued to be owner of the vehicle in question because the respondent had committed default in payment of hire money instalments and a sum of Rs. 1,08,122 was due and outstanding against him as per accounts settled on 27th October, 2000 and for that reasons, the Sub Divisional Judicial Magistrate had rightly ordered the vehicle to be released in favour of the petitioner, being the financier and owner of the vehicle. In support of the stand taken, reliance was placed upon judgments in *Sardar Trilok Singh and others* versus *Satya Deo Tripathi (1)* and *Man Pal Finance Corporation Limited* versus *T. Bangarappa and another*, (2).

(6) Opposing the submissions made, counsel for the respondent has justified the order dated 23rd December, 2000 passed by the Sessions Judge, Bhiwani, for the reasons stated therein. He has also placed reliance upon judgment in *Rajendra Prasad* versus *State of Bihar and another* (3).

(7) The reasons which prevailed with the Sub Divisional Judicial Magistrate, Charkhi Dadri, to release the vehicle in question on Superdari to the petitioner are contained in paras 4 and 5 of his order dated 7th June, 2000. The stand taken on behalf of the respondent that he was registered owner of the vehicle in question was not accepted. The learned Sessions Judge set aside order dated 7th June, 2000 of the Sub Divisional Judicial Magistrate for the reasons contained in para 11 of his order dated 23rd December, 2000 which reads as under :—

“11. The broad facts of the case that Ramesh Kumar who obtained loan from respondent No. 1 Ashok Leyland is

(1) 1979 SCC (Cr.) 987

(2) 1994 SCC (Cr.) 588

(3) 2000 (2) All India Criminal Law Reporter 751

admittedly registered owner of the jeep No. HR-34/7486. Some of the instalments have been paid. However, there is no details of the total instalments paid by the petitioner. The jeep in question was taken in possession from the petitioner in case FIR No. 101, dated 25th May, 2000 and thereafter on an application moved by the financier, i.e. respondent No. 1, the Sub-Divisional. Judicial Magistrate, Charkhi Dadri, while passing the impugned order ordered that the Supardari be given to the financier having best title of the vehicle in question. Undoubtedly, in case of non-payment of the instalments the financier, i.e. respondent No. 1 can sue the revisionist-petitioner for the recovery of the remaining amount in case of any violation. However, that fact could not be thrashed out in the present application for releasing the vehicle in question on supervision. Therefore, in view of the law laid down in *Rajendra Prasad v. State of Bihar* and another, 2000(2) Judicial Reports (Criminal) 621, *ibid*, the impugned order is not based on the correct appreciation of the facts of the case. Since the vehicle was taken in possession from the registered owner, therefore, the registered owner who has paid some of the instalments to the financier company, the Supardari in the given circumstances be given to the petitioner on the same terms and conditions as laid down in the impugned order.”

(8) Counsel representing the petitioner while assailing the above findings of the learned Sessions Judge has contended that the issue before the Sessions Judge was not as to from whom the possession of the vehicle was taken by the police ; rather the short controversy to be decided was as to who was entitled to receive vehicles on Superdari under Section 451 Cr. P.C. According to him, the petitioner being the owner in terms of hire-purchase agreement dated 27th February, 1998 was entitled to possession of the vehicle. To support his stand, he drew strength from the observations made in **Manipal Finance Corporation Limited 's case (supra)**. The facts of the above-mentioned case were that the appellant-finance company had given financial facility on hire-purchase basis to respondent No. 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 6th June, 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 those proceedings, the police took charge of the vehicle and produced the same before the Magistrate. The 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 with one surety of like amount and directed the appellant to have the question of title determined by a Civil Court. By the same order, the complaint was also dropped. The result of that order was that without the charge of theft having been proved, the possession of the vehicle was delivered to the hirer ignoring the findings recorded in the order. That order was challenged before the Court of Session which dismissed the revision petition. When further revision was filed in the High Court, there too the appellant company was unsuccessful. Thereafter, the matter was taken to the Apex Court. While allowing the appeal of the appellant company, it was observed by the Apex Court as under :—

“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."

