

Original Paper

Analyzing the Situation of Demanding Debts by Illegal Means with Identification Case Analysis Method

YiLong Li¹

¹ Southwest Minzu University, Chengdu, China

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Abstract

In recent years, various kinds of crimes demanding debts have emerged one after another. Before the new crime of demanding illegal debts, the judicial practice in previous years was mainly regulated by the crime of robbery, the crime of unlawful detention, etc. First of all, we should define the “illegal debt”, and then analyze the act and act object in its objective elements. In the subjective elements, the intention of criminal intent should be based on the purpose of illegal possession, while the lawful purpose does not belong to the intention of criminal intent in the subjective elements of a crime.

Keywords

analysis of authenticated cases, crimes of robbery, illegal detention, and debts

1. The Case

Wang X (woman) used a BMW car in her name as a guarantee to help her ex-husband borrow 400,000 Yuan from defendant Zhang (man). The three parties signed a loan contract, agreeing to repay the principal and pay 200,000 Yuan of interest within 2 years, and stated in the guarantee clause that the BMW car in the name of Wang X was used as guarantee, but the BMW car continued to be used by Wang X. After the expiration of two years, Wang X's ex-husband did not repay the loan as agreed. Because Wang X's ex-husband was sentenced to prison for a crime and could not repay, Zhang repeatedly asked Wang X for a price, so he offered the car as payment, but Wang X refused.

On February 7, 2019, Zhang called on his employees Zhou Mou and Huang Mou and drove with Wang X to a parking lot. When Wang X got out of the car, Zhou Mou and Huang Mou got out of the car, grabbed Wang X's arm and pulled Wang X into the back seat of Zhang's car. Zhang said to Wang X: “You must give me the car today”, and reached out for the car keys. Wang X took out his cell phone to make a call, Zhou Mou grabbed the cell phone. Zhou Mou said: “Don't think about leaving if you don't hand over the key today.” After a three-minute stalemate, Wang X handed the car keys to Zhang. Then

Zhou Mou opened the door of the car, let Wang X get out of the car, and returned the phone to Wang X. Zhang and others drove away the BMW. Wang X then called the police, and the public security organ filed a case for robbery, and detained and arrested Zhang. In July 2021, the procurator ate prosecuted the case to the court.

2. Crime of Robbery

Mr. Zhang coerced Wang X into handing over his car keys by restricting Wang X's personal freedom. He was suspected of constituting robbery under Article 263 of the Criminal Law. (Note 1)

2.1 Objective Constituting Requirements

2.1.1 Conduct

The suspect Zhang conspired with his employees to coerce Wang X to hand over the car keys and drive the vehicle by restricting the personal freedom of Wang X. Conduct Conforming to the Objective Conduct of Robbery

2.1.2 Behavioral Object

The robbery target of the suspect, Mr. Zhang, was the BMW sedan under the name of Wang X. Despite the existence of the real right mortgage, as a creditor, Mr. Zhang only has the mortgage right rather than the ownership of BMW cars. At this time, Wang X's possession of the BMW car is legal possession, property crime not only protects legal possession, but also protects illegal possession. What the criminal law protects is the property interests of the fact at the time of the act, and does not require the victim to suffer the final property loss in civil law. Therefore, the object involved in Zhang's act was a property object protected by the crime of robbery, and certainly Wang X was also a personal object protected by the crime of robbery.

2.2 Illegality

There was no ground of illegality preclusion in this case.

2.3 Subjective Constituting Requirements

2.3.1 Lack of Purpose of Illegal Possession

The Judicial Interpretation gives an expanded interpretation of debts, which includes both legal and illegal debts. When Mr. Zhang restricted the personal freedom of Wang X to obtain his vehicle, it should be determined that Mr. Zhang did not have the purpose of illegal possession of others' property subjectively.

According to the provisions of Paragraph 5 of Article 9 of the Opinions of the Supreme People's Court on Several Issues Concerning the Application of Law for the Trial of Criminal Cases Involving Robbery and Seizure, "Where an actor resorts to such means as violence or threat of violence in order to claim any debt, he may not be convicted and punished for the crime of robbery as a general rule. Where other crimes such as intentional injury are constituted, he shall be punished according to the provisions of Article 234 of the Criminal Law. "In this case, there was indeed a debt dispute, and the ownership of the properties involved was pending determination. Mr. Zhang's target was the vehicle

involved which was pledged to him by Wang X, which was in line with the characteristics of claiming debt and belonged to improper means for debt collection and property recovery; the abovementioned Judicial Interpretation only stipulates “for the purpose of claiming debt”, but does not clearly specify that the object of the act can only be the debtor. Under the circumstances that the ownership of the vehicle robbed by Huang Xingxian was disputed and had not been adjudicated by the people’s court in accordance with the law, Wang X was still the actual owner of the vehicle. Combining the above two aspects, Mr. Zhang’s behavior can be governed by the provisions of this article. Moreover, the violence used in the robbery did not rise to the level of constituting other crimes, such as intentional injury.

