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

Date of decision: 12th February, 2013

1. CRL.M.C. 649/2012 & CrI.M.A.2254/2012

Kanak Installments Pvt. Ltd. Petitioner

Through: Mr.Vibhor Verdhan, Advocate

versus

State of NCT of Delhi & Anr. Respondents

Through: Ms.Rajdipa Behura, APP for State
Mr.Ajit Kumar & Ms.Saira Sharma,
Advocates for R-2

2. CRL.M.C. 838/2012 & CrI.M.A.2936/2012

Devpal Singh Petitioner

Through: Mr.Vivek Singh, Advocate

versus

State & Anr. Respondents

Through: Ms.Rajdipa Behura, APP for State
Mr.Ajit Kumar & Ms.Saira Sharma,
Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Petitioners invoke inherent powers of this Court under Section 482 of the Code of Criminal Procedure ('the Code') for quashing a Criminal Complaint filed by Respondent No.2 for offence punishable under Sections 406/420 IPC.

2. The case of the Petitioners is that on 02.08.2000 Respondent No.2 (the Complainant) along with Petitioner Devpal Singh (in CrI.M.C. 838/2012) approached the Petitioner M/s Kanak Installments Pvt. Ltd. for grant of a loan of ₹1,00,000/- on the basis of the 'Agreement of Hire Purchase', which was duly signed by Respondent No.2 (the Complainant).
3. It is common case of Petitioners (in both the Petitions) that the Petitioner Devpal Singh stood as a guarantor for the earlier said finance of ₹1,00,000/-. A cheque No.076066 dated 20.03.2001 drawn at Oriental Bank of Commerce, Rishikesh was delivered to Respondent No.2 (the Complainant). The cheque was encashed and the payment was collected by Respondent No.2 (the Complainant) on the same date.
4. According to the Petitioner (in CrI.M.C.649/2012), after obtaining the loan of ₹1,00,000/- Respondent No.2 disappeared and very cleverly and maliciously filed a false Complaint dated 13.12.2001 against M/s Kanak Installments Pvt. Ltd. Company and its Director and also against the guarantor alleging that they cheated him of an amount of ₹1,00,000/-. It is stated that instead of repaying the loan amount of ₹1,00,000/-, Respondent No.2 filed the Complaint to blackmail the Petitioner and to obtain illegal monetary gains.
5. In CrI.M.C. 838/2012, the Petitioner who was arrayed as Accused No.3 in the Complaint states that Respondent No.2 (the Complainant) was his friend and also a relative. He (Respondent No.2) was in dire need of money. Keeping in view the old friendship and the relation, the Petitioner Devpal Singh approached M/s Kanak Installments Pvt. Ltd. Company along with Respondent No.2 (the Complainant) for grant of loan of ₹1,00,000/-. Petitioner Devpal Singh also states that the loan amount was

given to Respondent No.2 (the Complainant) by the earlier said cheque and thereafter he (the Complainant) and also Petitioner Devpal Singh submitted a post dated cheque for the amount of ₹1,00,000/- in favour of the Petitioner M/s Kanak Installments Pvt. Ltd. Company. The Petitioner Devpal Singh says that after the grant of loan, he was not aware of the whereabouts of Respondent No.2. According to him, because of non-payment of the loan amount by Respondent No.2, the cheque given by him (Petitioner Devpal Singh) in favour of M/s Kanak Installments Pvt. Ltd. Company (Petitioner in CrI.M.C.649/2012) was presented to the bank by the Company. Since, the cheque was dishonoured proceedings under Section 138 of the Negotiable Instruments Act, 1881 ('the Act') were also preferred against him (Devpal Singh) by M/s Kanak Installments Pvt. Ltd. Company. It is stated that the Complaint filed by Respondent No.2 (the Complainant) is false, manipulated and procured. It fails to constitute an offence punishable under Sections 420/406 IPC and is thus, liable to be quashed.

6. The Petition is resisted by Respondent No.2.
7. I have heard learned counsel for the parties and have perused the record.
8. It is urged by Mr.Vibhor Vardhan the learned counsel for the Petitioner that repossession of the goods in pursuance of the Hire Purchase Agreement may not amount to any criminal offence. In support of the contention, reliance is placed on *Charanjit Singh Chadha & Ors. v. Sudhir Mehra*, (2001) 7 SCC 417. He also relies on *Sunil Kumar v. M/s Escorts Yamaha Motors Ltd. & Ors.*, (1999) 8 SCC 468, to contend that where an FIR is lodged to pre-empt the filing of a criminal complaint against informant and where there is failure to make out necessary

ingredients of the offence of cheating or criminal breach of trust, the High Court will be well within its power to quash the FIR.

