

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 6 of 2021
(arising out of SLP (CrI.) No.3893/2020)**

SREI EQUIPMENT FINANCE LTD. . . . APPELLANT(S)

VERSUS

RAMJAN ALI & ORS. . . . RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

Leave granted.

2. This appeal has been filed challenging the judgment dated 28.01.2020 of High Court of Judicature at Allahabad, Lucknow Bench allowing the application under Section 482 Cr.P.C. filed by respondent No.1. By impugned judgment, High Court has directed for release of vehicle JCB No.UP 51 AT 5709 in favour of the respondent No.1. The appellant, who was respondent No.3 before the High court aggrieved by the judgment has come up in this appeal.

3. Brief facts of the case and events necessary to be noted for deciding this appeal are:-

3.1 One Amarnath Yadav purchased the JCB machine and entered into a finance agreement dated 22.10.2016 with the appellant under which agreement the appellant financed an amount of Rs.19,83,360/-. Under the agreement, Shri Amarnath Yadav (hereinafter referred to as "original owner") agreed to repay the loan in 46 monthly instalments @ Rs.56,300/- for each month from 15.12.2016 to 15.09.2020.

3.2 The original owner being resident of District Basti, State of Uttar Pradesh applied for registration of the vehicle to the Regional Transport Officer, Basti. The vehicle was registered by Regional Transport Officer, Basti, Shri Amarnath Yadav as owner of JCB machine bearing Registration No. UP 51 AT 5709 and there being agreement of finance with appellant, in the registration certificate the entry was made of the appellant as person in whose favour the vehicle was hypothecated as required by Section 51 of the Motor Vehicles Act, 1988. The original owner failed to pay any

instalment of loan. The appellant as per terms of the finance agreement dated 22.10.2016 referred the dispute to an arbitrator. The arbitrator proceeded to decide the reference as per Arbitration and Conciliation Act, 1996. Notices were issued by Arbitrator to original owner. Original owner failed to appear before the arbitrator. The arbitrator gave an award dated 26.03.2018 in favour of the appellant namely M/s. Srei Equipment Finance Private Limited for an amount of Rs.25,97,053/- with interest @ 10% p.a. from the date of notice of termination (07.03.2017).

3.3 The original owner made an application with the Regional Transport Officer, Basti praying for seeking cancellation of entry of the appellant as person with whom the vehicle was hypothecated. Regional Transport Officer, Basti issued an order on 16.08.2018 cancelling the entry of appellant as financier. The Regional Transport Officer, Basti without any information to the

appellant cancelled the entry of the appellant from the registration certificate and issued a fresh registration certificate in the name of original owner. On 16.08.2018, the Regional Transport Officer, Basti issued a clearance certificate in favour of original owner noticing the fact that vehicle has been sold to Ramjan Ali, the respondent No.1 in the jurisdiction of other registration authority, i.e., Sitapur.

3.4 On the basis of clearance certificate issued by Regional Transport Officer, Basti, the respondent No.1, Ramjan Ali submitted an application for certificate of registration to Transport Department, Sitapur and a registration certificate dated 27.08.2018 was issued in the name of Ramjan Ali as owner. The registration certificate dated 27.08.2018 also noted the entry of hypothecation in favour of Magma Fincorp Limited. The respondent No.1 after obtaining transfer from original owner has been using the vehicle.