2.4 Conclusion

Mr. Zhang coerced Wang X to hand over his car keys and drive away his BMW by restricting Wang X’s personal freedom, which does not constitute the crime of robbery under Article 263 of the Criminal Law

3. Crime of Unlawful Detention

Mr. Zhang’s act of restricting Wang X’s personal freedom when demanding debt is suspected of constituting the crime of unlawful detention under Article 238 of the Criminal Law.(Note 2)

3.1 Objective Constitutive Elements

3.1.1 Behavior Object

Wang X’s ex-husband borrowed 400,000 yuan from Mr. Zhang, and the agreed interest was 200,000 yuan in total. The debt had been existing before Mr. Zhang’s detention. For the BMW car under the name of Wang X, according to Article 26 (Note 3) of the Provisions of the Supreme People’s Court on Several Issues Concerning the Application of Law to the Hearing of Private Lending Cases, the interest of 40 (24%) * 2 = 192, 000 yuan is debts with legal interest, so 8, 000 yuan is debts with natural interest, i.e., the debt is not protected by law and can only be assumed by the debtor voluntarily.

According to the Interpretation of the Supreme People’s Court on How to Convict the Act of Illegally Detaining Others for Claiming Debts Not Protected by the Law published on July 13, 2000, if the actor illegally detains or detains any other person in order to obtain usury, gambling or other debts not protected by the law, he shall be convicted and punished in accordance with the provisions of Article 238 of the Criminal Law. That is to say, the interpretation expands the term “debts” in the original provisions of the Criminal Law to all legal and illegal debts.

Although the value of the BMW X that Zhang demanded from Wang X exceeded the amount owed, the amount of the debt as a pledge still fell within the scope of the amount that should be demanded by the creditor and did not exceed the amount of the debt demanding detention.

3.1.2 Conduct

Zhang’s behavior restricting the personal freedom of Wang X does not belong to the detention behavior in the crime of illegal detention, i.e., the behavior of illegally depriving others of their personal freedom.

The detention behavior constitutes the crime of illegal detention, and the actual deprivation of personal freedom is deemed as completion. However, in such case, the Criminal Law does not punish the actor yet. According to the judicial interpretation, the condition for objective punishment is that the actual accumulative time of deprivation of personal freedom reaches 12 hours, or it is less than 12 hours but there are other serious circumstances. If the condition for objective punishment is not met, in contrast, people will argue that the crime of illegal detention is not constituted. (Note 4)

According to Article 238 of the Criminal Law, in addition to the illegality of the act itself and the violation of the will of the act of detention, the main characteristics of the crime of illegal detention are as follows:

First, continuity or timing, that is, the act is in a continuous state in a certain period of time, so that others lose their personal freedom in a certain period of time. There is no explicit provision on the duration of the crime of illegal detention in our criminal law, but the basis for reference is the provisions in the 1999 “Case Filing Standards (Trial Implementation)” and the 2006 “Case Filing Standards”, which stipulate that the basic constitutive time of the crime of illegal detention is continuous detention of up to 24 hours. According to the general theory, the length of time has no effect on the conviction, only on the sentencing of the actor. But the short, instantaneous deprivation of personal freedom should fall under the “proviso” of Article 13 of the Criminal Law: “If the circumstances are obviously minor, with little harm, not to be dealt with as a crime.” (Note 5)

The second is the seriousness. According to the “proviso” of Article 13 of the Criminal Law: “If the circumstances are obviously minor and have little harm, not to be dealt with as a crime.” Only when the act of illegal detention has reached a very serious level can it constitute a crime; if the circumstances are obviously minor and have little harm, it should not be convicted and punished. In other words, only when the act of illegal detention has reached a very serious level can it be punished as a crime. Based on a comprehensive analysis of the number of persons involved, the methods used the motive and purpose, the damages and consequences, the duration of detention and other factors, the “seriousness” of the act should be considered.

