HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.10012 of 2013

ORDER:

The petitioners/A.1 and A.2 filed the instant petition under Section 482 Cr.P.C, praying this Court to quash the proceedings in C.C.No.60 of 2013 on the file of XVI Additional Chief Metropolitan Magistrate, at Hyderabad.

2) The brief facts of the case are thus:

a) The *defacto* complainant lodged report against the accused alleging that the accused are running illegal financial establishment under the name and style of Siddanth Trade Finance Corporation, Hyderaguda, Hyderabad and they financed Rs.1,50,000/- to him for purchasing the auto on hire purchase system and the vehicle i.e, auto bearing No.AP 11 Y 1631 was not registered in his name and the records such as RC books was also not given to him. He further alleged that he already paid Rs.63,000/- to the financers and they are not maintaining any records. Since the R.C book was held up with the accused, he was facing difficulty in plying the auto as Traffic Police were recording challans and imposing fines. He was paying monthly interest of Rs.3750/- but the accused were entering only Rs.375/- in his passbook instead of Rs.3750/- and thus cheated him by causing wrongful loss and they misappropriated his amount. He further alleged that since last three months his vehicle was not being plied and his entire family was suffering.

When questioned, the accused threatened him with dire consequences and his life was in danger. The police of Faluknama P.S registered FIR No.33 of 2012 and after investigation laid charge sheet against the accused for the offences under Sec.384, 420, 406 IPC and Sec.3, 5, 10 and 13 of A.P (Telangana area) Money Lenders Act, 1349 Fasli.

b) According to the police, their investigation revealed that A.1 and A.2 are father and son and they both have been running finance and business under the name and style of Siddanth Trade Finance Corporation in Hyderguda, Hyderabad. The accused are lending money for needy people on higher rate of interest and extracting huge interest from them in addition to which the accused are also financing the needy people for purchasing the vehicle on hire purchase system. A.1 and A.2 are doing business without any valid license. They are maintaining records with pencils with an evil intention to erase or alter the records as and when they wish to do so. They used to keep original R.C books of the financed vehicles and they did not mention in the records about the hypothecation and the RCs are not transferred in the name of the customers. Though the private financers can charge interest 2% more than that of bank rate, the accused are charging @ 2.5% p.m as flat interest which works out at 30% p.a.

c) Sofaras the complainant(LW.1) is concerned, their investigation revealed that LW.1 approached the accused to purchase an auto and they financed him Rs.1,50,000/- for purchase of auto bearing No.AP 11 Y 1631 on 06.10.2010 which was repayable in 30 installments @ Rs.6,900/- p.m and the total amount comes to Rs.2,07,000/- and thus the interest earned by the accused comes to Rs.57,000/- and the rate of interest is 2.5% p.m which is more than the normal banks' lending rate. LW.1 was remitting monthly interest @ Rs.3,750/- p.m but the accused were entering only pencil figures of interest at Rs.375/- in the small pocket book of LW.1 and after completion of the page in his book they were tearing of that page and concealing the figures entered in the passbook. As the accused retained the original RC book with them, LW.1 has been facing troubles in plying the auto as he was forced to pay Traffic Challans for not furnishing the original R.C and thereby the accused made the life of innocent auto drivers miserable. Hence the charge sheet.

3) Heard arguments of Sri Vedula Venkata Ramana, learned Senior Counsel for petitioners; learned Public Prosecutor for the State and Sri Mir Masood Khan, learned counsel for respondent No.2.

4a) Severely fulminating the charge sheet, learned counsel for petitioners argued that even if all the charge sheet allegations are taken to be true on their face value, still no offence can be attributed against the accused for the allegations would only reveal as if the petitioners have been doing hire purchase business by financing the purchase of the automobiles which is not an offence at all. He argued that as per the Hire Purchase Act and the hire purchase agreement, the financer will remain as owner of the vehicle and the hire purchaser will only be his bailee till he pays all the installments equaling the principal and interest and under law, if the hire purchaser failed to pay any of the installments, the financer will be entitled to take possession of the vehicle and this being the law, the complainant and police cannot make out any offence against the accused. Learned counsel further argued that in the instant case, the facts are much worse to make out any offence against the accused since it is not the case of the police that the accused have seized the vehicle from the possession of LW.1 and on the other hand, they only retained the R.C book and other records and the said act of the accused cannot be carped for the reason that the LW.1 is still due some installments and the accused being the financers have under law a lean over the R.C book and other connected documents. In that view of the matter, the LW.1 cannot ventilate any grievance for accused's withholding his documents. Learned counsel relied upon the following decision to buttress the point that it would not be an offence to seize the vehicle by the financer upon hire purchaser failing to pay the installments:

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b) Sofaras the allegation that accused are not maintaining proper records for payments made by LW.1 and they are only making some scribblings with pencil on the passbook of LW.1 and tearing of the pages is concerned, learned counsel vehemently argued that the accused are maintaining all the records as per law and they can submit at the relevant time and the said allegation is false. He also denied that the accused are charging high rate of interest than permissible under law. Learned counsel thus prayed to quash the proceedings in C.C.No.60 of 2013 and he also submitted that police during the course of investigation seized about 82 RC books and some other records and this Court may be pleased to direct the police or the trial Court to release them as they are required for the regular course of business of the accused.

5) Learned counsel for respondent No.2/complainant argued that the charge sheet allegations are not ascribing the accused for conducting the hire purchase business but the allegations would show that the accused under the guise of auto finance business are running money lending business without proper license and they have been collecting high rate of interest more than the scheduled rates of the commercial banks and further they are not maintaining proper accounts for their business and in respect of the amounts paid by LW.1, they have not made correct entries and only scribbled on some pass books and tore all the pages and thus cheated LW.1 and similar other auto drivers and therefore, the police rightly filed charge sheet against them and hence the instant petition is not maintainable.

6) Learned Public Prosecutor argued in similar lines and prayed for dismissal of the petition.

7) In the light of above rival arguments, the point for determination is:

"Whether there are merits in this petition to allow?"

8) **POINT**: There is no demur about the law on hire purchase system. Under hire purchase agreement, the financer remains as owner of the vehicle till the hire purchaser pays all the installments. In which event, the hire purchaser gives his consent for transferring the vehicle concerned in the name of the hire purchaser. It is also true that in case the hire purchaser failed to pay any installments as stipulated under the agreement, a right will be vested on the financer to seize the vehicle. Therefore, under those circumstances, the hire purchaser cannot express any grievance if the vehicle is seized for his failure to pay installments. In the cited decision (1 supra), Hon'ble Apex Court has reiterated the above point. However, it must be said that in the instant case, facts are quite different. It is not the case of the complainant and police that the accused have seized the vehicle like a shylock when the poor complainant failed to pay the installments. On the other hand their case is that the accused are running money lending business as well as automobile finance business simultaneously and the latter business is only a ruse for covering the illegal money lending business as they have

been lending the money at high rate of interest over and above the permissible rate, besides they are also not maintaining the records properly. This is the allegation against the accused sofaras their illegal money lending business is concerned. Sofaras their auto finance business under hire purchase system is concerned, it is the grievance of the complainant (LW.1) that the accused financed Rs.1,50,000/- to him to purchase auto bearing No.AP 11 Y 1631 and he was to pay @ Rs.6,900/- p.m in 30 installments totaling Rs.2,07,000/- and that he paid huge amount of Rs.63,000/-, there is no proper account for it and subsequently when he was remitting the interest part of the monthly installments i.e, Rs.3,750/-, the accused were mentioning with pencil in his book as only Rs.375/- and as and when that page is over, they are tearing of the said page to eliminate the evidence and in that way the accused have cheated him and misappropriated the amount paid by him. With these facts, the police have filed charge sheet against the accused and there is *prima facie* material against the accused. As such, it is not a fit case to quash the proceedings. However, if the accused are so advised, they can move the trial Court for quashing the proceedings. The other submission of the petitioners is concerned, they can file a proper petition for return of the custody of the documents seized and submitted to the Court by the police.

9) In the result, this Criminal Petition is dismissed with a

liberty to the petitioners to move the trial Court with an appropriate application seeking their discharge and they are also at liberty to move an appropriate application for return of the documents seized and produced before the trial Court. In which case, the trial Court shall dispose of the aforesaid applications on merits at the earliest. Since the petitioners are businessmen, their attendance before the trial Court is dispensed with except on the occasions when the trial Court requires their appearance.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 15.03.2016
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[1] (2013) 1 SCC 400