3.5 On 09.01.2019, the vehicle was taken possession by four persons, with regard to which an FIR Case Crime No.08 of 2019 under Sections 364 and 392 was lodged by respondent No.1, Ramjan Ali in Police Station Sidhauri District Sitapur. The vehicle was seized on 27.01.2019 by the police. Ramjan Ali filed an application before the Chief Judicial Magistrate, Sitapur for release of the vehicle No. UP 51 AT 5709. Police submitted a report before the Chief Judicial Magistrate, Sitapur on the application of respondent No.1. The appellant also appeared before Chief Judicial Magistrate, Sitapur and filed an objection claiming to be the financer of the vehicle. The appellant's objection stated that the registration certificate, which was in the name of Amarnath Yadav, the original owner, there was entry in favour of appellant as the person with whom the vehicle was hypothecated. The original owner had not paid any amount and an award dated 26.03.2018 was passed in favour

of the appellant against the original owner. Objection further stated that original owner and respondent No.1 had manufactured fraudulent documents and in collusion with officials of Regional Transport Office, Basti had managed to obtain clearance certificate dated 16.08.2018. The Regional Transport officer, Sitapur had transferred the vehicle and registration of the vehicle in the name of respondent No.1 which is illegal. The Chief Judicial Magistrate after noticing the case of the respondent No.1 as well as the appellant, who had filed a detailed objections observed that there is a dispute over ownership of vehicle between respondent No.1 and appellant and hence there is no justifiable ground to release the vehicle in favour of any of the parties. The application filed by respondent No.1 for release as well as the objection of the appellant were rejected by order dated 04.05.2019. Before the aforesaid order dated 04.05.2019 was passed, the appellant filed an

application before the Regional Transport Officer, Basti on 30.04.2019 claiming that the appellant was person with whom the vehicle was hypothecated and entry of hypothecation in favour of the appellant in the registration certificate was got cancelled on the basis of forged Form-35 and the clearance certificate was wrongly issued in favour of original owner for transfer of the vehicle.

3.6 The Regional Transport Officer after receipt of the application by the appellant dated 30.04.2019 issued notices to original owner on 30.04.2019, 08.05.2019, 15.05.2019 and 01.06.2019, the original owner did not appear before the Regional Transport Officer nor gave any reply. The Assistant Regional Transport Officer after considering the materials produced by the appellant by application dated 30.04.2019 and other materials passed an order on 29.06.2019 setting aside the order of cancellation of finance agreement as well as the no objection

certificate earlier issued by Regional Transport Officer, Basti. The Regional Transport Officer held that registration certificate issued by Regional Transport Officer, Basti in Form-23 in respect of vehicle(JCB Machine) bearing No. UP 51 AT 5709 and no objection certificate shall be treated as null and void. The Assistant Regional Transport Officer also wrote to the Superintendent of Police, Basti to register a case under appropriate section of the Indian Penal Code against the original owner.

3.7 The respondent No.1 filed an application under Section 482 Cr.P.C. before the High Court challenging the order dated 04.05.2019 passed by the Chief Judicial Magistrate rejecting his application for release of the vehicle. The appellant was subsequently impleaded as respondent No.3 in the application under Section 482 Cr.P.C.

3.8 The High Court vide its impugned judgment dated 28.01.2020 allowed the application under Section 482 Cr.P.C., set aside the

order of Chief Judicial Magistrate dated 04.05.2019 and directed the release of the vehicle in favour of respondent No.1 Ramjan Ali. The appellant aggrieved by the said order dated 28.01.2020 has come up in this appeal.

4. On 27.10.2020 while issuing the notice following order was passed:-

“Issue notice, returnable in four weeks.

We further direct that the vehicle bearing No.UP51AT-5709 in question shall not be further transferred by the respondent no.1.”

5. The counter affidavits have been filed by respondent Nos.2 and 3 as well as respondent No.1.

6. We have heard learned counsel for the appellant, learned counsel appearing for respondent No.1 as well as learned counsel appearing for the State.

