

Viking Tours Ltd.
v.
The Finance Co. Ltd. and Another

SUPREME COURT.

SAMARAKOON, C. J., WEERARATNE, J. AND SHARVANANDA, J.
S.C. 76/80—C.A. APPLICATION 986/79—M.C. COLOMBO (FORT) 29688
OCTOBER 15, 1981.

Administration of Justice Law, No. 44 of 1973, section 102—Disposal of property seized by police officer—Scope of inquiry to be held by Magistrate—Hire-purchase agreement—Seizure of vehicle by Finance Company for default—Whether validity of such agreement can be adjudicated upon in these proceedings—Code of Criminal Procedure Act, No. 15 of 1979, section 431.

On application being made by the Police for the disposal of an omnibus alleged to have been stolen from the appellant-company, the vehicle was claimed by the 1st respondent company as well, on the basis that they had seized it under a hire purchase agreement entered into with the appellant. After the said vehicle had been seized on termination of the hire-purchase agreement, the Police had taken custody of it on a complaint of robbery made by the appellant and produced it in the Magistrate's Court. At the inquiry into the application made by the Police, the appellant-company while admitting the hire-purchase agreement contended that it was merely a "cover" for a money lending transaction between the parties and not a valid hire-purchase agreement. The Magistrate accepted this position and taking the view that the Court was entitled to look into the true nature of the transaction between the parties held that the appellant was entitled to the vehicle.

On an application in revision made to the Court of Appeal, this order was set aside and the vehicle directed to be handed over to the 1st respondent. The appellant preferred an appeal to the Supreme Court from this order.

Held

The Magistrate exceeded his jurisdiction under section 102 of the Administration of Justice Law (which corresponds to section 431 of the Code of Criminal Procedure Act, No. 15 of 1979) in embarking on an inquiry into the validity or genuineness of the hire-purchase agreement. A Magistrate does not exercise a civil jurisdiction under section 102 and cannot go behind the hire-purchase agreement and re-open the transaction and grant relief in law or equity, once it is admitted that the parties entered into a hire-purchase agreement. Accordingly the judgment of the Court of Appeal must be affirmed.

APPEAL from a judgment of the Court of Appeal.

*E. D. Wickremayake, with M. Hussain, for the 2nd claimant-petitioner-respondent.
V. S. A. Pullenayagam, with D. S. de Silva and Miss C. Abeysekera, for the 1st claimant-petitioner-respondent.*

November 20, 1981

SHARVANANDA, J.

The scope of an inquiry under section 102 of the Administration of Justice Law (which corresponds to section 431 of the Code of Criminal Procedure Act, No. 15 of 1979) arises in this case. Section 102 (1) provides that:

"The seizure by any Police officer of property alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence shall be forthwith reported to a Magistrate who shall make such order as he thinks fit in respect of the delivery of such property to the person entitled to possession thereof, or if such person cannot be ascertained in respect of the custody and production of such property."

An application was made by the Police under the above section for the disposal of an omnibus bearing No. 23 Sri 7698 alleged or suspected to have been stolen from Viking Tours Ltd. On 5th October, 1978, the vehicle in question was removed from the possession of Viking Tours Ltd. by The Finance Co. Ltd. The Finance Co. Ltd. claimed that they seized the vehicle under a hire-purchase agreement dated 21st December, 1976, entered into between them and the 2nd Claimant. Paragraph 13(1) of the agreement provided that:

"If during the continuance of the hiring, the hirer (Viking Tours Ltd.) make default in punctually paying any monthly hiring rental (whether demanded or not) as and when it falls due, the owners (The Finance Co. Ltd.) should be entitled, should they think fit, to terminate the hiring either by giving the hirer notice in writing of such termination or by recovery of the vehicle without giving any such notice".

By the said agreement, Viking Tours Ltd. agreed and undertook to pay a monthly hiring rental of Rs. 6,536.70, payable on or before the 21st day of each month, commencing in the month of January 1977. The hirer paid only a sum of Rs. 5,000 against the monthly rental and defaulted in the payment of the other rentals. The Finance Co. Ltd., as it lawfully might, terminated the said hire-purchase agreement on 26th July, 1977, and demanded from the hirer the return of the said vehicle. Viking Tours Ltd. having failed to return the said vehicle, The Finance Co. Ltd., in terms of the said agreement, seized the said vehicle No. 23 Sri 7698 on 5th

October, 1978, from the custody of the appellant. Thereafter, on a complaint of robbery being made by Viking Tours Ltd., the Police took over the custody of the said vehicle from the possession of The Finance Co. Ltd. and produced same in the Magistrate's Court of Colombo and made application to the said Court for the disposal of the said vehicle in terms of section 102 (1) of the Administration of Justice Law.

