IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-15803 of 2014
Date of Decision: September 28, 2017

Amandeep Singh alias Amandeep Sidhu
........Petitioner

Versus

State of Punjab and another .....Respondents

CORAM:HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sahil Khunger, Advocate
for the petitioner.
Mr.R.S.Khaira,Assistant Advocate General, Punjab

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ARVIND SINGH SANGWAN, J.

Petitioner-Amandeep Singh has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (`Cr.P.C.' for short) for quashing of FIR No. 136 dated 6.9.2013, under Sections 379/411 of the Indian Penal Code, 1860 ('IPC' for short), registered at Police Station Urban Estate, Patiala (Annexure P4) along with all consequential proceedings arising out of the said FIR.

Brief facts of the case are that the petitioner is the Field Executive of Shriram City Union Finance Limited having its head Office at Chennai and he is working as Recovery Field Executive since September 29,2011. Respondent No.2-Gurpreet Singh alias Goldy-complainant, who had obtained a loan of a Honda Activa Scooter No. PB

11BB-8017 from the M/s Shriram City Union Finance Limited, got the aforesaid FIR registered with the allegation that on 3.9.2013, when he came back to his house, he found that his Activa Scooter was stolen. Later on, the Police involved the petitioner in the FIR as the Scooter was repossessed by the Finance Company on account of failure to make the instalment. Thereafter, the petitioner was arrested and was released on bail.

Learned counsel for the petitioner has submitted that, while submitting the report under section 173 Cr.P.C. (Annexure P7), it is mentioned that the petitioner-accused was arrested and the possession of the Scooter was taken by the Police through a recovery memo. It is further submitted that the Finance Company, vide its letter dated 27.8.2013, has sent an intimation to the Incharge Police Station, Urban Estate Patiala which was duly received on 27.8.2013, against a receipt by the Police Station. It was informed that the Company is going to repossess the Scooter from the wife of the complainant-Gurpreet Kaur. In this letter, it was clearly informed to the Police that applicant-Gurpreet Kaur, resident of H.No. 64 Gobind Bagh, Patiala vide agreement date 31.8.2012, had obtained a loan of ₹ 36,000/- and there was a default of nine instalments amounting to ₹15,720/-.

Learned counsel for the petitioner further submits that before repossessing the said scooter, a reminder letter dated 16.8.2013 (Annexure P5) was also issued by the Company to said Gurpreet Kaur giving the details of the defaulted amount and it was requested that the wife of the complainant should deposit the amount to avoid any legal action. It is, thus, submitted that, on having issued a notice to the complainant as well as informing the Police that the Company is going to repossess the Scooter, the same was taken in possession by the petitioner as an authorized representative of the Company and,therefore, no offence of theft is made out by the petitioner.

Learned counsel for the petitioner further submits that even the cheques, which were issued by the wife of the complainant, towards the payment of the instalments, were dishonoured on account of insufficient funds, the reminder letters were sent and only, thereafter, the Scooter was repossessed and,thereafter, the wife of the respondent-Company, has obtained the said Scooter on *sapurdari* from the trial Court vide release order dated 6.5.2014 and, thus, it is submitted that since 2014, the Scooter is in possession of respondent No.2-complainant and he has not deposited the balance amount of the loan instalment till date.

In support of his arguments, learned counsel for the petitioner has relied upon the judgment in **Anup Sarmah vs. Bhola Nath Sharma and others** (2013)1 Supreme Court Cases 400 wherein the Apex Court has held as under:-

> "3. We have considered the rival submissions raised by the learned counsel for the parties and perused the records.
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> 4. In Sardar Trilok Singh & Ors. v. Satya Deo Tripathi, this Court examined a similar case wherein the truck had been taken in possession by the financier in terms of hire purchase agreement, as there was a default in making the payment of instalments. A criminal case had been lodged against the financier under Sections 395, 468, 465, 471, 120-B/34, I.P.C. The Court refused

to exercise its power under Section 482, Cr.P.C. and did not quash the criminal proceedings on the ground that the financier had committed an offence. However, reversing the said judgment, this Court held that proceedings initiated were clearly an abuse of process of the Court. The dispute involved was purely of civil nature, even if the allegations made by the complainant were substantially correct. Under the hire purchase agreement, the financier had made the payment of huge money and he was in fact the owner of the vehicle. The terms and conditions incorporated in the agreement gave rise in case of dispute only to civil rights and in such a case, the Civil Court must decide as what was the meaning of those terms and conditions.

