IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.23760 of 2016
and
Crl.M.P.Nos.11293 of 2016 and 2210 of 2017

1. The General Manager,
(amended as per order in
Crl.MP.No.15297/2018 in
Crl.OP.No.23760 of 2016
dated 05.12.2018)
Shriram City Union Finance Ltd.,
Chennai - 600 001.

2. The Branch Manager,
Shriram City Union Finance Ltd.,
Cuddalore - 607 106. ... Petitioners

Vs.

M.Naveen Kumar ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in C.C.No.114 of 2016 on the file of the learned Judicial Magistrate II, Panruti and to quash the same.

For Petitioners : Mr.V.Bhiman
For Respondent : Mr.K.Prakash

O R D E R

This petition has been filed by the accused Nos.1 and 2 to quash the proceedings against them in C.C.No.114 of 2018 on the file of the learned Judicial Magistrate No. II, Panruti.

2. The respondent herein has filed a private complaint against the petitioners herein stating that he has purchased the two wheeler bearing Regn.No.PY-01-CF-8345 under hire purchase agreement with the first petitioner/A1 on 28.01.2015. At the time of purchasing the said vehicle, he has paid a sum of Rs.25,000/- and obtained a loan of Rs.53,800/- and the said amount has to be repaid in 20 monthly installments at the rate of Rs.3,500/- per month and to that effect, an agreement was

also executed. The respondent has paid the installments till the month of February 2016 without any default. Thereafter, he could not pay few installments, due to his ill health. On 08.04.2016, the collection agent from accused No.2 (Petitioner No.2) has approached the respondent and demanded the arrears amount, for which, the respondent made a request to grant one month time to pay the arrears amount. Subsequently, on 09.04.2016, at about 10.30 a.m, the respondent left his house and returned on 11.04.2016 at about about 3.00 p.m and found that the above mentioned vehicle was missing and the same was stolen by the accused No.2 (Petitioner No.2) with the help of his men. The respondent has lodged a complaint before the Pudupet Police Station on 16.04.2016. The police has issued CSR, but thereafter, they did not take any action. Subsequently, the accused No.1 (petitioner No.1) has issued a pre-sale notice dated 16.04.2016 through his Cuddalore Branch office and informed the respondent that the vehicle was voluntarily surrendered by him on 08.04.2014 due to default in the monthly installments and the vehicle will be sold shortly by the company as per the hire purchase agreement. In the said pre-sale notice, the value of the vehicle was mentioned as Rs.20,000/- and the total outstanding mentioned was Rs.49,287/- including seizing expenses of Rs.2,500/- which shows that the vehicle was stolen from the respondent by the petitioners and it was not surrendered as mentioned in the said notice. Thereafter, the respondent has sent a lawyer's notice dated 06.05.2016 denying the averments made in the pre-sale notice and also informed that the said vehicle was stolen by them. Though, the petitioners have received the said notice, they neither handed over the vehicle nor chosen to send any reply. Hence, the respondent has filed a private complaint before the Judicial Magistrate No.II, Panruti, to punish the petitioners under Section 379 of I.P.C.

3. Based on the said complaint, the learned Judicial Magistrate No.II, Panruti has taken the case on file in C.C.No.114 of 2016 and issued summons to the petitioners herein. After receipt of summons, the petitioners herein have filed the present petition under Section 482 of Cr.P.C to quash the proceedings against them.

4. Heard Mr.V.Bhiman, the learned counsel for the petitioners and Mr.K.Prakash, learned counsel for the respondent.

5. The learned counsel for the petitioners has submitted that the first petitioner is the General Manager and the second petitioner is the Branch Manager of the company viz., Shriram City Union Finance Ltd. He further submitted that without impleading the company as accused, the respondent cannot prosecute the officers of the company. He further submitted that

as per the Hire Purchase agreement entered into between the Finance Company and the respondent dated 09.12.2014, the respondent herein has obtained a loan of Rs.55,600/- from the Finance Company and he undertakes to repay the said amount in 20 monthly installments at the rate of Rs.3,500/-. He further submitted that the respondent has paid the said installments only for few months properly and thereafter he did not make payments. He further submitted that inspite of repeated demands, the respondent failed to pay the installments and hence the vehicle was seized as per the terms of the hire purchase agreement. He further submitted that as per the hire purchase agreement, the financier is the owner of the vehicle and the respondent is only an hirer and since, the installments were not regularly paid as per the terms of the hire purchase agreement, the Finance Company is entitled to repossess the vehicle and exercising the said power, the first petitioner has seized the vehicle and the said act cannot be termed as theft and therefore, the petitioners cannot be prosecuted for the offence under Section 379 IPC. In support of the said contentions, he has relied upon the following decisions:

1) Charanjit Singh Chadha and Others /vs/ Sudhir Mehra, AIR 2001 SC 3721

2) Anup Sharma /vs/Bhola Nath Sharma and others, (2013) 1 SCC 400.