7. Learned counsel for the appellant submits that the vehicle was registered with Regional Transport

Office, Basti in October, 2016 in the name of Amarnath Yadav, the original owner, with entry of appellant as a person with whom the vehicle was hypothecated. The original owner failed to pay the loan EMI and on a reference made to the arbitrator an arbitration award dated 26.08.2018 was passed and after the arbitration award having been passed against the original owner, he hatched a plan to cheat the appellant. The original owner by submitting the forged documents including forged Form-35, got cancelled the entry of appellant in the registration certificate and a clearance certificate was issued on 16.08.2018 by Regional Transport Office, Basti. On the basis of clearance certificate vehicle was got registered in the name of respondent No.1 at Regional Transport Office, Sitapur. The transfer by original owner was wholly illegal and without jurisdiction. The vehicle having been hypothecated to appellant, it could not have been transferred without clearing the loan and without consent of the appellant. The respondent No.1, who is beneficiary of fraud was not entitled to the release of the vehicle and the High Court committed an error

in releasing the vehicle in favour of respondent No.1. It is further submitted that Regional Transport Office, Basti having passed an order on 29.06.2019 cancelling the registration certificate issued in the Form 23 as well as the No Objection Certificate, High Court committed error in directing the release of the vehicle in favour of respondent No.1. The vehicle being hypothecated to appellant and there being award against original owner, the vehicle can neither be transferred to respondent No.1 nor there is any right in respondent No.1 to claim the vehicle.

8. Learned counsel appearing for the respondent No.1 submits that respondent No.1 is bonafide purchaser, who had paid amount of Rs.7,50,000/- to original owner and has obtained finance of Rs.10 lakhs from M/s. Magma Fincorp Limited, the vehicle was rightly released by the High Court in his favour. It is submitted that in the registration certificate, which was produced by original owner, there was no entry of the hypothecation in favour of the appellant. The respondent No.1 has diligently obtained the transfer

and got the vehicle registered in his name with Regional Transport Office, Sitapur. The JCB machine, which was purchased by respondent No.1 was not under any hire purchase agreement, there is no error in purchase of the vehicle by respondent No.1. The respondent No.1 after purchase of the vehicle has obtained insurance cover and is paying the tax for the use of JCB to registering authority, Sitapur. The vehicle having been forcibly taken possession on 09.01.2019, the same has rightly been released to the respondent No.1.

9. Learned counsel appearing for the State submits that after register of the FIR investigation was initiated by the Sub-Inspector and it was found that Amarnath Yadav, the original owner died of cancer on 08.07.2019. In the counter affidavit filed by the State, necessary facts of the case have been mentioned.

10. We have considered the submissions of the learned counsel for the parties and have perused the records.

11. The Motor Vehicles Act, 1988 contains detail provisions regarding registration of vehicle, transfer of ownership and special provisions regarding motor vehicle subject to hire purchase agreement. The present is a case where the appellant had entered into hire purchase agreement with original owner Amarnath Yadav on 22.10.2016. An entry regarding hypothecation was made in the registration certificate while registering the vehicle No. UP 51 AT 5709. Section 51(1), (3) and (4) which are relevant for the present case are as follows:-

"51. Special provisions regarding motor vehicle subject to hire-purchase agreement, etc.-(1) Where an application for registration of a motor vehicle which is held under a hire-purchase, lease or hypothecation agreement (hereafter in this section referred to as the said agreement) is made, the registering authority shall make an entry in the certificate of registration regarding the existence of the said agreement.

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(3) Any entry made under sub-section (1) or sub-section (2), may be cancelled by the last registering authority on proof of the termination of the said agreement by the parties concerned on an application being made in such form as the Central Government may prescribe and an intimation

in this behalf shall be sent to the original registering authority if the last registering authority is not the original registering authority.

(4) No entry regarding the transfer of ownership of any motor vehicle which is held under the said agreement shall be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement.

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12. From the facts, which have been brought on the record, it is clear that when the vehicle was initially registered at Regional Transport Office, Basti, the name of original owner was Amarnath Yadav and entry in the name of appellant as the person with whom the vehicle was hypothecated was there in the registration certificate. Rule 61 of The Central Motor Vehicle Rules, 1989 deals with termination of hire purchase agreement etc. Rule 61, which is relevant is as follows:-

"61. Termination of hire-purchase agreements, etc.—(1) An application for making an entry of termination of agreement of hire purchase, lease or hypothecation referred to in sub-section (3) of section 51 shall be made in Form 35 duly signed by the registered owner of the vehicle and the financier, and shall be

accompanied by the certificate of registration and the appropriate fee as specified in rule 81.

