

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.11.2018

CORAM
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.OP.No.25847 of 2018
and
CRL.MP.NO.14826 of 2018

Mr.K.Santhakumar

...Petitioner/Accused

Vs.

1.State Rep. by

The Inspector of Police,
Kinathukadavu Police Station,
Coimbatore District.

... Respondent 1/Complainant

2. Mr.Dhandapani

....Respondent2/Defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in Crime No.244 of 2018 on the file of the first respondent police and Quash the same.

For Petitioner : Mr.R. Thamaraiselvan

For Respondents: Mr. M.Mohamed Riyaz
Additional Public Prosecutor for R1

: Mr.P.Muthukrishnan for R2

ORDER

This Criminal Original Petition has been filed seeking to quash the FIR in Crime No.244 of 2018 pending on the file of the first respondent.

2. A reading of the complaint, reveals the fact that the second respondent is the owner of the Toyota Fortuner Car. He had purchased the same by taking loan from M.M.Finance to an extent of Rs.10,00,000/-. This car was purchased in the year 2018. There was a tenant by name Mr.Muralidharan under the second respondent. This person had requested the petitioner to sell the car to him and he had also promised the petitioner that he will settle the dues to the finance company and the petitioner had also handed over the car to the said Muralidharan. Thereafter, the said Muralidharan left Chennai and started staying at Kerala on the guise of taking treatment. The second respondent was insisting Muralidharan to return back the car and the said Muralidharan directed the second respondent to take the car from his wife. When the second respondent

approached Muralidharan's wife, she had informed the second respondent that one Santhakumar, who is the petitioner herein, had taken the car from the house. Therefore, the present complaint has been given by the second respondent against Santhakumar and the respondent police had registered the FIR in Cr.No.244 of 2018 for offences under Sections 406, 420 IPC.

3. The learned counsel for the petitioner would submit that the petitioner had parted with a sum of Rs.9,90,000/- to the son of Muralidharan since he promised that the car will be sold by him. There was a vehicle sale agreement between the parties on 21.02.2018 in this regard.

4. The learned counsel for the petitioner would further submit that he had no direct dealings with the second respondent and it is only the son of Muralidharan, who was co-ordinating with this petitioner for the sale of the car. Since the petitioner was insisting for the original R.C. Book and the same was not given to him, the petitioner had also issued notice to the Transport Commissioner, requesting him not to transfer the R.C.Book in the name of anyone else. While so, the present complaint came to be filed against this petitioner.

5. The learned counsel for the petitioner would also submit that a reading of the entire complaint does not make out any offence against the petitioner, and it is in fact, the petitioner who has now been cheated since he has parted with a huge amount and the original R.C.Book has not been transferred in his name and there is a very serious dispute with regard to the ownership of the car.

6. The learned counsel appearing for the second respondent would submit that till date R.C.Book stands in the name of the second respondent. Therefore, it is the second respondent who is the owner of the car.

7. The learned counsel for the second respondent would further submit that the petitioner without any right has taken away the car and therefore, the present complaint was given against him and the same has been taken on file by the respondent police and an FIR has been registered against the petitioner.

8. The learned counsel for the second respondent would also submit that the second respondent has been cheated in this case and the second respondent, who is not in possession of the car is also now forced to settle the amount before the Finance Company. Therefore, the learned counsel would submit that the second respondent is completely left in lurch and therefore this Court should not interfere with the FIR registered by the respondent police.

9. The learned Government Advocate representing the first respondent would submit that the respondent police is investigating the case and it is at a very preliminary stage and therefore this Court should not interfere with the investigation at this stage.

10. This Court has carefully considered the submissions made on either side. One thing which stands glaring in this case is that there is absolutely no privity of contract between the petitioner and the second respondent. The entire grievance of the second respondent is against Muralidharan who had taken the car without paying him any money. The second respondent is not even aware of the fact that the son of Muralidharan had received the money from this petitioner and had handed over possession of the car to the petitioner by virtue of the vehicle sale agreement dated 21.02.2018. In a way, this petitioner has also been cheated by Muralidharan and his son and the petitioner who had parted with money is now facing a very difficult situation, wherein, there is a dispute with regard to ownership of the vehicle. Admittedly, in this case, the RC Book stands in the name of the second respondent till today.

11. This Court has carefully read the contents of the FIR and finds that no offence has been made against this petitioner. The second respondent in fact has to proceed against Muralidharan and his son for having been cheated and taking away the car without paying him any money. Without doing so, the second respondent cannot proceed against this petitioner.

12. In view of the reasons stated above, this Court is of the considered view that the FIR pending in Crime No.244 of 2018 on the file of the first respondent against this petitioner is totally unsustainable. Accordingly, the same is quashed. It is left open to the second respondent to give a fresh complaint before the respondent police as against Muralidharan and his son with regard to the offence of cheating and criminal breach of trust and the first respondent on receipt of such complaint from the second respondent, shall proceed further in accordance with law as per the guidelines given by the Hon'ble Supreme Court in Lalita Kumari Vs. Government of Uttar Pradesh and others [2013 (6) CTC 353].

13. In the result the Criminal Original Petition is allowed with the above directions. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dh/raja

To

1.The Inspector of Police,
Kinathukadavu Police Station,
Coimbatore District.

2.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.P.Muthukrishnan, Advocate, S.R.No.77868

+lcc to Mr.S.Shankar, Advocate, S.R.No.77885

CRL.OP.No.25847 of 2018

SPD(CO)

rrs 11/12/2018



WEB COPY