Mr. Zhang restrained Wang X’s freedom for only three minutes, which was an instantaneous restraint and did not constitute the detention under the crime of illegal detention. In the second-instance criminal judgment of “Xu Liangyin and Chen Haiming a case of picking quarrels and provoking troubles, illegal detention and establishment of a casino”, the court stated that: “After investigation, in order to collect debts, Xu Liangyin briefly controlled Rao 1’s freedom for less than 12 hours, which does not constitute the elements of the crime of illegal detention.” Second, in “Ma Jiancheng et al., intentionally destroying properties, unlawful detention and intentional injury”, the Ningxia High People’s Court agreed with this view of the appellant: “the appellant Ma Jiancheng did not beat the victim and restricted the victim’s freedom for a short time, so his act does not constitute the crime of illegal detention;” Even in civil cases, the court also held that the defendant’s act of briefly detaining the plaintiff in order to settle the construction price did not constitute the “coercion” prescribed in Article

150 (Note 6) of the Civil Code. Therefore, Zhang's brief restraint of Wang X's freedom did not constitute the objective elements of the crime of illegal detention.

In addition, Paragraph 3 of Article 238 of the Criminal Law is a provision of attention. The contents of this paragraph are the same as those of the basic provisions. In fact, this provision reiterates the basic components of the crime of illegal detention, and does not change the components of the basic provisions. There is no major difference between the unlawful detention for demanding a debt and the general unlawful detention in terms of infringement on legal interests, both of which only violate the victim's right to personal liberty. Although the content of this paragraph specifically mentions the need for the purpose of demanding a debt, this provision does not add special content to the crime of unlawful detention for demanding a debt, it is only used to remind the judicial personnel that the degree of infringement on legal interests of unlawful detention for demanding a debt is the same as that of unlawful detention for other reasons. "For the purpose of demanding a debt" is just the specific content of the crime of unlawful detention listed by the legislator.

Therefore, because the provision of Article 238, paragraph 3, is only a provision of attention, its interpretation and application do not necessarily have many restrictions, and can be applied to various circumstances that are consistent with the constitution of the crime of unlawful detention of criminals. Therefore, the caution provision should not be regarded as a legal fiction that once detention is used to demand a debt, it will be punished for the crime of unlawful detention. Judging which constituent elements the actor's behavior meets is the focus of dealing with cases of unlawful detention for demanding a debt.

To sum up, Mr. Zhang's objective behavior in the case does not meet the constituent elements of the crime of unlawful detention.

3.2 Illegality (the Accusation among the above Constituting Elements Has not been Established; the Article Is just a Supplementary Statement)

In the case, Mr. Zhang's behavior may belong to self-help behavior in civil law. According to Article 1177 (1) of the Civil Code, "Where the lawful rights and interests of a person are infringed upon, the situation is urgent and the person cannot obtain the protection from the relevant state organ in time, and failure to take immediate measures will lead to irreparable damages to his/her lawful rights and interests, the aggrieved person may, to the extent necessary for protecting his/her lawful rights and interests, take reasonable measures such as detaining the properties of the infringer, etc.; however, he/she shall immediately request the relevant state organ to deal with the matter."

It can be seen that the elements of self-help behavior are that it must be an act of the oblige to protect his/her lawful rights; it must be an act to protect rights under urgent situations; the way of self-help behavior must be the means or form allowed by law; afterwards legal formalities must be completed in a timely manner. The requirement for act of autonomy is objectively urgent and temporary, and it is "too late to ask for relief" from the relevant departments when the self-help behavior is taken. In addition to the failure to request for public relief in time, it also refers to the failure to get timely

response to the request for public relief; “relevant departments” should refer to the national judicial authority and administrative law enforcement department.

In this case, the defendant’s act of controlling and disposing of the collateral is to protect its own lawful rights and interests; however, the plaintiff, as the debtor, had not committed any act infringing on its mortgage right such as intentional transfer of the collateral, impairment or loss of the value of the collateral, etc. Therefore, the defendant could seek for relief from the relevant state organ, and the situation has not reached an emergency state; the defendant’s act of controlling and disposing of the collateral went beyond the means and form allowed by law for the obligee to carry out self-help behaviors; the defendant did not perform legal formalities afterwards and requested the relevant state organs to deal with the matter. Therefore, the defendant’s act does not satisfy the elements of self-help behavior and is not self-help behavior.

There is no cause for prevention of illegality in this case.

3.3 Conclusion

The fact that Mr. Zhang restricted Wang X’s personal freedom when demanding debt does not constitute the crime of illegal detention as specified in Article 238 (3) of the Criminal Law.