(2) The application for the issue of a fresh certificate of registration under sub-section (5) of section 51 shall be made in Form 36 and shall be accompanied by a fee as specified in rule 81.

(3) Where the registered owner has refused to deliver the certificate of registration to the financier or has absconded then the registering authority shall issue a notice to the registered owner of the vehicle in Form 37."

13. The entry of the appellant's name in the registration certificate of the vehicle was got cancelled by submission of Form 35 by original owner and thereafter fresh registration certificate in Form 23 dated 14.08.2018 was issued in the name of Amarnath Yadav as original owner without any entry of hypothecation. The clearance certificate dated 16.08.2018 was also issued by Regional Transport Office, Basti for transfer of the vehicle to Ramjan Ali within the jurisdiction of registering authority, Sitapur. In the FIR No.08/2019 under Sections 364 and 392, the vehicle was seized on 27.01.2019. Chief Judicial Magistrate in his order dated 04.05.2019 rejecting the application of respondent No.1 for

release has noticed the claim of the appellant, who had filed objection to the release application. The award dated 26.03.2018 was also placed before the Chief Judicial Magistrate where it was noted that outstanding amount in favour of the appellant is Rs.25,97,053/-. Chief Judicial Magistrate noticed the case of the appellant that original owner and the second owner had manufactured fraudulent documents and in collusion with the officials of the Regional Transport Office, Basti managed to get the clearance certificate dated 16.08.2018 whereas No Objection Certificate could not have been issued. The Chief Judicial Magistrate has rejected the application for release.

14. The Regional Transport Office, Basti had passed an order dated 29.06.2019 in exercise of power under Section 55(5) of the Motor Vehicles Act. Section 55(5) under which the order dated 29.06.2019 was passed is to the following effect:-

“55. Cancellation of registration.-

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(5) If a registering authority is satisfied that the registration of a motor

vehicle has been obtained on the basis of documents which were, or by representation of facts which was, false in any material particular, or the engine number or the chassis number embossed thereon are different from such number entered in the certificate of registration, the registering authority shall after giving the owner an opportunity to make such representation as he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address entered in the certificate of registration), and for reasons to be recorded in writing cancel the registration.

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15. The order dated 29.06.2019 was filed before the High Court, which order has been looked into and commented by the High Court. The last paragraph of the order of the Assistant Divisional Transport Officer, Basti, which is relevant is as follows:-

"Under the aforementioned facts and circumstances, I have arrived at the conclusion that Sh. Amarnath Yadav with the intention to cheat in a dishonest manner had fraudulently manufactured the Form 35 and on the basis of such fake document had managed to get the financial contract of the aforementioned vehicle cancelled. It is a settled position of the law and that of the Motor Vehicle Act that an act which is void ab initio can never hold good with the efflux of time. (Quod initio vitiosum est non protest tractu temporis convalescere). Keeping in mind the aforementioned maxim, I have arrived at the bonafide conclusion that Sh.