9. It is very well settled that inherent powers under Section 482 of the Code though very wide have to be invoked sparingly and with circumspection only (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the Court and (iii) otherwise to secure the ends of justice. In *Satish Mehra v. State(NCT of Delhi) & Anr.*, (Criminal Appeal No.1834/2012) decided on 22.11.2012, the Supreme Court held that inherent powers of the High Court to quash an FIR or a criminal complaint can be invoked where the allegations made in the complaint even if admitted do not disclose any offence. The relevant part of the report in *Satish Mehra* is extracted hereunder:

“15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed....”

10. The criminal proceedings are quashed by the High Court in exercise of its inherent powers under Section 482 of the Code on the premise that the criminal prosecution should not be and ought not to be permitted to denigrate into a weapon of harassment or persecution.
11. In *Janta Dal v. H.S. Chowdhary & Ors.*, (1992) 4 SCC 305, the Supreme Court, while referring to the inherent powers to make orders as may be necessary for the ends of justice, clarified that such power has to be exercised in appropriate cases *ex debito justitiae*, that is, to do real and substantial justice, for administration of which alone the Courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide plentitude and the powers require great caution in its exercise. The High Court, being the highest Court exercising criminal jurisdiction in a State, has inherent powers to make any order for the purposes of securing the ends of justice. Being an extraordinary power, it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate Court of its powers.
12. There is no gain saying that if the averments made in the Complaint do not constitute a criminal offence, the FIR is liable to be quashed. The case of Respondent No.2 (the Complainant) is that Petitioner No.2 (in CrI.M.C.649/2012) and the Petitioner (in CrI.M.C. 838/2012) were in league. According to him, these two Petitioners had entered into a criminal conspiracy to defraud Respondent No.2 with that object Accused No.3 (Petitioner Devpal Singh) came forward to get Respondent No.2 a loan of ₹1,00,000/- against hypothecation of his bus No.UA-7/4391. According to Respondent No.2, it was Petitioner Devpal Singh who persuaded him under an illegal design to change the registration of the

bus from Delhi to Dehradun (U.P.) and he handed over the original registration certificate of the bus to Petitioner Devpal Singh for its temporary registration with the Motor Vehicle Department, Dehradun (U.P.). It is the case of Respondent No.2 (the Complainant) that Accused Nos.3 and 4 induced him to sign some documents. Accused Nos.2 and 3 (Petitioners herein) also obtained his signatures on some documents and also on a blank cheque for ₹1,00,000/- prepared in the name of Respondent No.2 (the Complainant). Paras 3 to 9 of the Complainant are extracted hereunder:-

“3. That Sh.Dev Pal, S/o Sh. Hukum Singh, R/o D-47, Sanjay Colony, Dehradun (Uttanchal) is relative of the complainant and guarantor of the finance transaction entered with the “Kanak Installments Pvt. Ltd.” for financing for purchase of bus against hypothecation of my Bus No.UA-7/4391.

4. That both the Accused No.2 & 3 had under a planned strategy defrauded the complainant. The complainant owned one bus and wanted to purchase another bus. The accused no.3 had given assurance to complainant to get against hypothecation of the complainant’s Bus No.UA-7/4391. Sh. Dev Pal, the accused No.3 had taken the complainant the Dehradun and persuaded under an illegal design to change the registration of the bus from Delhi to Dehradun, Utter Pradesh and the original R/C paper of the bus were handed over to Sh.Dev Pal for temporary registration of the bus with the department of Motor Vehicle, Dehradun.

5. That on 19th March, 2001, Sh.Dev Pal, accused No.3 and Sh.Dinesh Goel (employee of the company), accused No.4 had come to the complainant’s residence in Delhi and induced the complainant to settle the terms of the finance transaction in the presence of Sh.Amar Pal Singh. The accused No.3 and 4 further induced and pressurized the complainant to sign documents for the finance transaction. That on the same day, the accused No.3 and 4 took the complainant and Sh.Amar Singh to Sh.Ramesh Chand (Director Kanak Installments Pvt. Ltd.) at the

Registered office at Delhi Road, Meerut. There Sh.Ramesh Chand, accused No.2 and Sh.Dev Pal, accused No.3 in connivance and collusion with had pressurized the complainant to sign the papers and under protest had taken the signatures of the complainant on several written and printed papers of "Kanak Installments Pvt. Ltd.", along with some blank papers. The complainant had signed all the papers in the presence of Sh.Amar Pal Singh, as the complainant desperately want to finance for another bus and also because want to finance for another bus and also because the complainant is a semi-illiterate person and had deposed faith on Sh.Dev Pal, accused No.3. Sh.Ramesh Chand, accused No.2 had after obtaining signatures on all the documents told the complainant that before handing over the cheque of Kanak Installments Pvt.Ltd., of ₹ One Lac to the complainant, the accused No.2 require post dated cheques of the complainant as security. As the complainant was not having his cheque book of bank A/c in Delhi, Sh.Ramesh Chand, Accused No.2 instructed the complainant to go back to Delhi and bring the cheque book. Sh. Ramesh Chand, accused No.2 also took the signature of the complainant on the back of the aforesaid blank cheque of "Kanak Installments Pvt. Ltd." as a token of acceptance of the transaction but the complaint was told that cheque can only be delivered after post dated cheque are deposited with the company.