(9) In the above-mentioned case, reliance was placed upon judgment in **Sardar Trilok Singh's case (supra)**. In that case, the dispute between the parties related to the purchase of a truck from Harbans Singh, arrayed as accused. The total cost incurred in the purchase of truck was Rs. 60,000. On 29th April, 1973, an agreement was entered into between Satya Deo Tripathi and his partner Bhagwani Prasad on one hand and M/s Sardar Finance Corporation, Kanpur on the other which was represented by appellant No.1 as its partner in the Apex Court. According to the stand taken by the afore-said corporation, half of the money was advanced by the said firm which had enabled the complainant and his partner to acquire the truck. The stand of the complainant was that the amount advanced by the said firm was by way of loan while the stand of the appellants in the Apex Court was that it was given on the basis of hire-purchase agreement entered into between the parties in support of which formal agreement in writing was also executed. /Complainant's case was that he along with others had only signed a blank form. His further case was that he had paid back two monthly instalments and the third instalment was payable in the month of July, 1973, but before the payment of third instalment the accused came to the house of the complainant in his absence and in spite of protests by his wife, forcibly under threat of arms removed the truck and thus, they were alleged to have committed various offences including the offence of decoity, which led the complainant to file complaint against the accused named therein. The stand taken by the aforesaid corporation was that the first instalment was payable on 15th May, 1973, second on 15th June, 1973 and third on 15th July, 1973 and so on. The entire sum due was to be cleared in twenty-three instalments. On default of any one monthly instalment the financier had the right to terminate the hire-purchase agreement even without notice and seize the truck. As the instalment for the month of July had not been paid by the due date, complainant and his partners had surrendered the truck on 24th July, 1973. In short, the case presented by the appellants in the Apex

Court was that the complaint lodged by the complainant was absolutely false. Taking into account the facts brought forth on record, it was observed by the Apex Court, as under :—

“The question as to what were the terms of the settlement and whether they were duly incorporated in the printed agreement or not were all questions which could be properly and adequately decided in a civil court. Obtaining signature of a person on blank sheet of papers by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts their relevant provisions of the Penal code making it an offence or when such a document is used as a genuine document. Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on July, 30, 1973 from the house of the respondent they could and did claim to have done so in exercise of their bonafide right of seizing the truck on the respondent’s failure to pay the third monthly instalment in time. It was, therefore, a *bona fide* civil dispute which led to the seizure of the truck. On the face of the complaint petition itself the highly exaggerated version given by the respondent, the appellants went to his house with a mob armed with deadly weapons and committed the offence of decoity in taking away the truck was so very unnatural and untrustworthy that it could take the matter out of the realm of civil dispute. Nobody on the side of the respondent was hurt. Even a scratch was not given to anybody.”

(10) With the above observations, the appeal was allowed while setting aside the orders the High Court as well as that of the Magistrate and the criminal proceedings initiated by the respondents against the appellants were quashed.

(11) What right flows from the hire-purchase agreement, again came to be discussed lucidly in *Charanjit Singh Chadha* versus *Sudhir Mehra*,⁽⁴⁾ In that case, the facts were that the appellants

were running a non-banking financial institution under the trade-name of M/s Deluxe Leasing Private Limited. Sudhir Mehra, respondent, partner of the partnership firm entered into hire-purchase agreement with the appellants on 3rd May, 1994 whereunder a motor vehicle was handed over to the respondent. The total consideration amount to be paid by the respondent was Rs. 3,02,884 and the respondent had made an initial payment of Rs. 69,308 and the balance amount was to be paid in 36 monthly instalments of Rs. 8,400 each starting from 3rd June, 1994. As per the stand of the respondent, he had been paying instalments regularly. Respondent had filed a criminal complaint in the court of Judicial Magistrate, Amritsar, on 3rd December, 1998 on the allegation that the motor vehicle in question had developed some trouble and it was entrusted to a motor mechanic on 1st September, 1996 for carrying out repairs. Further, according to him, on the night of 16th September, 1996 the appellants forcibly took away the vehicle from the motor mechanic and thus, committed offences under Section 406/420/120-B IPC. The Magistrate took cognizance of the offence stated in the complaint and issued summons to the appellants. Aggrieved by the summoning order, the appellants had filed a petition under Section 482 of the Code of Criminal Procedure in this Court to quash the complaint proceedings. The appellants had alleged in the petition that the respondent had committed default in paying the instalments and that as on 1st September, 1996 an amount of Rs.1,34,887 was outstanding against the respondent and for that reason, the appellants were constrained to terminate the hire-purchase agreement and that the respondent had surrendered the motor vehicle to the appellants. The learned Single Judge of this court declined to quash the proceedings and held that the allegations in the complaint were capable of making out offences punishable especially under Section 379 IPC and consequently, the petition was dismissed. Aggrieved by that order, the appellants went up in appeal to the Apex Court. Dealing with the rights of the parties on the basis of hire-purchase agreement entered into between them and the facts of the case, it was stated in paras 5 to 11 of the judgment as under :—