Amarnath Yadav while concealing the actual facts had submitted fraudulently manufactured documents and thereby had managed to get the order dated 19.6.2018 for cancellation of the financial agreement in respect of the Vehicle No. UP 51 AT 5709 JCB and the order dated 16.8.2018 for issuance of the no-objection certificate of the vehicle. As such, I, while exercising the powers vested on me U/s 55 (5) of the Central Motor Vehicle Act 1988, do hereby set aside the previously Issued order of cancellation of finance agreement and the no-objection certificate. From today i.e. from 29.6.2019, the registration certificate issued by this office in the Form 23 in respect of the aforementioned vehicle and the no-objection certificate shall be treated null and void. Sending a request letter to the Registration Officer, Sitapur, with the expectation that he shall cancel the orders passed by his office on the basis of the forms issued by this office earlier and remit back the no-objection certificate of the vehicle to this office. That apart, let correspondence be made with the Superintendent of Police, Basti to lodge case under the appropriate sections of the IPC for the act done by Sh. Amarnath Yadav. Accordingly, the application dated 30.4.2019 of the Financier Srei Equipment Finance Limited made in connection with the Vehicle No. UP 51 AT 5709 JCB is being finally disposed of in the light of the aforementioned conclusion and provision of the Law.

Sd// Registration Officer
Motor Vehicle Department, Basti"

16. The registering authority has come to the conclusion that Form 35 on the basis of which the entry in the name of the appellant as person with whom the vehicle was hypothecated was fraudulently removed. The Assistant Divisional Transport Officer has cancelled the order dated 16.08.2016 as well as the No Objection Certificate of the vehicle and, thus, the registration certificate given by office of Regional Transport Office, Basti in Form 23, which has been filed as Annexure CA-2 to the counter affidavit of respondent No.1 has been held to be null and void. All subsequent proceedings including certificate of registration obtained by respondent No.1 on 27.08.2018 on the basis of certificate of clearance dated 16.08.2018 shall also automatically be treated non est. The order of the Assistant Divisional Transport Officer, Basti dated 29.06.2019 has not been shown to have been either set aside or stayed by any competent court. The High Court in paragraph 10 of the judgment has noted about the order of the Assistant Divisional Transport Officer. The High Court has observed that the contents of the order dated 29.01.2019 are baseless and the action of

the Assistant Regional Transport Office, Basti is also derogatory. We fail to see that on what basis, the High Court proceeded to make the following observations:-

"10.the contents of the order dated 29.01.2019 are baseless and the action of ARTO, Basti is also derogatory,....."

17. Although High Court was right in its observation that the record of office of Assistant Regional Transport Office, Basti was provided by the officials to the owner of vehicles, but there were ample materials before Assistant Regional Transport Officer, which were submitted by application dated 30.04.2019 of the appellant and other records available with the Assistant Regional Transport Officer including four notices issued to original owner which has been noticed by Assistant Regional Transport Officer in his order. More so, when order of the Assistant Regional Transport Officer dated 29.06.2019 has neither been set aside nor stayed, High Court could not have ignored the effect and consequences of the order. The order dated 29.06.2019 having been passed in exercise of the statutory power of the registration authority under

Section 55(5), the legal consequence of the said order is that registration certificate issued in Form 23 by Regional Transport Office, Basti showing the name of only Amarnath Yadav with no entry of appellant has been treated to be null and void.

18. The High Court in its order has relied on judgment of this Court in **Manoj and Ors. Vs. Shriram Tpt. Finance Co. Ltd. and Ors., JT 2002(1) SC 293**, where this Court has observed that vehicle having been released in favour of the registered owner though it was open for the financier to approach in the civil court for proper relief. In the above case, the motor vehicle was registered in the name of the appellant Manoj Sharma. On his application, the Magistrate has directed for release of the vehicle in favour of Manoj Sharma. The said order was reversed by the High Court in revisional jurisdiction. The argument which was made before this Court was that there was a civil suit pending where an order of status quo was passed due to which the High Court was not justified in releasing the vehicle to Manoj

Sharma. In the above case, this Court in paragraph 4 of the judgment has made following observations:-

"4. Mr. Rao appearing for the financier vehemently contended that in view of the pendency of the civil suits, and the order of the status quo passed therein, the magistrate was not justified in passing the order granting the vehicle in possession of Shri Manoj Sharma. We do not find any substance in the aforesaid contention inasmuch as the magistrate has categorically held in the order that the order delivering possession of the property to Shri Manoj Sharma is subject to any variation to be made by the civil court. If the financier was aggrieved by the order directing release of the vehicle in favour of Shri Manoj Sharma, who continues to be the registered owner of the vehicle, it was open for the financier to approach the civil court in the pending civil suit for interference. In this view of the matter, we set aside the impugned order of the High Court and direct that the order of the magistrate dated 3.4.2000 be complied with, and in case Shri Manoj Sharma furnishes a necessary bond to the extent of Rs. 5 lacs, then the vehicle could be given to Shri Manoj Sharma, which would be subject to any variation of the order by the civil court."

