

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL. M.C. NO.538/2009**

Date of Decision : 17.8.2009

SANJAY SINGH

.....Petitioner

Through: Mr.R.N.Yadav,
proxy counsel

Versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Pawan Bahl, APP for
the State.
Mr.Sudeep Kumar,
Advocate for respondent
no.2.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J. (oral)

1. This is a petition for quashing of FIR No.676/2006 registered at P.S. Patel Nagar under Section 406/409 IPC.
2. Briefly stated the facts of the case are that the petitioner herein was employed with Sahara India Pariwar as a Junior Executive Worker. In that capacity, the petitioner is purported to have been handed over the possession of the two vehicles. One vehicle was a two wheeler, make TVS Suzuki Max-100 motorcycle, bearing registration no.HR-26/S 7505

while as the other was a Maruti Alto car bearing registration No.DL-9C.J 5641. Both these vehicles were registered in the name of Sahara India Pariwar-respondent herein.

3. So far as the Alto car is concerned, it is stated that the same was purchased by the petitioner on hire-purchase basis and he was to pay monthly instalments towards the liquidation of the sale price of the vehicle. It is alleged that since the petitioner had defaulted in payment of the instalments, his services were dispensed with and he was asked to return the vehicles.
4. The petitioner having failed to do so, the respondent/complainant filed a complaint under Section 406/409 IPC against the petitioner in the Court of Competent Ilaka Magistrate and vide order dated 14.11.2006, the learned Magistrate directed the registration of an FIR in pursuance of exercise of its powers under Section 156 (3) of Cr.P.C. This is how the FIR was registered against the petitioner.
5. Since the processes were issued against the petitioner, he challenged the same before the learned ASJ, Delhi in CrI.Rev.P. No.109/2007 which was dismissed on 31.10.2007. The petitioner still feeling aggrieved has chosen to file the present petition for quashing of the FIR.

6. On the last date of hearing i.e. on 15.5.2009, it was brought to the notice of this Court that steps u/s 82 of the Cr.P.C have been initiated against the petitioner and as he was not responding to the processes issued against him, the date of hearing was given as 30.5.2009 for appearance before the learned MM.
7. This Court was indulgent and restrained the police from arresting the petitioner till 30.5.2009 on which date he was directed to appear before the learned MM and on the same day he took permission for grant of personal exemption so that he could submit to the processes of law and the trial could proceed.
8. It has now been revealed by the learned APP that the petitioner had appeared before the learned Magistrate through counsel on 30.5.2009 but thereafter he failed to respond, as a consequence of which the process under Sections 82 and 83 Cr.P.C. were completed and the learned MM passed the orders declaring the petitioner as a proclaimed offender.
9. The learned counsel for the petitioner has also not appeared today and the proxy counsel has sought an adjournment. Keeping in view the aforesaid background, this Court is not

inclined to oblige the proxy counsel by giving an adjournment especially when this is a matter which can be disposed of.

10. I have heard the learned APP as well as the learned counsel for respondent no.2 and perused the record.
11. A perusal of the grounds on which the quashing of the FIR is prayed is that in matters of hire purchase, there cannot be a criminal liability. The petitioner in support of his contention in the petition itself has mentioned authorities in this regard. The first authority which has been relied upon by the petitioner is a case titled **Bhagya Products (P) Ltd. Vs. Commissioner of Police and Ors.** 2003 (69) DRT 1 and the second authority is **Govind Vs. State** 104 (2003) DLT 51 (10).
12. In addition to this, the petitioner has also relied upon a case titled **G.Sagar Suri & Anr. Vs. State of U.P. & Ors.** AIR 2000 SC 754 and **Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.** AIR 2008 SC 251 Vol. 8 2007 SLT 554.
13. The learned counsel for the petitioner has contested the pleas of the petitioner by urging that the judgments which have been relied upon by the petitioner are not applicable to the facts of the present case.
14. I have carefully considered the respective submissions of the parties. The two judgments i.e. Bhagya Products (supra) and

Govind Lal (supra) are concerned, the Court essentially deals with a factual matrix where a person concerned had taken loan for purchase of a vehicle and thereafter he had defaulted in payment of the said loan, whereupon the financing agency (be that a bank or a financing company) had repossessed the vehicle while the same was being used by the parties concerned and that the Court was called upon to consider as to whether a case under Section 420/406 could be registered against such parties.

15. It was in this background that the Courts observed that an offence of breach of trust or cheating would not be made out and restriction was put on the financing company to repossess the vehicle. The Court had also laid down elaborate guidelines for repossessing the vehicle.
16. So far as the facts of the present case are concerned, they are totally distinguishable and consequently the law laid down in the said factual matrix cannot be made applicable to the facts of the present case. The petitioner admittedly is an employee of M/s Sahara Group of Companies and in the capacity of being that employee, he was given a motorcycle and a car for use. No doubt the said car and a vehicle were purchased by the petitioner on hire purchase basis by taking a loan from his employer namely M/s Sahara India but as he had

resigned from the services and not settled the said loan. Consequently, the complainant M/s Sahara India had required him to return the vehicles which were admittedly registered in the transport authority in the name of the employer. The petitioner did not respond to such a request for return of the vehicle and it was in this background that the complainant filed a complaint under Section 156 (3) Cr.P.C. where upon the learned Magistrate was pleased to direct the registration of an FIR under Section 406 IPC i.e. the breach of trust and Section 409 IPC, Breach of trust by a public servant.

17. It could not be said that merely because a person has taken a vehicle on hire purchase basis then he will not be guilty of the offence of breach of trust, if he fails to return the vehicle or honour the commitments made by him. The very essence of the offence of the breach of trust is that there should be entrustment. The very fact that the vehicle is purchased by the company and is registered with the transport authority in its name shows that the company is the owner of the vehicle. The vehicle is entrusted to the employee with the condition that he would pay a specified amount as hire charges till the time the principal price of the vehicle and interest, if any is liquidated. If he leaves the company in midway, he is under

an obligation to return the vehicle or get his ownership perfected by paying the balance. By not doing either of the two, the learned Magistrate was justified in getting the FIR registered against him and there is nothing wrong in the same.

18. For these reasons, I feel that the facts of the present case are distinguishable and consequently the judgments which have been relied upon by the plaintiff are not helpful to him.
19. So far as the judgment in case G.Sagar Suri case is concerned, that only lays down a general preposition that the criminal justice machinery should not be permitted to be mis-used at the instance of a complainant in order to give vent to his frustration. These are the general observations and nobody can dispute the efficacy or under value the observations passed by the Supreme Court in the said judgment that issuance of the process in a criminal complaint or registration of an FIR in pursuance to a complaint having been made under Section 156 (3) of Cr.P.C. is a serious matter and therefore, not only the Court but the party must also act carefully and it should not affect the liberty of an individual. I do not find that in the instant case, it could be, by any stretch of imagination said that the complainant had out of sheer frustration lodged a complaint against the

present petitioner under Section 156(3) of Cr.P.C. to satisfy himself. Court feels that the complainant was well within his right to activate the criminal justice machinery as the petitioner had failed to hand over the possession of the two vehicles which was with him in the capacity of a trustee.

20. I accordingly, reject the contention of the learned counsel for the plaintiff that the FIR registered against the petitioner or the direction which has been given by the learned Magistrate directing the registration of an FIR against the petitioner deserves to be quashed.

21. I feel that the petition is totally misconceived and accordingly, the same is dismissed.

V.K. SHALI, J.

AUGUST 17, 2009
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