

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.23928 of 2011

and

M.P.Nos.1 and 2 of 2011

1.R.Kannan

2.N.Chidambaranathan

...Petitioners/Accused 3 & 2

Vs.

S.P.Barathi

...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in S.T.C.No.1826 of 2011 on the file of the Judicial Magistrate No.5, Salem and quash the same.

For Petitioners: Mr.K.S.Kumar

For Respondent : No Appearance

ORDER

This criminal original petition is preferred by the petitioners/accused 2 and 3 against the proceedings pending in S.T.C No.1826 of 2011 before the learned Judicial Magistrate No.5, Salem and quash the same.

2.Brief case of the petitioners/accused 2 and 3:

The facts of the case is that the respondent herein availed a Two wheeler loan from the Salem Branch of M/s.Shri Ram City Union Finance Ltd. on 10.7.2009. The invoice value of the vehicle was Rs.51143/- and the respondent paid a sum of Rs.12503/- as initial payment. The remaining amount of Rs.38,640/- as advanced as loan to the respondent. The respondent entered into a hire purchase agreement with the Salem branch of M/s.Shri Ram City Union Finance Ltd. on 10.7.2009 agreeing to the terms and conditions contained therein. The respondent agreed to repay the loan amount in 24 months at an EMI of Rs.2044/- from 7.8.2009 to 07.5.2011 being the total amount due towards the principal and interest. The respondent had issued post dated cheques for the easy monthly installments.

3.After availing the loan, the respondent defaulted in repaying the amounts 8 cheques got dishonoured. Subsequent to

the demands made by the Salem branch, the respondent paid some amounts. Even thereafter the respondent continued defaults in repayment. As per the terms of the Hire Purchase Agreement, the respondent surrendered the vehicle to the Salem branch and on 29.9.2010; a pre-sale notice was issued by the Salem branch to the respondent by RPAD. Thereafter, on 30.9.2010, the respondent caused a lawyer notice to be issued to the petitioners as well as the Salem branch, calling upon the Salem branch alone to send him a statement of accounts as to enable him to settle the dues.

4. On receipt of the lawyer's notice, the Salem branch of Shri Ram City Union Finance Ltd issued a reply annexing a copy of the statement of accounts and also a copy of the pre-sale notice to the lawyer of the respondent.

5. The respondent thereafter did not choose to settle the dues or to contact the Salem branch. The respondent have filed a private complaint against the petitioners as well as the Salem branch official of Shri Ram City Union finance Ltd on 7.12.2010 for alleged offences under section 120(b) 420 and 468 of IPC.

6. The petitioners state that they have nothing to do with the alleged offence stated by the respondent. The entire incident is said to have occurred at Salem based on the contract entered into between the respondent and the Salem branch which is purely civil in nature. Whereas the petitioners herein are at Chennai and there is no allegation as to how they are responsible for the commission of the alleged offence.

7. The learned counsel for the petitioners/accused submits that the learned Magistrate ought to have appreciated the fact that from a reading of the complaint itself it could be seen that no offence as alleged by the complainant in his petition could have been committed by the petitioners/accused who are at Chennai.

8. The learned counsel for the petitioners/accused submits that the learned Magistrate ought to have appreciated the fact that it is the case of the complainant that the alleged offence took place at Salem and in such a case how these petitioners have been arrayed as accused more particularly when there is no allegation regarding the participation of these petitioners in the alleged incident.

9. The learned counsel for the petitioners/accused submits that the learned Magistrate ought to have appreciated the fact that no complaint could be filed without the names of the accused. A reading of the complaint shows that only the designations of the accused are given in the complaint. On that score itself the complaint has to be quashed.

10. The learned counsel for the petitioners/accused submits that the learned Magistrate ought to have appreciated that the dispute is purely civil in nature based on the hire purchase

agreement entered into between the parties and the parties thereto are bound to redress their grievance if any through a civil Court.

11.The learned counsel for the petitioners/accused submits that the learned Magistrate ought to have appreciated the fact that the petitioners/accused have not committed any criminal offence but only exercised their rights under the contract namely the Hire purchase Agreement.

12.The learned counsel for the petitioners/accused submits that the learned Magistrate ought not to have taken the private complaint on file for the simple reason that the allegations in the complaint were not supported by any documents more particularly when the complainant himself admits that there is a contract between him and the petitioners/accused which is only civil in nature.

13.The learned counsel for the petitioners/accused cited the following decisions in support of their contentions:

2001 SCC (Cr1) 1557 (Charanjit Singh Chadha and others Vs Sudhir Amehra)

14.I heard Mr.K.S.Kumar, learned counsel for the petitioners and perused the entire materials available on record. No representation on behalf of the respondent.

15.It is seen from the annexures filed in the type set of the quash petition, purely civil dispute coloured into criminal complaint. Admittedly there is a hire purchase agreement entered between the parties and the parties there to be bound to redress their grievance only through a Civil Court. A reading of the complaint would shows that there is no criminality and no offence could be made out under section 120(b), 420 and 468 of IPC.

16.I am afraid how the learned Judicial Magistrate took cognizance of the offence which is purely a civil nature and the allegations in the complaint were not supported by any documents more particularly when the respondent/complainant himself admits that contract is pending between them.

17.In the result, this criminal original petition is allowed and the proceedings in S.T.C.No.1826 of 2011 before the learned Judicial Magistrate No.5, Salem is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate No.5,
Salem.

+lcc to Mr.K.S.Kumar, Advocate, S.R.No.44574

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CNR(CO)

rrs 14/03/2019



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