IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18369-2008 (O&M)
Date of decision : 05.02.2015

INTER STATE FINANCE LTD AND ANR ...Appellants/Petitioners

Versus

RAJESH ...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vinod S. Bhardwaj, Advocate
for the petitioners.

Mr. Amandeep Rana, Advocate
for respondent.

JITENDRA CHAUHAN, J. (Oral)

The present petition under Section 482 Cr.P.C. is for quashing of complaint (Annexure P-11) titled as - "Rajesh son of Raghubir Vs. Inter State Finance Limited" as well as the summoning order dated 17.07.2004 (Annexure P-15) whereby petitioner No.2 has been summoned to face trial under Section 379 IPC.

As per the allegations made in the complaint, complainant-Rajesh son of Raghubir Singh is the owner of mini bus bearing registration No.DL-IV-2313. On 05.08.2000 at about 08.00 am said bus being driven by driver Harish Kumar was intercepted by five persons who came in Marshell Van and identified themselves as members of Inter State Finance Limited, New Delhi. As per the allegations they robbed the driver of the said bus and abducted this driver. They took the driver to their office situated in Sector 4, Gurgaon. However, the driver was dropped at Mahipalpur Road, Delhi.

It is further alleged in the complaint that the abovesaid vehicle was got financed from M.K.K Finance Limited, New Delhi and after clearing of the dues, Form No.35 was issued. The complainant approached the Police Station City, Gurgaon. However no action was taken on his complaint. Thereafter the complainant approached the learned Summoning Court vide complaint (Annexure P-11) wherein the complaint was dismissed vide order 10.04.2001 (Annexure P-13) by the learned Chief Judicial Magistrate, Gurgaon relying upon the police report (Annexure P-12).

Feeling aggrieved again the order dated 10.04.2001 (Annexure P-13) the complainant filed a revision before the learned Additional Sessions Judge, Gurgaon. Learned Additional Sessions Judge vide order dated 08.11.2001 set aside the impugned order (Annexure P-13) dismissing the complaint, and remanded back the case to the trial court with a direction to deal with the complaint of the complainant in accordance with the provisions of law as contained in Chapter XV of Cr.P.C. Thereafter vide impugned order dated 17.07.2004 (Annexure P-15) passed by learned Judicial Magistrate Ist Class, Gurgaon, the petitioners have been summoned to face trial under Section 379 IPC.

The petitioners have sought quashing of the complaint and summoning order by way of this Cr. Misc. No. M-18369 of 2008.

It is contended on behalf of the petitioner that petitioner No.1 financed two vehicles purchased by Rajesh son of Raghubir, who furnished different addresses. Thereafter the vehicles were repossessed by petitioner No.1. A complaint under Section 420 IPC arising out of the same transaction was filed by the respondent. It is further submitted that even civil proceedings with regard to subject matter were initiated by the respondent at Delhi for possession of the vehicles but the same were dismissed. The present complaint was filed against the petitioners subsequently and thus the same is an abuse of process of the court.

On the other hand learned counsel appearing on behalf of the respondent has vehemently opposed the present petition.

I have heard learned counsel for the parties and perused the record.

In the present case the complainant got financed two vehicles bearing registration Nos. DL-IV-2313 and DL-IV-3500. However, he defaulted in the repayment of the loan amount. Subsequently the guarantor namely Rajinder Prasad issued two undertakings dated 27.02.1999 (Annexure P-4 and P-5) admitting his liability of repayment of Rs.292880/- and Rs.70933/- being guarantor of the abovesaid vehicles. Thereafter, the entire loan amount pertaining to vehicle no.DL-IV-2313 was paid and no dues certificate was issued by the petitioner company. However, it was specifically agreed by the respondent that the said vehicle may be taken in possession in case there is default in payment of lease rental with respect to vehicle no.DL-IV-3500. Thereafter, the complainant again defaulted and vehicle no.DL-IV-2313 was repossessed by the petitioner. This fact is further fortified from the perusal of the Annexure P-9, the contents of which are reproduced as under :-

"Sir,

I have obtained NOC for Vehicle No.DL-IV-2313 subject *to following terms and understanding:-*

1) Vehicle Nos.DL-IV-2313 and DL-IV-3500 are operated by M/s R. K. Tours and Travels. Both the vehicles were got finance from you and on account of defaults in repayments were taken in possession by the Company.

