NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 215 of 2016

Saddam Khatri S/o Late Mohd. Shabbir Khatri, aged about 28 years, R/o House No. 96, Ward No.3, Thana Road Dongargaon, Post, PS. & Tehsil Dongargaon, Revenue & Civil District Rajnandgaon (CG)

---- Petitioner

Versus

Chola Mandalam Investment & Finance Company Limited, Branch Office – 2nd floor, Rishabh Tower, adjacent to City Heart Restaurant, G.E. Road, Rajnandgaon, Revenue & Civil District – Rajnandgaon (CG)

Through Roshan Lal Swarnkar S/o Ramadhin Swarnkar, aged about 32 years, Senior Associate Legal Coordination and General Power of Attorney Holder, Rajnandgaon, Revenue & Civil District Rajnandgaon (CG)

---- Respondent

For Petitioner : Shri Surfaraj Khan, Advocate

For Respondent : None

Hon'ble Shri Justice P. Sam Koshy

Order On Board

12/08/2016

None appears for the respondent though served. Even on the previous date, there was no representation on behalf of the respondent.

2. The present petition under Section 482 CrPC has been filed seeking for quashment of the proceedings initiated under Section 138 of the Negotiable Instrument Act (for short “the NI Act”) before the JMFC, Rajnandgaon in Complaint Case No. 121 of 2016.

3. Counsel for the petitioner submits that the issue involved in the present writ petition has already been decided by this Court in CrMP No.128 of 2014 dated 07.08.2014 wherein it has been held that once the Finance Company has seized the vehicle, thereafter having sold it and has also adjusted the sale value for meeting the loan repayment, the proceeding under the provisions of 138 NI Act cannot be opted.

4. Having considered the order passed by this Court in CrMP No. 128 of 2014 in the case of Rajkumar Sharma v. Shriram Finance Co. Ltd. this Court is of the opinion that the facts of the present case is identical in nature. It is not in dispute that the vehicle involved in the present case has already been seized by the respondent and it is submitted that subsequently, the vehicle has also been put in auction and it has been sold out. Once when the vehicle was seized and thereafter soled it by the Finance Company and the sale value of the said vehicle has also been adjusted for meeting the loan repayment, the agreement on the basis of which the postdated cheques were issued cannot be acted upon and the cheques cannot be put for clearance. This issue has elaborately been dealt with and decided by this Court in CrMP No. 128/14 dated 07.08.2014. In the said order this Court has held as under:

> **(6)** Having considered the rival contentions advanced by either side, it is necessary to refer to a couple of decisions rendered by a few High Courts in this regard where on similar set of facts the proceedings under Section 138 of the N.I. Act was challenged. One of the decisions in this regard was a judgement passed by the High Court of Kerala on 2.4.2004 in the case of *Sudha Beevi* v. *State of Kerala* [IV (2004) BC 71, 2004 CriLJ 3418], wherein under similar factual background, the High Court of Kerala had held that if the hire-purchase agreement involved in the case between the financial institution and the hirer stood determined by the act of parties, the cheques which were accepted by the financial institution towards advance for repayment of the hire would become instruments without consideration and that they will be instruments for which consideration had failed and under the said circumstances the remedy available to the financial institution is only to realize the balance hire due by filing appropriate suit for damages on account of breach of terms of agreement. It was also held that since the financial institution had admittedly got repossession of the vehicle and that the said repossession was even before the filing of the complaint case, the hire-purchase agreement between the parties stood “determined ipso facto”. Thus, as a consequence of the seizure of vehicle the financial institution had exercised one of the options available to him under the agreement and as such the cheques in its

hands given as a security thereafter becomes instruments for which a consideration had failed and if presented for payment and gets dishonoured, no offence punishable under Section 138 of the N.I. Act would be attracted.

It is also pertinent to mention that in order to attract the penal provisions under the N.I. Act “debt or other liability” must be a “legally enforceable debt or liability”. If the said instrument is not supported by consideration, there is no question of attracting Section 138 of the N.I. Act.

In the instant case it is all the more necessary to take note of the fact that apart from taking repossession of the said vehicle, the Respondent has also sold the vehicle and have adjusted the sale proceeds of the vehicle against the liabilities of the Petitioner and which also leaves the Respondent with the only remedy for realization of the balance amount from the hirer is by way of filing a suit for damages or a suit for recovery, as the case may be.

(7) The said view taken by the Kerala High Court has been further relied upon by the Madurai Bench of Madras High Court in the case of *N. Rajangan* v. *Centurion Bank Ltd.,* decided on 13.10.2009, wherein also the Madurai Bench of Madras High Court reached to the conclusion that once the financier had exercised the option of seizure of vehicle, the postdated cheques cannot be permitted for encashment, particularly, after the seizure of the vehicle and the only recourse available to the said financier is to initiate appropriate legal remedy for recovery of the balance amount.

Likewise, the Punjab and Haryana High Court at Chandigarh also in a recent decision made on 31.7.2013 in the case of *M/s Guru Nanak Tractors* v. *Swarn Singh*, took the same view that as per the Section 138 of the N.I. Act in order to attract the penal provision the debt or other liability must be legally enforceable debt or liability and if the instrument is not supported by consideration, there is no question of attracting the provisions of Section 138 of the N.I. Act.

(8) The decisions of the High Courts referred to above is further fortified by the recent decision of the Hon'ble Supreme Court in the case of *M/s Indus Airways Pvt. Ltd. and others* v. *M/s Magnum Aviation Pvt. Ltd. and another* [2014 (3) M.P.H.T. 28 (SC)].

(9) In light of the aforesaid decisions rendered by the different High Courts and in respectful agreement to the ratio laid down in these judgements, in the instant case also, as is evident from the document (Annexure A-3) filed by the Petitioner issued by the Respondent, the Respondent has taken repossession of the vehicle and has also further sold it and realized the sale proceeds and, under the said circumstances, I am of the opinion that the hire-purchase agreement entered into between the Petitioner and the Respondent gets determined ipso facto.

5. Thus, the facts of the present case being identical and squarely covered by the decision of this Court passed in CrMP No. 128 of 2014, the present petition deserves to be and is accordingly allowed.

6. Consequently, the Complaint Case No.121 of 2016 and the proceedings initiated by the respondent against the petitioner in the said complaint case pending before the JMFC, Rajnandgaon stand quashed. No order as to costs.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola