

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4445 OF 2009

- 1) Kiran s/o Laxmanrao Donglikar,
Age 40 years, Occupation Service,
- 2) Satish s/o Shashikant Kulkarni,
Age 38 years, Occupation Private Service,
- 3) Sanjay s/o Tukaram Shinde,
Age 40 years, Occupation Private Service,
- 4) Sharad s/o Karna Patil,
Age 30 years, Occupation Private Service,
- 5) Shanjay s/o Keshavrao Yagulwar
(Mamulwar), Age 35 years, Occupation
Private Service,

All R/o Mahindra and Mahindera Company
Ltd., Near Megh-Mahlhar Hotel, AUSA
Road, Latur Tq. Dist. Latur.

- 6) Balaji s/o Baswantappa Birajdar,
Age 35 years, Occupation Service,
R/o as above.
- 7) Avinash s/o Venkatesh Lokhande,
Age 35 years, Occupation Service,
R/o Vasant Nagar, Nanded.

...Applicants

Versus

- 1) The State of Maharashtra,
Through Police Station Omerga.
- 2) Vishnu s/o Venkat Mulje,
Age 25 years, Occupation Business,
R/o Mulaj Tq. Omerga Dist.
Osmanabad.

...Respondents

Mr. S. J. Salunke, Advocate for applicants.
Mrs. V. S. Choudhary, Addl. Public Prosecutor, for respondent
No.1 / State.
Mr. S. A. Walekar, Advocate for respondent No.2.

**WITH
CRIMINAL APPLICATION NO.247 OF 2016**

- 1) Kiran s/o Laxmanrao Donglikar,
Age 37 years, Occupation Service,
R/o At Present Nashik.
- 2) Sharad Karna Patil,
Age 32 years, Occupation Service,
R/o Latur.
- 3) Sanjay Keshavrao Mamulwar,
Age 33 years, Occupation Service,
r/o Latur.
- 4) Sanjay Tukaram Shinde,
Age 37 years, Occupation Service,
- 5) Satish Shashikant Kulkarni,
Age 28 years, Occupation Service,
- 6) Balraj @ Balaji Basavraj Birajdar,
Age Adult, Occupation Service,
All R/o Mahindra Finance Khardekar
Stop, Latur.

...Applicants

Versus

- 1) The State of Maharashtra.
- 2) Vishnu s/o Venkat Mulje,
Age 25 years, occupation Agri.,
R/o Mulaj Tq. Omerga
Dist. Osmanabad.

...Respondents

Mr. S. J. Salunke, Advocate for applicants.
Mrs. V. S. CHoudhary, Addl. Public Prosecutor, for respondent
No.1 / State.
Mr. S. A. Walekar, Advocate for respondent No.2.

CORAM : T. V. NALAWADE &

SMT.VIBHA KANKANWADI. JJ.

DATE : 29-10-2018.

ORAL JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. application bearing No. 247 of 2016 has been filed contending that, Criminal application No.4445 of 2009 be fixed for final hearing.
2. Application No.247 of 2016 is hereby allowed and disposed of accordingly.
3. Application No. 4445 of 2009 has been filed by original accused persons by invoking inherent powers of this Court under Section 482 of Code of Criminal Procedure for quashing and setting aside First Information Report vide Cr. No. 21 of 2009 dt. 10-11-2009 registered with Omerga Police Station, Osmanabad for the offence punishable under Section 395 r/w. 34 of Indian Penal Code.
4. Respondent No 2 has lodged the said FIR contending that he had purchased Tractor viz. Mahendra Arjun with the financial aid from Mahindra and Mahindra Finance Company, Latur branch. He

had exchanged his H. M. T. Tractor. The value of his tractor was assessed at Rs. 1,80,000/-. Price of new tractor was Rs.5,28,000/-. Therefore, after deducting the exchange price, he had availed loan of Rs.3,48,532/-. It was to be repaid in installment of Rs.74,210/- p. m. Between 01-12-2007 to 01-06-2012. He had deposited three installments of Rs. 74,210/- each and one of Rs.45,000/-, in all Rs.2,77,630/-. The relation between informant and Finance company is of debtor and creditor. Company was never the owner of Tractor. If informant commits any default in payment of installments, then it can be recovered only by way of Court procedure. Informant had parked his Tractor bearing No. MH-25-1668 along with rooters, in front of his house on 27-09-2009. All the accused came around 14.00 to 14.30 hrs and asked informant to hand over the keys of Tractor. He asked them the reason for keys and refused to hand it over. It was told by them that their officer has asked them to bring the vehicle. They threatened him and directed him to hand over the keys. Accused No. 1 to 4 assaulted him by fists blows. Accused No. 4 pointed out pistol at him and threatened to kill him. Accused No. 5 to 7 broke the ignition wires and all of them took away the Tractor forcibly. Thereafter, the complainant had approached the Company, but could not get any positive reply. He has every reason to infer that the Tractor might have been sold. It was ultimately told to him on 01-11-2009 that he should not come to Company, as he will not

get his Tractor back. He went to Police station to lodge report on 02-11-2009, but no cognizance was taken. Hence, he filed private complaint before Judicial Magistrate First Class. The said complaint was sent by concerned Magistrate for investigation under Section 156 (3) of Code of Criminal Procedure. Therefore, the FIR came to be lodged.