5. In K.A. Mathai alias Babu & Anr. v. Kora Bibbikutty & Anr., this Court had taken a similar view holding that in case of default to make payment of instalments financier had a right to resume possession even if the hire purchase agreement does not contain a clause of resumption of possession for the reason that such a condition is to be read in the agreement. In such an eventuality, it cannot be held that the financier had committed an offence of theft and that too, with the requisite mens rea and requisite dishonest intention. The assertions of rights and obligations accruing to the parties under the hire purchase agreement wipes out any dishonest pretence in that regard from which it cannot be inferred that financier had resumed the possession of the vehicle with a guilty intention.

6. In Charanjit Singh Chadha & Ors. v. Sudhir Mehra, this Court held that recovery of possession of the vehicle by financier-owner as per terms of the hire purchase agreement, does not amount to a criminal offence. Such an agreement is an executory contract of sale conferring no right in rem on the hirer until the transfer of the property to him has been fulfilled and in case the default is committed by the hirer and possession of the vehicle is resumed by the financier, it does not constitute any offence for the reason that such a case/dispute is required to be resolved on the basis of terms incorporated in the agreement. The Court elaborately dealt with the nature of the hire purchase agreement observing that in a case of mere contract of hiring, it is a contract of bailment which does not create a title in the bailee. However, there may be variations in the terms and conditions of the agreement as created between the parties and the rights of the parties have to be determined on the basis of the said agreement. The Court further held that in such a contract, element of bailment and element of sale are involved in the sense that it contemplates an eventual sale.

> "8......The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and option is exercised a sale takes place of the goods which till then had been hired."

While deciding the said case, this Court placed reliance upon its earlier judgments in M/s. Damodar Valley Corporation v.The State of Bihar, Instalment Supply (Private) Ltd. & Anr. v. Union of India & Ors.,(SCCp.744 para 8), K.L. Johar & Co. v. The Deputy Commercial Tax Officer, Coimbatore III,(AIR p.1090, Para 17) and Sundaram Finance Ltd. v. State of Kerala .

7. In view of the above, the law can be summarised that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is re-possessing the goods owned by him.

8.If the case is examined inthe light of the aforesaid settled legal proposition, we do not see any cogent reason to interfere with the impugned judgment and order. The petition lacks merit and, accordingly,dismissed"

Accordingly, it is submitted that in the eventuality of repossessing the vehicle, it cannot be held that the financer had committed an offence of theft as there was no *mens rea* or dishonest intention.

In pursuant to the notice of motion, respondent No.2 was duly served and, as per order dated 18.12.2014, it was observed that none has appeared on behalf of respondent No.2 despite service.

Respondent No.1-State has filed reply, by way of affidavit of Deputy Superintendent of Police City II Patiala, stating that the FIR has been registered on the complaint of respondent No.2-Gurpreet Singh alias

Goldi and the challan has been presented. In response to the arguments raised by the counsel for the petitioner that the Company had submitted a letter on 27.8.2013 (Annexure P6) providing intimation to the Police regarding default in payment of instalment by wife of respondent No.2, it is submitted in the affidavit that the Police kept awaited for 2-3 days and,thereafter, the said letter was filed. Thus, receiving of the letter is not denied.

In an additional affidavit filed by the Deputy Superintendent of Police, City II, Patiala dated 14.9.2017, it is further submitted that the Scooter was recovered on 7.9.2013 from the petitioner and the Chief Judicial Magistrate, Patiala issued the release order of the Scooter in favour of Gurpreet Kaur, wife of the complainant vide release order dated 6.5.2014 and the same is in possession of the complainant since then.

After hearing the learned counsel for the parties, I find merit in the arguments raised by the learned counsel for the petitioner.

Firstly, the petitioner has proved that he is an employee of the Company and in the capacity of a Recovery Officer, he had adopted a due process i.e. issuance of notice to the complainant stating that, for default in payment of installment, the Company proposes to take legal action and secondly, by giving an advance intimation to the Police that the Company is going to repossess the Scooter, the same was repossessed. Hence, no *mens rea* on the part of the petitioner is proved on record from a bare perusal of the FIR and report under Section 173 Cr.P.C. Hon'ble Apex Court in Anup Samrah (supra) has held that, in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier and financial institution and the ownership remains with the latter. Therefore, in case, the vehicle is seized by the Financer, no criminal action can be taken against him as he repossessed the goods owned by him.

In view of the above discussion,FIR No. 136 dated 6.9.2013, under Sections 379/411 IPC, registered at Police Station Urban Estate, Patiala (Annexure P4) along with all consequential proceedings, arising therefrom, are ordered to be quashed.

(ARVIND SINGH SANGWAN)
JUDGE

September 28, 2017
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Whether speaking/reasoned: Yes/No
Whether Reportable:Yes/No