19. In the above case, there was no dispute that Manoj Sharma was registered owner of the vehicle. The present is a case where registration certificate which was issued by Regional Transport Office, Basti in Form 23 stood cancelled including the setting aside of the clearance certificate dated 16.08.2018.

The subsequent registration obtained from Regional Transport Office, Sitapur on the strength of clearance certificate dated 16.08.2018 shall also be of no avail to the respondent No.1 in view of registration certificate having been set aside on 29.06.2019. The above case, thus, has been wrongly relied by the High Court in support of the claim of the respondent No.1.

20. The statutory authority while cancelling the registration certificate of the vehicle issued by Regional Transport Office, Basti in Form 23 has recorded his conclusion that entry of the appellant as a person in whose favour the vehicle was hypothecated, which was there in the original registration certificate has been fraudulently deleted. In consequence of above, all subsequent acts including the registration certificate issued in the name of respondent No.1 by Regional Transport Office, Sitapur became non est. The respondent No.1 although claimed that he is a bonafide purchaser but fact remains that he is beneficiary of fraud.

21. The High Court unduly influenced by the fact that application for release of vehicle was filed by respondent No.1, the High Court lost sight of the fact that the appellant has also filed objection to the application of release filed by respondent No.1 objecting the release and claiming itself to be entitled to the vehicle as being person with whom the vehicle was hypothecated, whose hypothecation entry was fraudulently removed to facilitate the transfer in favour of respondent No.1, which was illegal and void.

22. The High Court in paragraph 9 has observed that registration certificate obtained from the office of Regional Transport Office, Basti, was in the name of Amarnath Yadav as registered owner with no endorsement of hypothecation, which fact was relied by the High Court in the impugned order. The High Court failed to notice that entry of hypothecation of the vehicle in favour of the appellant was very much there in the original registration certificate, which entry was got deleted by submitting a forged Form 35 by original owner, which finding has been recorded in

the order of Assistant Regional Transport Officer dated 29.06.2019 cancelling the registration certificate on which reliance has been placed by the High Court in paragraph 9. The basis of the order of the High Court was the certificate of registration in name of Amarnath Yadav, which has been filed before us as Annexure CA-2. Without considering the fact that by order dated 29.06.2019, the said certificate stood cancelled and was declared void and non est, the High Court decided in favour of respondent No.1.

23. In view of the foregoing discussions, we are of the considered opinion that the High Court committed error in directing the release of the vehicle in favour of respondent No.1 in whose name the vehicle was registered at Regional Transport Office, Sitapur, but in view of order dated 29.06.2019, the registration in favour of Amarnath Yadav (CA-2) and of certificate of clearance dated 16.08.2018 having been set aside, there was no right in respondent No.1 to claim the release of the vehicle. The order of the High Court, thus, is unsustainable and is hereby set aside. We further order that vehicle No. UP 51

AT 5709 be released in favour of the appellant. Chief Judicial Magistrate, Sitapur shall ensure that vehicle is received back from respondent No.1 and released in favour of appellant on such terms and conditions as may be deemed fit and proper, which exercise shall be completed within a period of four weeks from today. The appeal is allowed accordingly.

.....J.
(ASHOK BHUSHAN)

.....J.
(R. SUBHASH REDDY)

.....J.
(M.R. SHAH)

**New Delhi,
January 05, 2021.**