

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M No. 40495 of 2012
Date of Decision: 24.7.2018**

Sunil Dahiya

.....Petitioner

v.

State of Haryana and another

.....Respondents

CORAM HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Sanjeev Kodan, Advocate, for the petitioner

Mr. Karan Sharma, AAG, Haryana

RAJBIR SEHRAWAT, J.

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of Criminal Complaint No. 366-1 dated 17.11.2011/6.4.2012 (Annexure P-1) and the summoning order dated 26.9.2012 (Annexure P-2), passed in that complaint by the Judicial Magistrate First Class, Jind.

In brief, the facts of this case are that respondent No.2 had filed the above said complaint, alleging therein, that the complainant had purchased one Truck bearing No. HR-56-G-0079 by availing the finance facility from Kotak Mahindra Bank Limited, vide hire purchase agreement dated 18.11.2006. It was further alleged that the complainant deposited 25 instalments with the bank. However, due to recession, he could not make the further payment in time. Taking benefit of that situation of the complainant, the employee of the Kotak Mahindra Bank, by misusing their powers, took away and re-posessed the said truck of the complainant. It was further pleaded in the complaint that the complainant had not been served any notice

of sale in the auction in the execution the ex-parte award dated 11.8.2009 where the vehicle was being sold on 19.11.2009; showing the same to be kabad. The complainant further came to know that the truck in question had been transferred to one Randhir Singh, who was arrayed as respondent No.2 in the complaint, through the sale in the execution proceedings.

Upon this complaint, the Judicial Magistrate First Class, Jind, issued the above said impugned summoning order, summoning the present petitioner under Sections 418, 420, 421 read with Section 34 IPC.

Assailing the above said complaint as well as summoning order, learned counsel for the petitioner submits that the petitioner was only an employee of the said bank. Moreover, the petitioner was not even posted at the Rohtak Branch, where the truck was taken into possession and was sold in auction proceedings, during any period when the above said truck in question was dealt with by the bank. Therefore, the petitioner is not involved in the case in any manner.

Learned counsel for the petitioner further submits that in any case, admittedly, the truck in question is hypothecated with the bank under the hire-purchase agreement. The bank had every right to repossess the said truck. It is also contended by learned counsel for the petitioner that in case of hire purchase agreement, the financier remains the owner of the property and the loanee is only a holder of the property in trust for usage till the entire loan amount is re-paid. Therefore, if the loan is not repaid as per the agreement, then the financier is legally entitled to take back the vehicle as per the agreement. In this regard, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court rendered in “**SLP (Criminal) No.8907**

of 2009 decided on 30.10.2012, **Anup Singh v. Bhola Nath Sharma and others**". To the same affect, learned counsel has also relied upon another judgment of the Hon'ble Supreme Court reported as **"2006 (2) RCR (Criminal) 386, The Managing Director, Orix Auto Finance (India) Ltd. v. Jagmander Singh and another"**.

There is no representation on behalf of the complainant. Despite the fact that the notice in the case was issued in the year 2012 and he was duly served, till today there is no appearance by the complainant. No reply has been filed to controvert the pleadings of the petitioner in the present petition.

Having heard learned counsel for the petitioner, this Court is of the considered opinion that the present petition deserves to be allowed. Admittedly, the above said truck was purchased by the complainant on finance by the bank and was hypothecated to the bank under hire purchase agreement. Under the agreement, the bank remained the owner of the truck in question. The complainant was to become the owner of the truck only after making the entire payments as per the agreement. Till then the complainant had only right to enjoy the possession of the truck in question, so long as he complied with the terms of the agreement. Once the complainant did not comply with the terms of the agreement qua repayment of the loan, then, the bank had every right to re-possess the truck, so as to minimise the damage to its interest.

Hon'ble Supreme Court in the above said judgments have also held that the purchaser, under hire purchase finance agreement, remains only a person in possession in trust as per the terms of agreement. The ownership remains with the financier i.e. with the bank in the present case. Therefore, merely, because the possession of the truck is taken by the bank, that does not

constitute any offence.

Moreover, the record also shows that in this very matter, even the arbitration proceedings were undertaken by the bank, as per the clause in the agreement. The complainant had not even associated himself with the arbitration proceedings. Resultantly, the arbitration award was passed against the complainant ex parte. In execution of that award only, the truck in question was sold by the bank to the second accused, arrayed in the complaint.

Otherwise also, the petitioner has categorically averred that he was not even posted in the Rohtak Branch, at the time when the matter of above said truck in question was dealt with by the bank. Therefore, in any case, if anybody is to be held liable in this matter, then it is not the petitioner at all.

So far as the other accused -the subsequent purchaser of the truck in question is concerned, by any means, he cannot be involved in any criminal proceedings. Admittedly, he had purchased the truck in question in open auction, in validly conducted proceedings by the bank. Hence, he could also not be held liable for any criminal offence.

In view of the above, the present petition is allowed. Criminal Complaint No. 366-1 dated 17.11.2011/6.4.2012 (Annexure P-1) as well as summoning order dated 26.9.2012 (Annexure P-2), is quashed.

(RAJBIR SEHRAWAT)
JUDGE

24.7.2018

Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No