5. Hire-purchase agreements are executory contracts under which the goods are let on hire and the hirer has an option to purchase in accordance with the terms of the agreement. These types of agreements were originally entered into between the dealer and the customer and

the dealer used to extend credit to the customer. But as hire-purchase scheme gained popularity with liberal amount of working capital found it difficult to extend the scheme to man coustmers. Then the financiers came into picture. The finance company would buy the goods from the dealer and let them to the customer under hire-purchase agreement. The dealer would deliver the goods to the customer who would then drop out of the transaction leaving the finance company to collect instalments directly from the customer. Under hire-purchase agreement, the hirer is simply paying for the use of the goods and for the option to purchase them. The finance charge, representing the difference between the cash price and the hire-purchase price, is not interest but represents a sum which the hirer has to pay for the privilege of being allowed to discharge the purchase price of goods by instalments.

6. Though in India the Parliament has passed a 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 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 *M/s Damodar Valley Corporation versus State of Bihar*, AIR 1961 SC 440, this Court took the view that a mere contract of hiring, 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.

8. In *K.L. Johar and Co. versus The Deputy Commercial Tax Officer*, AIR 1965 SC-1082, this Court took the view that a hire-purchase agreement has two elements; (1) element of bailment; and (2) element of sale, in the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then has been hired.
9. Similar views were expressed earlier in *Instalment Supply (Pvt.) Ltd. versus Union of India and Ors.*, AIR 1962 SC 53; and reiterated in *Sundaram Finance Ltd. versus State of Kerala*, AIR 1966 SC 1178.
10. The agreement executed by the parties in this case is to the effect that the hirer would not become the owner of the property until he pays the entire instalments. A copy of the agreement is produced as Annexure P-1 wherein the appellants are referred to as the first party and the respondent as the second party and it is specifically stated that the first party would be the absolute owner of the vehicle and the respondent-second party agreed to pay all the instalments punctually. Clause 7 of the agreement says that the hirer may at

any time before the final payment under the hire-purchase agreement falls due and after giving the owners not less than fourteen days notice in writing of his intention to do so and re-delivering the vehicle to the owners at their office, terminate the hire-purchase agreement. Clause 8 (viii) gives a right to the owner to re-possess the vehicle in case of default by the hirer. Clause 9 (ix) gives the owner an irrevocable licence to enter any building, premises or place where the vehicle may be supposed to be for the purpose of inspection, re-possession or attempt to re-possess the vehicle and the owner of the vehicle will not be liable for any civil or criminal action at the instance of the hirer. It is also made clear that the hirer would be liable for all the expenses of the owner in obtaining re-possession or attempting to obtain re-possession of the vehicle.

11. The whole case put forward by the respondent-complainant is to be appreciated in view of the stringent terms incorporated in the agreement. If the hirer himself has committed default by not paying the instalments and under the agreement the appellants have taken re-possession of the vehicle, the respondent cannot have any grievance. The respondent cannot be permitted to say that the owner of the vehicle has committed theft of the vehicle or criminal breach of trust or cheating or criminal conspiracy as alleged in the complaint. When the agreement specifically says that the owner has got a right to re-possess the vehicle there cannot be any basis for alleging that the appellants have committed criminal breach of trust or cheating.”

(12) In the above-mentioned case, notice was also taken of the earlier decision in *Sardar Trilok Singh's case (supra)* and *K.A. Mathai and another* versus *Kora Bibbikutty and another* (5). In the ultimate analysis, it was laid down” Hire-purchase agreement in law is an executory contract of sale and confers no right in rem on hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the re-possession of goods as per term of the

agreement may not amount to any criminal offence. "As the agreement in that case specifically gave authority to the appellants to re-possess the vehicle and their agents had been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Therefore, under the hire-purchase agreement, the appellants 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." Consequently, the appeal was allowed and the impugned order was set aside and the complaint and other proceedings initiated pursuant to such complaint were quashed.