At the inquiry into the application of the Police, The Finance Co. Ltd (the 1st claimant) and Viking Tours Ltd. (the 2nd claimant) made claims to the said vehicle. At the inquiry, Mr. A. S. Gunatilleka, a Director of the 2nd claimant-company, gave evidence and stated that Viking Tours Ltd. imported the said vechicle and that the Company needed Rs. 1½ lakhs for the payment of debts incurred in connexion with the importation of the said vehicle, which was valued at about Rs. 7 lakhs, and in connexion with the obtaining of this money, the Company entered into the hire-purchase agreement P2. He further stated that The Finance Co. Ltd. was willing to give them Rs. 1½ lakhs "if we sign a certain agreement". He further stated that at a meeting of share-holders in December 1976, it was decided to enter into a hire-purchase agreement with The Finance Co. Ltd. He admitted that he signed on behalf of the 2nd claimant the said hire-purchase agreement P2. The 2nd claimant however contended that the agreement P2 was not a valid hire-purchase agreement, but was a 'cover' for a money-lending transaction, whereby the said vehicle was given as security for the loan of Rs. 150,000.

By his order, the Magistrate accepted the submission of the 2nd claimant and held that "there was no genuine hire-purchase agreement and that the transaction was a money-lending transaction where Viking Tours Ltd. borrowed Rs. 1½ lakhs on the security of the vehicle which was worth about Rs. 6 or Rs. 7 lakhs". His view was that in an inquiry under section 102, the Court was entitled to probe into the true nature of the transaction between the claimants and was not hamstrung by the document which purports to set out the agreement between the parties. On the view taken by him of the circumstances of the transaction, he held that the 2nd claimant, Viking Tours Ltd., was entitled to the vehicle.

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agreement and that the transaction was a money-lending transaction where Viking Tours Ltd. borrowed Rs. 1½ lakhs on the security of the vehicle which was worth about Rs. 6 or Rs. 7 lakhs". His view was that in an inquiry under section 102, the court was entitled to probe into the true nature of the transaction between the claimants and was not hamstrung by the document which purports to set out the agreement between the parties. On the view taken by him of the circumstances of the transaction, he held that the 2nd claimant, Viking Tours Ltd., was entitled to the vehicle.

The Finance Co. Ltd. thereupon moved the Court of Appeal to revise the said order, and the Court of Appeal by its order dated 29th September, 1980, set aside the order of the Magistrate and directed the vehicle to be handed over to The Finance Co. Ltd. (the 1st claimant). Viking Tours Ltd. (the 2nd claimant) has preferred this appeal from the said order.

At the hearing before us, counsel for the 2nd claimant appellant submitted that the transaction between the appellant and The Finance Co. Ltd. was a money-lending transaction and that the said hire-purchase agreement P2 entered into by both the claimants was a 'sham' to get over the provisions of the Money Lending Ordinance. He contended that it was competent for the Magistrate at an inquiry under section 102 of the Administration of Justice Law to go into the question whether there was a genuine hire-purchase agreement and that he could go behind the agreement to ascertain the rights of parties to the said vehicle.

The above contention of counsel cannot be accepted. In my view, the Magistrate exceeded his jurisdiction under section 102 of the Administration of Justice Law in embarking on an inquiry into the validity or genuineness of the hire-purchase agreement and into questions whether the said agreement reflected the true nature of the transaction between the parties. The jurisdiction that the Magistrate exercises under section 102 is not a civil jurisdiction. The Magistrate is not endowed with the civil jurisdiction of a District Judge. He is not entitled, in an inquiry under section 102, to go behind the hire-purchase agreement and re-open the transaction and grant relief in law or equity. The 2nd defendant-claimant-appellant admitted being a party to the hire-purchase transaction. It is not a case of the Company denying being a party, and hence the parties are bound by the agreement until it is set

aside by a competent Court of civil jurisdiction. The question of avoidance or annulment of the hire-purchase agreement is outside the ambit of the inquiry under section 102 of the Administration of Justice Law. Different considerations, however, will apply if a claimant denies being a party to the agreement or if the agreement is illegal. In this case the Magistrate has misdirected himself when he proceeded to hold that the agreement between the parties was not a hire-purchase agreement but was a cloak for a money-lending transaction. It was not open to the 2nd claimant to agitate before the Magistrate issues relating to reliefs which only a civil Court is competent to grant.

The order of the Court of Appeal is affirmed and the appeal of the 2nd claimant-appellant is dismissed.

SAMARAKOON, C.J.—I agree.

WEERARATNE, J.—I agree.

Appeal dismissed.