

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.R.C.No.333 of 2015

M/s TVS Finance and Services Ltd.,
(formerly known as M/s Haritha Finance Limited)
Rep by its Authorised Signatory
Mr.Sai Kumar
No.3, Jaffar Syrang Street
Chennai 1
presently at
No.29, Haddows Road, Chennai 6. Petitioner/Complainant

vs.

1.K.Kiran Kumar Reddy
2.K.Ravi Kumar Reddy Respondents/Accused

Criminal Revision Petition filed under Sections 397 and 401 Cr.P.C. to set aside the order dated 06.02.2014 in C.C.No.14665 of 2006 passed by the learned III Metropolitan Magistrate at George Town, Madras discharging the respondents/accused and allow the Criminal Revision.

For Petitioner : Mr.Abdul for M/s AAV Partners

O R D E R

Heard the learned counsel for the petitioner.

2. The petitioner, who is the complainant in the trial Court, is aggrieved by the order dated 06.02.2014 passed by the learned III Metropolitan Magistrate, George Town, Chennai, dismissing his complaint.

3. For the sake of convenience, the parties would be referred to as complainant and accused.

4. Admittedly, the complainant is a Non-banking Financial Institution and is into Hire-Purchase financing business. K.Kiran Kumar Reddy [A1] approached the complainant some time in the year 1999 for purchasing buses under Hire-Purchase Scheme. The complainant had advanced money on pronote and other collateral

security, including immovable property security to K.Kiran Kumar Reddy [A1] and for the loan availed of by him, one K.Ravi Kumar Reddy [A2] stood as guarantor. It appears that K.Kiran Kumar Reddy [A1] defaulted in making payments, on account of which the complainant seized 10 buses from the possession of K.Kiran Kumar Reddy and sold the same for Rs.34,16,666/-. While so, the complainant lodged a prosecution against K.Kiran Kumar Reddy [A1] and K.Ravi Kumar Reddy [A2], guarantor, for offences under Sections 406, 415, 418 and 420 IPC before the learned III Metropolitan Magistrate, George Town, Chennai.

5. The learned Magistrate took cognizance of the offences in C.C.No.14665 of 2006 and issued process to the accused. K.Ravi Kumar Reddy [A2] approached this Court in Crl.O.P.No.11160 of 2007 challenging the said prosecution, and this Court by order dated 17.09.2010, quashed the proceedings as against K.Ravi Kumar Reddy [A2]. From 2010 to 2015, there was no progress in the trial before the learned Magistrate. In the meantime, the matter was also referred to the Lok Adalat and the parties were not able to arrive at a settlement and therefore, the matter was sent back to the Court for adjudication. The complainant was continuously absent on 23.12.2014, 28.01.2015 and 06.02.2015. Therefore, the learned Magistrate dismissed the complaint, challenging which the complainant is before this Court.

6. This Court carefully perused the complaint and found that, purely a civil dispute has been given a criminal colour and prosecution has been launched alleging that, the accused has committed offence of cheating. Some of the paragraphs in the complaint are extracted below:

"5. The complainant submits that, thereupon M/s TVS Finance and Services Ltd., and Mr.Kiran Kumar Reddy had entered into a Lease Agreement No.320974 dated 31.03.09 whereby TVS Finance and Services Ltd. had let on lease 10 TATA buses (Chassis & Body) to Mr.Kiran Kumar Reddy on terms and conditions contained therein.

6. The Complainant submits that, in terms of the Lease Agreement, Demand Promissory Note, Supplementary Agreement and Indemnity were executed by Mr.Kiran Kumar Reddy in favour of TVS Finance and Services Ltd.

10. The Complainant submits that, on the pretext of honouring their payments Mr.Kiran Kumar Reddy and Mr.Ravi Kumar Reddy induced TVS Finance and Services Ltd to reschedule the payments. After believing the words, which we had agreed. Thereafter by letter dated 09.05.00. Mr.Kiran Kumar Reddy requested for re-schedulement from 5 years to 6

years. Hence, TVS Finance and Services Ltd had re-scheduled the Lease Charges payable and extended the period upto June, 2005 and the same was communicated by TVS Finance and Services Ltd to Mr.Kiran Kumar Reddy vide its letter dated 16.06.00 and the same was acknowledged by Mr.Kiran Kumar Reddy, by counter-signing the said letter.

11. The Complainant submits that, in terms of the revised repayment schedule Mr.Kiran Kumar Reddy had executed a Demand Promissory Note on 16.06.00 agreeing to pay the amount mentioned therein on demand.

12. The Complainant submits that, Mr.Kiran Kumar Reddy had also executed a Power of Attorney on 01.06.00 in favour of TVS Finance and Services Ltd. to deal with the 10 TATA buses which was given on Lease to him.

19. The Complainant submits that, in such circumstances on account of the defaults committed by Mr.Kiran Kumar Reddy, TVS Finance and Services Ltd had seized the 10 buses after giving due notice to Mr.Kiran Kumar Reddy and sold the same to M/s Amanath Motor Owners Co-operative Society Ltd for Rs.34,16,666/-, which sum was given credit to the account of Mr.Kiran Kumar Reddy."