4. Revelation

To distinguish the crime of illegal detention from the crime of robbery, the key is whether the purpose of illegal possession exists. The crime of robbery is an act of robbing public or private properties by violence, coercion or other methods for the purpose of illegal possession. The crime emphasizes that the act of robbing public or private properties by violence, coercion and other means is committed for the purpose of illegal possession. With respect to whether demanding money (illegal debt) from a prostitute is illegal possession, the Opinions on Several Issues Concerning the Application of Law in the Trial of Criminal Cases Involving Robbery and Seizure stipulates that “where an offender resorts to such means as violence or threat of violence to claim any debt, he may not be convicted and punished for the crime of robbery as a general rule”, but there is no clarification as to whether the debt is a legal or illegal debt. Therefore, there are different opinions in practice on whether or not to determine the crime of robbery. Meanwhile, the Opinions on Several Issues Concerning the Application of Law in the Trial of Criminal Cases Involving Robbery and Seizure stipulates that “whoever commits robbery with such prohibited objects as drugs, fake currency or pornographic articles as the objects shall be convicted of the crime of robbery; whoever robs any illicit money or property obtained from gambling or from criminal activities shall be convicted of the crime of robbery, but if the offender only robs the money or debt from gambling he wins as the object of robbery, he may not be convicted and punished for the crime of robbery as a general rule. Where any other crime is constituted, the offender shall be punished in accordance with the relevant provisions of the Criminal Law. “It can be seen that when a robbery is committed with illegal debt or illegal articles as the objects, the law is more inclined to “protection” of illegal debt. Similarly, if the offender commits robbery for the purpose of obtaining the

illegal debt, the illegal debt shall also be protected; that is, if the offender commits robbery for the purpose of claiming illegal debt and loses the subjective purpose of illegal possession, it shall not be determined as the crime of robbery.

The crime of illegal detention refers to the criminal act of illegally depriving others of their personal freedom by means of detention, confinement or other compulsory methods. The crime of illegal detention by claim is a type of crime of illegal detention, in which the offender, for the purpose of claiming debts, illegally deprives the debtor or persons who have a close relationship with the debtor of their personal freedom by various means such as detention and seizure. According to the nature of the debts, the crime of illegal detention by claim can be divided into claiming legitimate debts, claiming illegal debts, claiming debts in excess of the amount of the true creditor's right, claiming non-existent debts, and claiming debts that are difficult to ascertain. Debts that are difficult to ascertain include debts not protected by law for which the limitation of action has expired, debts that are presumed not to exist due to lack of evidence, and debts that the offender subjectively believes to exist. It can be seen that under the circumstance that it is impossible to ascertain whether there is debt between the offender and the victim, we shall, in combination of the subjective criminal intent and criminal conduct, explore whether the offender has carried out illegal detention for the purpose of claiming debts. The existence of real and valid debt is not required for the crime of illegal detention by claim. As long as the offender is subjectively for the purpose of claiming debts, with no intention of illegal possession of others' property, even if the offender claims a debt that he/she believes to exist, the crime of illegal detention is constituted. The intention of illegal possession of property is also the key to distinguish the crime of illegal detention by claim from robbery and kidnapping. The offender's crime of illegal detention may include the elements such as assault, insult and abuse that overlap with robbery and kidnapping, but as long as he/she does not have the purpose of illegal possession of property, he/she does not constitute a crime of robbery or kidnapping.

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Notes

Note 1. Article 263 of the Criminal Law [Robbery] Whoever robs public or private property by violence, coercion or other methods shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and concurrently sentenced to a fine;

Note 2. Article 238 of the Criminal Law [Crime of Unlawful Detention] Whoever unlawfully detains a person or illegally deprives a person of his or her personal freedom by any other means shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance, or deprivation of political rights. If he resorts to battery or insult, he shall be given a heavier punishment. Whoever unlawfully detains or takes others into custody in order to obtain repayment of debts shall be punished in accordance with the provisions of the preceding two paragraphs.

Note 3. Article 26 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law to the Hearing of Private Lending Cases When the interest rate agreed upon by both parties does not exceed the annual interest rate of 24%, if the lender requests the borrower to pay interests according to the agreed interest rate, the People's Court should support it. When the interest rate agreed upon by both parties exceeds the annual interest rate of 36%, the part of interests that exceeds 36% is invalid. When the borrower requests the lender to return such amount above 36% that has been paid, the People's Court should support it.

Note 4. Point 18 of the Guiding Opinions on Several Issues Concerning the Handling of Criminal Cases Involving Mafia and Evil Forces issued by the Supreme Law, the Supreme Inspection Office, the Ministry of Public Security and the Ministry of Justice.

Note 5. Some countries stipulate time limits for the crime of illegal detention, or use a certain period of time as the basis for establishing different levels of statutory punishments of the crime of illegal detention. For example, Item 1 of Article 239 of the German Criminal Law stipulates that the statutory punishment of "depriving the victim of his liberty for more than one week" shall be "not less than one year and not more than ten years of liberty punishment".

Note 6. Article 150 of the Civil Code of the People's Republic of China: "Where a party or a third party, by means of coercion, has the right to request a people's court or an arbitral institution to revoke a civil juristic act."