6. That the complainant along with Sh.Amar Pal Singh came back to Delhi on the same day and after collecting the cheque book returned to Meerut on 21.3.2001 and visited the Registered Office of "Kanak Installments Pvt. Ltd." at Delhi Road, Meerut and presented the post dated cheques. However, to the utter shock and surprise, the complainant was told that the payment of ₹ One Lac had already been paid by the company to Sh.Dev Pal, accused No.3 in cash against post dated Cheques of Sh.Dev Pal, accused No.3 that Sh.Dev Pal, accused No.3 was a guarantor in the transaction and not the borrower and therefore, had no authority (written or oral) to receive the said amount on behalf of the complainant. Sh.Dev Pal, accused No.3 was also not authorized to present the original R.C. of the bus for making endorsement of hypothecation, the originals were given to accused No.3 only

for safe custody. Sh.Ramesh Chand, accused No.2 Director of Kanak Installments Pvt. Ltd., accused No.2 therefore, had deliberately and in collusion with Sh.Dev Pal had released the amount of ₹ One Lac in cash without any authority, to defraud the complainant.

7. That the complainant contracted Sh.Dev Pal, accused No.3 and he flatly denied the acceptance of the said amount of ₹ One Lac from Kanak Installments Pvt. Ltd. The complainant also demanded the original papers of the bus. Which were returned by Sh.Dev Pal, but on inspection it was found that the R.C. was endorsed (hypothecated) by Kanak Installments Pvt. Ltd., and on asking for an explanation Sh.Dev Pal started fighting with the complainant.

8. That the complainant had thereafter visited the Registered office of the company several time and at all times Sh. Ramesh Chand, accused No.2 had promised orally that the payment shall be made to the complainant after the same is recovered from Sh.Dev Pal, accused No.3. The accused No. 2 had also requested the complainant not to lodge any complaint with police regarding the transaction as the accused No.2 was confident of recovering money from Sh.Dev Pal, accused No.3 and of the same being paid to the complainant.

9. That the complainant got issued a Regd.A.D./U.P.C. Legal notice dated 10th November, 2001 to the Accused (s) through Sh.Ajit Kumar, Advocate for Recovery of money/cancellation of agreement and/or filing of criminal complaint for cheating and defrauding. On receipt of the aforesaid notice, Mr.Dinesh Goel, employee of Kanak Installments Pvt. Ltd. and Sh.Ramesh Chand, accused No.2 had met the complainant at his residence in Delhi and in the presence of Sh.Amar Pal Singh threatened to withdraw the notice of else be ready of dire consequences.”

13. A perusal of photocopy of the cheque, which is placed on the paper book shows that it was a bearer cheque. This fact was not even disputed by the learned counsel for the Petitioner. Thus, Respondent No.2's (the

Complainant) averments that amount of ₹1,00,000/- was not paid to him or that Accused Nos. 2 and 3 (i.e. Petitioner No.2 in CrI.M.C.649/2012 and Petitioner in CrI.M.C. 838/2012) were in collusion to cheat him (the Complainant) cannot be rejected at this stage.

13. It is true that repossession of the vehicle in terms of the Hire Purchase Agreement will not amount to any criminal offence. The facts of the instant case, however, are distinguishable. Respondent No.2's (the Complainant) case is that Hire Purchase Agreement was a only cloak to deprive him of his bus and he was not paid any money by the Petitioner.
14. Learned counsel for Respondent No.2 (the Complainant) also draws my attention to the photocopy of the cheque which shows that the cheque is in the name of 'Om Veer' whereas the name of Respondent No.2 (the Complainant) even according to the Hire Purchase Agreement is 'Om Bir Singh'. By itself it may not be enough to draw an inference that the Petitioners entered into any conspiracy to cheat Respondent No.2. But in view of the averments made in the complaint, it will be a matter of trial whether the cheque in question was handed over to Respondent No.2 (the Complainant) and whether he (the Complainant) received the payment or not. Since, these are disputed questions of fact; this Court in exercise of its power under Section 482 of the Code cannot be stifled with the Petitioners' prosecution at this stage.
15. The Petitions are devoid of any merits; the same are accordingly dismissed.
16. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 12, 2013

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