(13) No doubt, in the present case, no case has been registered against the petitioner and rather the FIR in question was registered against Dharminder and seven other persons by Ramesh Kumar, hirer of the vehicle. It appears from the order dated 23rd December, 2000 of the Sessions Judge, Bhiwani, that the vehicle in question was taken possession of from the registered owner and following the dictum in *Rajendra Prasad's case* (supra) the vehicle was ordered to be released to the registered owner namely Ramesh Kumar, while setting aside order dated 7th June, 2000 of the Sub- Divisional Judicial Magistrate, Charkhi Dadri. It would be manifest from the decision rendered in *Rajendra Prasad's case* (supra) that the question relating to title of the vehicle in dispute and the correctness of the rival versions regarding the transactions relating to the vehicle were not decided. In order to avoid the vehicle to be exposed to heat and cold, the vehicle was ordered to be entrusted temporarily to the appellant Rajendra Prasad who was the ostensible holder in the registration certificate. It was also directed that the custody of the vehicle with the appellant will be on behalf of the Court and the said arrangement was only till the stage when the Court passed the order regarding disposal of the property on conclusion of the trial.

(14) It is not clear from the above judgment as to whether the vehicle in question was obtained by Rajendra Prasad under the hire-purchase agreement or what were the terms of the transaction under which he came to be owner of the vehicle. This judgment thus, would not in any manner help the respondent under the circumstances of the case. The controversy in the present case, as per the stand of

the petitioner, is that respondent Ramesh Kumar cannot be allowed to frustrate the right of the petitioner to take possession of the vehicle in question when under the terms of the hire-purchase agreement he has committed default in payment of the amount of instalments, as is averted from the terms of hire-purchase agreement dated 27th February, 1998 coupled with the schedule of payment as detailed in the first and second schedule annexed with the agreement placed on record by the petitioner. It is for that reason that the petitioner had authorised Chhotu Ram to re-possess the vehicle from Ramesh Kumar and copy of authority letter dated 19th May, 2000 has been placed on record.

(15) At this stage, notice has to be taken of the provisions of Section 230 of the Motor Vehicles Act, wherein the word "owner" means a person in whose name a motor vehicle has been registered and where such person is a minor, the guardian of such minor and in relation to motor vehicle which is the subject-matter of hire-purchase agreement or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement." The above-noted provisions clearly spell out that the word "owner" has been given an expanded and wider meaning for the purpose of the Act because it makes a person, who is in possession of the vehicle in question which is subject-matter of hire-purchase agreement also the owner for the purpose of the Act. The net consequence of these provisions would be that despite there being hire-purchase agreement, the person in possession under the hire-purchase agreement will be entitled to move an application under section 41 of the Act so as to enable him to get his name entered as registered owner in the certificate of Registration. The object of enabling these provisions under the Act of 1988 appears to recognize the hirer as an owner not only to retain the Registration Certificate in respect of the vehicle which is the subject-matter of the hire-purchase agreement but also to help him to obtain the fitness certificate, get the vehicle insured, route permit etc., the necessary compliance of which is required to be done under the 1988 Act so as to run the vehicle without any hindrance from any quarter. But that does not mean that he becomes the absolute owner because as per conditions of the hire-purchase agreement, the hirer has to fulfil the conditions

laid down therein and to pay the amount of instalments so as to become the absolute owner in terms of the hire-purchase agreement. Section 451 of the Code of Criminal Procedure empowers the Court to pass an interim order for the custody and disposal of the property pending enquiry or trial and the property regarding which the offence appears to have been committed or appears to have been used for commission of offence. In this case, as the claim for custody of the vehicle was put by the hirer Ramesh Kumar and the financier-petitioner, the Magistrate was duty-bound to examine the terms of the hire-purchase agreement because a definite stand was taken by the financier that the default in payment of the instalment amount has been made by the hirer and merely because the Registration Certificate has been issued in the name of the hirer who would, but for this hire-purchase agreement, have been entitled to possession of the vehicle in question, would not in any manner take away the right of the financier under the hire-purchase agreement to obtain interim custody of the vehicle in question because by that time the hirer had not become the absolute owner of the property. The Sub Divisional Judicial Magistrate has rightly taken into consideration that in the Registration Certificate of the vehicle in question, it was also mentioned that the same has been hypothecated with the petitioner-financier and the absolute owner of the vehicle in question under the hire-purchase agreement was the financier who had the right to take possession of the vehicle because of the default committed by the hirer. All these circumstances were not taken into account by the Sessions Judge, Bhiwani, who has said nothing in the order as to the basis on which he found that the Sub Divisional Judicial Magistrate has gone wrong in ordering the release of the vehicle in question on Superdari to the financier.

(16) For the foregoing reasons, the revision petition is allowed, order dated 23rd December, 2000 of the Sessions Judge, Bhiwani, being unsustainable in law is set aside and that of Sub-Divisional Judicial Magistrate dated 7th June, 2000 is restored.

R.N.R.