7. By merely employing expressions like "inducing the complainant", "fraud" and "cheating", the bundle of facts obtaining in this case cannot be given a criminal colour. For attracting the provision of cheating, it is trite law that there should be deception at inception. Even according to the complainant, the accused had given immovable property as security, but the grievance of the complainant is that the property was over valued.

8. Before parting, this Court is constrained to take note of certain events that came to the notice of a learned single Judge of this Court in 2007-2008, which is best explained in the judgment of this Court in Mohan Nair and another vs. M.S. Margasagayam [2009-1-L.W. (Cr1.)200]

"19. It is pertinent to point out that on an earlier occasion on coming to know about the indiscriminate manner in which the private complaints filed under Section 156 (3) Cr.P.C. and Section 200 Cr.P.C. are being entertained by the Judicial Magistrates / Metropolitan Magistrates in this State and after calling for details with reference to pendency of such cases from the Registry and on a perusal of the

details and the nature of the cases in which process has been directed to be issued by the various Courts, Mr. Justice R.Regupathi, by a common order dated 21.08.2008 passed in Crl.O.P.Nos.15451 and 15981 of 2008 has come down heavily on such Magistrates and one among them is the learned X Metropolitan Magistrate, Egmore, Chennai. The learned X Metropolitan Magistrate, Egmore, Chennai, alone had taken cognizance of 10,738 cases for the alleged offence under Sections 406 and 420 IPC and all those cases were withdrawn from that Court to the file of this Court and the following direction was also issued namely:-

"(iv) All records including Vigilance reports may also be placed before the Hon 'ble the Chief Justice for being taking appropriate departmental action against the Magistrates concerned in particular III, X, XVII and XVIII Metropolitan Magistrates, Chennai and Judicial Magistrate-III, Coimbatore and Judicial Magistrate, Paramakudi, Ramnad;"

But subsequent to the aforesaid directions also some instances have come to the notice of this Court that the learned X Metropolitan Magistrate, Egmore, Chennai, is continuing to adopt the same procedure. If complaints of this nature, which are purely civil in nature, frivolous and vexatious, are taken on file indiscriminately without application of mind, the litigating public will not only be put to harassment but will lose faith in the very judicial system itself. Hence this Court feels that stringent action should be taken against the learned X Metropolitan Magistrate, Egmore, Chennai, who has taken the complaint on file in this case."

In fine, this Court confirms the order of dismissal passed by the learned Magistrate, albeit on other grounds stated above. Accordingly, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(Lok Adalat)

//True Copy//

Sub Assistant Registrar

gms

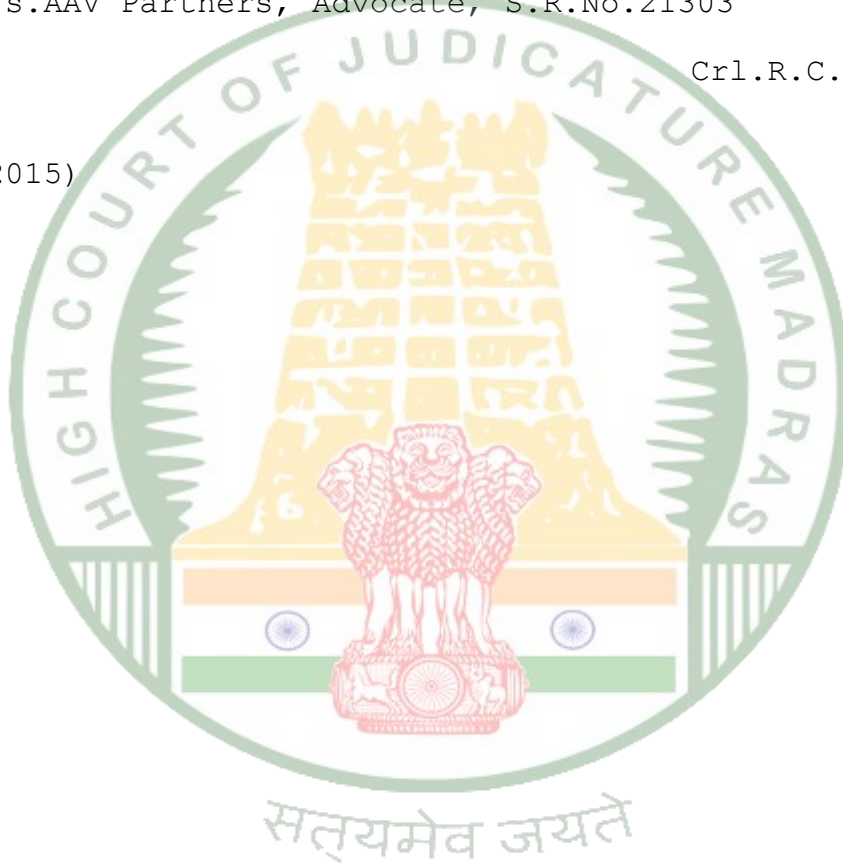
To

1. III Metropolitan Magistrate at George Town,
Madras
2. -do- Through The Chief Metropolitan Magistrate,
Egmore, Madras.

+lcc to M/s.AAV Partners, Advocate, S.R.No.21303

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BVR(CO)
CA(15/05/2015)



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