2) Both the vehicles were released with an Express Understanding that the future installments will be paid in time. Additional Guarantee was given on 27.02.1999 for both the accounts by Mr. Rajinder Prasad S/o Sh. Nathu Ram.

3) Account of Vehicle No.DL-IV-3500 is still continue. It is clearly understood that Company's Lien on the above vehicle will continue till the full amounts due in account of Vehicle No.DL-IV-3500 in Agreement No.L-329 are paid. Both the vehicle will remain available to the Company and in the event of any default in repayments due in the account of DL-IV-3500, the company will have option to take into possession Vehicle No.DL-IV-2313.

The implications of the above undertaking have been read out and explained to me and I have signed this document of Lien after full understanding of its implications.

Yours faithfully,

Rajesh"

The term of the agreement of vehicle no.DL-IV-3500 expired on 27.02.2000 and till that date the full amount had not been paid. Thereafter vehicle DL-IV-2313 was taken in possession by the petitioners vide letter dated 03.08.2000 which reads as under :-

"Sh. Rajesh
Son of Sh. Raghubir Singh
VPO,Najafgarh
New Delhi.

***Reg**: Vehicle No.DL-IV-2313*

Specific lien on the above vehicle was given by you on 22.10.1999 to assure repayment of the amounts due I loan A/c of vehicle No.DL-IV-3500.

The term of agreement of vehicle No.DL-IV-3500 expired on 27.02.2000 and full amount due has not been paid.

As per authority given by you, we hereby exercise the right of possession and have authorised Nepal Singh, whose signatures are given below, to receive delivery of the above vehicle. Please hand over the vehicle to Nepal Singh.

For Inter State Finance Ltd.
(General Manager) *(Attested signature of Nepal Singh)*

copy for information

The SHO

The above vehicle is under specific lien with us for loans which have not been paid as per agreement.

The vehicle is being taken in custody as per agreement with the party. Please corporate the recovery agency and do not entertain any complaint on the above.

With regards

For Inter State Finance Ltd.
(General Manager)"

From the above discussion, it is clear that the vehicle in question was taken into possession by the petitioners in terms of the admitted liability of the complainant vide Annexure P-9.

Hon'ble Supreme Court of India in **Charanjit Singh Chadha Vs. Sudhir Mehra, AIR 2001 SC 3721** while dealing with a similar question of law has held as under :-

> "*The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on hire until the conditions for transfer of the property to him have been fulfilled. Therefore, the re-possession of goods as per the term of the agreement may not amount to any criminal offence. The agreement [Annexure P-1] specifically gave authority to the appellants to re-possess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire purchase agreement, the appellants have continued to be the owner of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. We, therefore, allow this appeal and set aside the impugned judgment. The complaint and any other proceedings initiated pursuant to such complaint are quashed.*"

Section 378 IPC reads as under:

> *Theft.—Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth. Explanation 2.—A moving effected by the same act which affects the severance may*

> *be a theft. Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it. Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal. Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.*

For the commission of 'theft' falling under the definition of Section 378 of the Indian Penal Code, intention to take the movable property dishonestly out of the possession of a person without that person's consent, must be there. In this case, the basic element of *mensrea* is missing on the part of the petitioners. The vehicle was repossessed by the petitioners because there was a default in payment in violation of agreement. In the impugned complaint Annexure P-11 even it is not asserted that the petitioner had dishonest intention. Therefore, the ingredient of Section 378 of IPC are not made out. In **Asmathunnisa Vs. State of Andhra Pradesh and another– 2011 (2) RCR Criminal 571 (SC)**, it has been laid down as under:-

> *B. Criminal Procedure Code, Section 482 – Quashing of criminal proceedings in exercise of power under Section 482 Cr.P.C. - Law on the subject as enunciation during last 50 years summarized :-*
>
> *(i) Where the allegations made in the first*

information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence and the evidence collected in supported of the same do not disclose the commission of any offence and make out a case against the accused.

(iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the accused.

(vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

> *(vii) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with a ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. AIR 1960 SC 866 : 1991(1) RCR (Crl.) 383, relied.*

In this view of the matter, this court feels that the criminal proceedings initiated against the petitioners are nothing but an abuse of the process of law. Consequently the present petition is allowed and complaint (Annexure P-11) titled as - "Rajesh son of Raghubir Vs. Inter State Finance Limited" as well as the summoning order dated 17.07.2004 (Annexure P-15) along with consequential proceedings thereof are hereby quashed.

(JITENDRA CHAUHAN)
JUDGE

05.02.2015
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