6. Per contra, the learned counsel for the respondent has submitted that the respondent has paid the installments till the month of February 2016, but thereafter he did not pay few installments, because of his ill-health. He further submitted that when the respondent was out of station, the petitioners herein took the vehicle from the house of the respondent without his consent and therefore, the said act would amount to theft. He further submitted that before taking the vehicle, the petitioners did not send any prior notice. Therefore, a primafacie case is made out against the petitioners. Hence, he requests to dismiss the petition.

7. It is an admitted fact that the respondent herein has purchased a two wheeler bearing Regn.No. PY-01-CF-8345 under hire purchase agreement with Shriram City Union Finance Limited. It is also an admitted fact that the respondent has committed default in paying the installments. At this juncture it would be relevant to refer to Clause 10(2) (a) of the Hire purchase Agreement which read thus:-

> " Demand that the borrower return the product/vehicle to the lender in the same condition as delivered, reasonable wear and tear expected and in the event of failure of the borrower to comply with the same within 7 days from the date of the demand enter upon the

premises where such product/vehicle is located and take immediate possession and remove the same all without the liability to the lender or its agents for such entry of for damage to property or otherwise. The lender has the right to detach and dismantle the product /vehicle from any part of the freehold or process machinery to which it may be affixed without the prior permission of the borrower. For the purpose of possession of the product/vehicle of the borrower expressly grants irrevocable licence to the lender/security trustee or its agents or any other authorized representative for the purpose of exercising its right under this clause" .

8. A plain reading of the aforesaid caluse would show that the Finance Company can repossess the vehicle if the borrower failed to return the vehicle on demand within seven days from the date of demand. So, invoking the said clause, the Finance Company has seized the vehicle.

9. In Charanjit Singh Chadha and Others /vs/ Sudhir Mehra, AIR 2001 SC 3721 cited supra, the Hon'ble Supreme Court in Paragraph Nos.10 to 17 has observed as follows:

> 10. The agreement executed by the parties in this case also is to the effect that the hirer would not become the owner of the property until he pays the entire instalments. A copy of the agreement is produced as Annexure P-1 wherein the appellants are referred to as the first party and the respondent as the second party and it is specifically stated that the first party would be the absolute owner of the vehicle and the respondent-second party agreed to pay all the instalments punctually. Clause 7 of the agreement says that the hirer may at any time before the final payment under the hire purchase agreement falls due and after giving the owners not less than fourteen days notice in writing of his intention to do so and re-delivering the vehicle to the owners at their office, terminate the hire purchase agreement. Clause 8(viii) gives a right to the owner to re-possess the vehicle in case of default by the hirer. Clause 9(ii) gives the owner an irrevocable licence to enter any building, premises or place where the vehicle may be or supposed to be for the purpose of inspection, re-possession or attempt to repossess the vehicle and the owner of the vehicle will not be liable for any civil or criminal action at the instance of the hirer. It is also made clear that

the hirer would be liable for all the expenses of the owner in obtaining re-possession or attempting to obtain re-possession of the vehicle.

11. The whole case put forward by the respondent-complainant is to be appreciated in view of the stringent terms incorporated in the agreement. If the hirer himself has committed default by not paying the instalments and under the agreement the appellants have taken re-possession of the vehicle, the respondent cannot have any grievance. The respondent cannot be permitted to say that the owner of the vehicle has committed theft of the vehicle or criminal breach of trust or cheating or criminal conspiracy as alleged in the complaint. When the agreement specifically says that the owner has got a right to re-possess the vehicle, there cannot be any basis for alleging that the appellants have committed criminal breach of trust or cheating.

12. Before the learned Single Judge, the respondent had contended that the vehicle was in the possession of the respondent and it was taken out of his custody without his consent and therefore, the offence of theft is made out. This plea is also without any basis as the appellants have taken re-possession of the vehicle in exercise of their right under the agreement. There may be instances where the owner of the goods may commit theft of his own goods. The illustration (k) of Section 378 IPC, which is an instance of such a theft, is to the following effect:

"Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property in as much as he takes it dishonestly."

13. But in the instant case, the owner re-possessing the vehicle delivered to the hirer under the hire purchase agreement will not amount to theft as the vital element of 'dishonest intention' is lacking. The element of 'dishonest intention' which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer. It is appropriate to note that the term 'dishonestly' is defined under Section 24 of the IPC as follows:

"Dishonestly"--Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

14. It is also to be noticed that learned author R.M. Goode, in his book Hire Purchase Law & Practice (Second Edn.) has observed as follows at page 846:-

"It would seem that so long as the hirer is in possession of the goods they belong to him for the purpose of the Act [The Theft Act, 1968] even though his possession is unlawful, e.g. because the hire-purchase agreement has come to an end. If the owner has an enforceable right to possession then he will not be guilty of theft in seizing the goods if he knew of his legal rights since he will not be acting dishonestly but will have taken the goods in the well founded belief that he has a right to resume possession."

