

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.1117 OF 2017

ORDER:

This criminal petition is filed under Section 438 of Cr.P.C to enlarge the petitioner/A1 on bail in the event of his arrest in connection with Crime No.32 of 2017 of Osmania University Police Station, Hyderabad, registered for the offences punishable under Sections 406, 420 read with 34 of IPC.

The case of the *de facto* complainant-Mohammed Abdul Moid is that he purchased a car bearing No.A.P.04 AG 0009, model Audi Q5 (SUV) Black colour, manufactured in the year 2010 on hire purchase for an amount of Rs.32,00,000/-, paid down payment of Rs.10,00,000/- and obtained finance of Rs.22 lakhs from TVS Credit Service Ltd, Hyderabad repayable in 60 months by way of EMI of Rs.55,269/- per month. Accordingly, he paid three monthly instalments totalling Rs.1,65,807/-. He also purchased another car bearing No.AP09 CV 0320, model BMW 3 series (sedan), white colour, manufactured in the year 2010 for Rs.20 lakhs having paid down payment of Rs.8 lakhs and obtained finance of Rs.12 lakhs from Kotak Mahindra Bank repayable in 60 months @ Rs.30,400/- per month and the *de facto* complainant paid 8 instalments amounting to Rs.4,86,400/-.

While leaving country, he handed over car bearing No.AP04 AG 0009 to the petitioner/A1, aged 55 years, resident of King Koti, Hyderabad in the month of October, 2015 on mutual agreement that he shall personally use the vehicle and pay instalments due for the period under his use and shall return the vehicle at the end of

one year. Accordingly, he paid 8 instalments and became defaulter for 8 instalments as on the date of complaint i.e. 22.01.2017. Similarly, the other car AP09 CV 0320 BMW 3 series was handed over to A2 as per the terms agreed between them and finally made serious allegations against A2 of creating fake delivery notes and sold both cars. The petitioner did not return the car as per terms after using for one year, when he has returned to India.

Learned counsel for the petitioner contended that the payment of instalments and delivery of property to the petitioner is nothing but out right sale of moveable property and thereby he became the owner of the car. But admitted that no transfer records took place in the RTO office i.e. registration certificate. As per the terms and conditions agreed between the parties, the petitioner is bound to return the car at the end of the year, but sold away the cars to third parties by A2. How A2 came into possession of the cars was not explained. Creating fake delivery notes by A2 and sale of cars belonging to the *de facto* complainant, which was handed over to the petitioner for his personal use and return the same after end of one year is nothing but an offence punishable under Section 406 of IPC and it appears from the allegations made in the complaint, the agreement between the *de facto* complainant and the petitioner is bailment. But the sale of car by A2, which was handed over to A1 would amount to criminal mis-appropriation as defined under Section 405 of IPC, *prima facie*, which is punishable under Section 406 of IPC. Therefore, I find *prima facie* material against the petitioner that the petitioner committed an offence punishable under Section 406 of IPC. Consequently, the petitioner is not entitled to claim pre-arrest bail.

After dictating the order, learned counsel for the petitioner requested the Court to direct the investigating agency to issue notice under Section 41-A of Cr.P.C, following the guidelines of the Apex Court in **Arnesh Kumar v State of Bihar**¹, without touching any merits of the case.

This Court need not issue any such direction as the investigating agency is bound to follow the guidelines of the Apex Court in **Arnesh Kumar's** case (supra), otherwise it would amount to contempt. Therefore, no specific direction need be given as they are bound to follow the guidelines of the Apex Court in **Arnesh Kumar's case (supra)**.

With the above observation, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

14.02.2017
kvrm

¹ 2014(2) ALT(Crl) 457(SC)