

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CrI.O.P.No.25286 of 2014

and

M.P.No.1 of 2014

&

CrI.M.P.No.6558 of 2016

1.Srinivasa Rao,
2.Sridharan

.... Petitioners

Vs.

1.The Inspector of Police
R-7, Police Station,
K.K.Nagar, Chennai 600 078.

2.Alfred

....Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in C.C.No.1385/2014 on the file of XXIII Metropolitan Magistrate, Saidapet, Chennai District and quash the same.

For Petitioners : Mr.S.Arivazhagan
For R1 : Mr.T.ShunmugaRajeswaran
For R2 : K.Alfred (Part-in-person)

ORDER

The petitioners are accused 2 and 3 in C.C.No.1385/2014 on the file of XXIII Metropolitan Magistrate, Saidapet, Chennai. The Inspector of Police, R-7, KK Nagar Police Station, registered a First Information Report in Cr.No.904/2007, on the basis of the complaint dated 05.05.2007 preferred by the second respondent/defacto complainant for an alleged offence punishable under Section 380 IPC. The allegation of the second respondent/defacto complainant is that his Maruti Omni Vehicle bearing Registration No.TN-09-AR-4650 was stolen from his house. According to the defacto complainant, he had kept a sum of Rs.10,000/- and also certain documents inside his car.

2. The Inspector of Police, R-7, KK Nagar, Police Station,

on conclusion of the investigation laid a final report against the present petitioners as well as one Neelakanda Pillai, in which, it is stated that the defacto complainant had purchased one Maruti Omni Van bearing Registration No.TN-09-AR-4650, after obtaining loan from Mahindra & Mahindra Finance Company and was also paying equated monthly installments @ Rs.9,600/-. The further contention of the prosecution is that the petitioners/accused had seized the Maruti Omni Van bearing Registration No.TN-09-AR-4650, even though there was no default in payment of EMI by the defacto complainant.

3. In the present petition, the petitioners have contended that the defacto complainant availed a loan of Rs.1,00,000/- from Mahindra & Mahindra Finance Service Limited for purchase of a Maruti Omni Van and his wife also stood as a guarantor for the due repayment of equated monthly installments. According to them, since the defacto complainant's wife approached the Mahindra & Mahindra Finance Company with a request to release her from the liability as a guarantor and also gave a letter dated 07.03.2007 in this regard to the said Company along with a request to take possession of the vehicle, the petitioners took possession of the vehicle bearing registration No.TN-09-AR-4650 and therefore, they have not committed the offence punishable under Section 380 IPC.

4. Mr.Arivazhagan, the learned counsel appearing for the petitioners drew the attention of this Court to the letter dated 13.03.2007 alleged to have been sent by the wife of the defacto complainant to Mahindra & Mahindra Finance Company in which it is mentioned that though the vehicle stands in the name of her husband they (defacto complainant and his wife) would not be in a position to pay the future installments due to some family problems. The specific contention of the learned counsel for the petitioners is that since the vehicle itself was handed over by the wife of the defacto complainant, there is no question of prosecuting the petitioners for the alleged offence punishable under Section 380 IPC. सत्यमेव जयते

5. Per contra, Mr.K.Alfred, party-in-person contended that he has been regularly paying the monthly installments and has never committed any default. He would also contend that he was arrested by the Police and kept in the prison in connection with some other offence and during this period the petitioners had seized the vehicle even though there was no default committed by him in making the payments towards the monthly installments. He also filed a copy of the statement of accounts issued by the Syndicate Bank, in which he is having a savings bank account No.60920-10012059.

6. A perusal of the statement of accounts shows that the

defacto complainant has been making the payments regularly till 1st March 2007. At the out set, it may be observed that it is not the case of the petitioners that they had seized Maruti Omni Van bearing Registration No.TN-09-AR-4650, since the defacto complainant did not pay the monthly installments. On the contrary, their contention is that the wife of the defacto complainant had voluntarily surrendered the vehicle to them. When, there is no default in payment of monthly installments, the petitioners should not have seized the vehicle without the consent of the defacto complainant in whose name, the vehicle has been purchased. When the petitioners contend that the defacto complainant's wife surrendered the vehicle to them, the case of the prosecution is that the vehicle was seized from the house of the defacto complainant.

7. In any event, this is a disputed question of fact, which cannot be gone into, at this stage. The Inspector of Police, R-7, KK Nagar, Police Station had investigated the case and laid a charge sheet before XXIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.1385/2014.

8. In the facts and circumstances of the case, I do not find any reason to quash the proceedings and accordingly, this Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

dna

To

1.The Inspector of Police
R-7, Police Station, K.K.Nagar, Chennai 600 078.

2. XXIII Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to Mr.K.Alfred, Advocate SR.No.50725
+1cc to Mr.K.Arivazhagan, Advocate SR.No.50925

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GN(29/08/2018)