15. This Court also had occasion to consider this question. One of the earlier decisions is Sardar Trilok Singh & Ors. vs. Satya Deo Tripathi . In that case, the parties had entered into a hire purchase agreement. The complainant alleged that the accused, in a high handed manner during his absence came to his house and forcibly removed the truck and thereby committed the offence of dacoity. The police investigated the case and filed a final report. The accused filed his objection before the Magistrate, but the objection was not considered. The accused filed a revision before the session court which was dismissed. Thereafter the accused filed a petition under section 482 Cr.P.C. to quash the proceedings. That was summarily dismissed by the High Court and the matter reached up to this Court at the instance of the accused. In paragraph 5 of the judgment, this Court observed:

"We are clearly of the view that it was not a case where any processes ought to have been directed to be issued against any of the accused. On the well-settled principles of law it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct. Money must have been advanced to him and his partner by the financier on the basis of some terms settled between the parties... Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on July 30, 1973 from the house of the respondent they could and did claim to have done so in exercise of their bona fide right seizing the truck on the respondent's failure to play the third monthly instalment in time. It was, therefore, a bona fide civil dispute which led to the seizure of the truck".

16. In K.A. Mathai & Anr. vs. Kora Dibbikutty & Anr. , the bus was obtained by the complainant on a hire purchase agreement. The complainant paid only part of the consideration and defaulted in paying the instalments and the vehicle was taken possession of by the financial and at that time, both the first accused who had derived away the bus from the possession of the complainant and the second accused were present in the bus. They were prosecuted for the offence punishable under Section 379 read with Section 114 IPC. This Court holding that the bus was taken away at the instance of the financier and the accused had not committed any offence observed as under:

"Though we do not have the advantage of reading the hire-purchase agreement, but as normally drawn it would have contained the clause that in the event of the failure to make payment of instalments the financier had the right to resume possession of the vehicle. Since the financier's agreement with A-2 contained that clause of resumption of possession, that has to be read, if not specifically provided in the agreement, as part of the sale agreement between A-2 and the complainant. It is in these circumstances, the financier took possession of the bus from the complainant with the aid of the appellants. It cannot thus be said that the appellants, in any way, had committed the offence of theft and that too, with the requisite mens rea and requisite dishonest intention."

17. The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on hire until the conditions for transfer of the property to him have been fulfilled. Therefore, the re-possession of goods as per the term of the agreement may not amount to any criminal offence. The agreement [Annexure P-1] specifically gave authority to the appellants to re-possess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire

purchase agreement, the appellants have continued to be the owner of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. We, therefore, allow this appeal and set aside the impugned judgment. The complaint and any other proceedings initiated pursuant to such complaint are quashed."

10. In Anup Sharma /vs/Bhola Nath Sharma and others, (supra), the Hon'ble Supreme Court after referring to the earlier decisions in Sardar Trilok Singh and Others V. Satya Deo Tripathi, AIR 1979 4SCC 396: In K.A.Mathai alias Babu and Another v. Kora Bibbikutty and Another (1996) 7 SCC 212 and in Charanjit Singh Chadha and Others v. Sudhir Mehra, (2001) 7 SCC 417, has observed in Paragraph No.7 as follows:

" 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 repossessing the goods owned by him"

11. From the said decisions, it is clear that in an agreement of hire purchase, the purchaser is only a trustee/bailee on behalf of the financier/owner and the ownership remains only with the financier and thus, in case the vehicle is seized by the financier, no Criminal action can be taken against him and he is repossessing the goods owned by him.

12. The only grievance expressed by the learned counsel for the respondent is that before seizing the vehicle, notice was not given to the respondent. In this aspect, it would be relevant to refer to the averments made in the complaint. In the complaint itself, the respondent has stated that on 08.04.2016, the collection agent of the accused No.2 has approached him and demanded the arrears amount. So it is clear that the respondent has admitted that the petitioners agent has approached the respondent and made demand, so the same can be taken as notice. Therefore, the contention of the learned counsel for the respondent that without notice, the petitioners have seized the vehicle cannot be accepted.

13. It is also to be pointed out that in the complaint, the Shriram City Union Finance Ltd., not arraigned as an accused. Without adding the said Finance Company as accused, the respondent has filed a Private Complaint against the General Manager and Branch Manager. So, the said complaint is not maintainable on this ground also.

14. In view of the aforesaid decisions of the Hon'ble supreme Court, the seizure of the vehicle by the financier cannot be termed as offence and therefore, the prosecution cannot be launched against them. Further, the Finance Company also has not been arraigned as an accused. The complaint is not maintainable on this ground also. Hence launching of the prosecution against the petitioners would amount to abuse of process of the Court. Therefore, the proceedings against them has to be quashed.

15. In the result, this petition is allowed. The proceedings against the petitioners herein in C.C.No.114 of 2016 on the file of the Judicial Magistrate No.II, Panruti are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vv

To
1.The Judicial Magistrate II,
Panruti.

2.The Chief Judicial Magistrate, Cuddalore.

3. The Public Prosecutor,
Madras High Court, Chennai.

+1cc to Mr.V.Bhiman, Advocate, S.R.No. 88066

Crl.O.P.No.23760 of 2016
and
Crl.M.P.Nos.11293 of 2016
and 2210 of 2017

KJI(CO)
GN(27/02/2019)