5. Applicants have contended that complainant had not deposited entire installments as agreed. The Company had requested him to pay the remaining amount, but he did not give any response. He gave consent letter for surrender of Tractor bearing No. MH-25-H-1668 on 11-08-2009. In view of the said letter, applicants had taken possession of the Tractor. Panchanama to that effect was executed by them on the spot on the same day. Applicants had issued notice to complainant on 14-08-2009 by R. P. A. D., but it could not be served on him as he was out of station. Then he has lodged a false complaint against them. The complaint was sent by the learned Magistrate for investigation under Section 156 (3) of Code of Criminal Procedure. Investigation has been carried out and charge-sheet was filed by police before Judicial Magistrate First Class, Omerga bearing R. C. C. No. 46 of 2012 under Section 395 of Indian Penal Code. The said case has been committed to the Court of Additional Sessions Judge, at Omerga, Dist. Osmanabad. In fact, perusal of entire charge-sheet would show that it does not attract

ingredients of offence punishable under Section 395 of Indian Penal Code. No act has been done forcibly. Possession of the Tractor was taken in view of surrender of Tractor by complainant. The clause No. 12 (II), (III) and (IV) of the loan agreement gives the Company a right to recover the vehicle. Therefore, when the action was based on the basis of terms of contract, it can not amount to any offence. The complaint was filed with ulterior motive. Hence, they prayed for the quashment of proceedings before learned Additional Sessions Judge, Omerga, Dist. Osmanabad.

6. Heard learned Advocate Mr. S. J. Salunke for applicants, learned A. P. P. Mrs. V. S. Choudhary for respondent No. 1/ State and learned Advocate Mr. S. A. Walekar for respondent No. 2. All of them have made submissions in support of their respective contentions.

7. Respondent No. 2 is not denying that he had taken loan while purchasing Tractor from Finance Company. Therefore, it can be presumed that he had entered into agreement with the said Company. The loan agreement has been produced on record. Respondent No. 2 is not denying the contents of the same. Perusal of said agreement would show that respondent No. 2 had specifically agreed that in case of default, the finance company will have right to take back the possession of the vehicle. Respondent No. 2 is admitting that he has not paid subsequent installments and still he

has not cleared the loan. Thus, when there is specific stipulation in the contract giving right to other party to take possession of the vehicle, then such covenant should be honoured. Respondent No. 2 can not now say that he was not aware of the said term or it was not agreeable to him. The effect of said agreement has already taken place and he has got loan amount by virtue of said agreement. Applicants have also shown documents to the effect that notices were given to respondent No. 2 when the out of the loan was outstanding. Then he himself has given letter of surrender of vehicle to the company. He has not denied his signature on the said letter. Thus, the applicants were justified in acting on the basis of said letter. Respondent No. 2 appears to have suppressed execution of said letter. When applicants had taken possession of vehicle in pursuance of said letter, it does not attract the ingredients of offence punishable under Section 395 of Indian Penal Code.

8. Respondent No. 2 has tried to rely on decision of the learned Consumer Forum, Osmanabad directing the Finance Company to hand over the possession of the Tractor to him and allowing him to pay further installments. The said decision is not binding on Criminal Court. It is required to be seen in this case, as to whether the act was done with criminal intent or not.

9. This Court in *Mohd. Mohsin Mohd. Taqi and another v/s. State*

of Maharashtra and others [Criminal Application No. 2432 of 2010 decided on 02-08-2018], placed reliance on the decision of Hon'ble Apex Court in *Anup Sarmah Vs. Bhola Nath Sharma & ors., (2013) 1 SCC 400*, wherein it was held:

“In view of the above, the law can be summarized 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 later. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is possessing the goods owned by him”.

It has been observed by this Court that Dishonest intention cannot be gathered from the action taken by the Bank. The said case was under Section 379 of Indian Penal Code. The said observations are applicable here also, though it has been alleged that offence punishable under Section 395 of Indian Penal Code has been committed. Respondent No. 2 on the other hand admitted that he is a defaulter. Under such circumstance, his complaint appears to be with malafide intention. Though the investigation has been carried out, investigating officer failed to see the terms of agreement giving right to the finance company to take back the possession and the fact that respondent No. 2 had executed surrender letter in favour of company. Statements of witnesses supporting the complainant are not helpful to prosecution, for the simple reason that they had not seen the terms of agreement between respondent No. 2 and finance

company. It would be unjust to ask the applicants to face the trial with such kind of evidence. The present is a fit case, where this Court should exercise its powers under Section 482 of Code of Criminal Procedure to quash the proceedings. Hence, following order : -

ORDER

1. Criminal Application No. 4445 of 2009 is hereby allowed.
2. Relief is granted in terms of prayer clauses 'C' and 'E'.
3. Criminal Application No. 247 of 2016 stands disposed of.
4. Rule is made absolute in those terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.