

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.O.P.No.32138 of 2014

and

M.P.No.1 of 2014

Vijay Pari

...Petitioner

.Vs.

1.The Station House Officer,
J-3 Guindy Police Station,
Guindy, Chennai.

2.B.Jeba Raja

...Respondents

PRAYER: This Criminal Original petition is filed under Section 482 of Cr.P.C. To call for records and quash the FIR No. 2694/2014 dated 23.11.2014 pending investigation on the file of the 1st respondent.

For Appellant : Mr. K.S. Ilangovan

For Respondent-1: Mr. C. Iyyappa Raj

For Respondent-2: Mr.R.Chandra Sekar

O R D E R

This Criminal Original Petition has been filed by the accused to quash the FIR in crime No.2694 of 2014 on the file of the first respondent police.

2.The case of the prosecution is that the petitioner/accused entered into an sale agreement with the second respondent to sell his used Maruti Suzuki car and the sale price was fixed as

Rs.5,00,000/- (Rupees five lakhs only). Initially the said amount was not paid, thereafter the accused received the entire sale consideration. The accused after receiving the entire sale consideration, did not discharge the dues to the bank, hence the second respondent lodged a complaint with the first respondent police and the first respondent police have registered an F.I.R in Crime No.2694 of 2014 u/s 420 of I.P.C. In order to quash the Crime No.2694 of 2014, this Criminal Original Petition has been filed.

3. The learned counsel for the petitioner submitted that in the said F.I.R it has been stated that a sale agreement was entered on 02.08.2013 and the defacto complainant/2nd respondent has not stated that the petitioner has violated the terms and conditions of the agreement.

4. The learned counsel for the petitioner also referred to the Judgment of the Hon'ble Apex Court in the case of V.P.SHRIVASTAVA Vs INDIAN EXPLOSIVES AND OTHERS reported in (2010) 10 SCC 361 wherein in para no:23, it has been held that the ingredients required to constitute an offence of cheating have been laid down in Ram Jas Vs. State of U.P. and the relevant portion is extracted hereunder:

(I) there should be fraudulent or dishonest inducement of a person by deceiving him;

(ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) (a) in cases covered by (ii)(b) the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind reputation or money"

5. Per Contra the learned counsel for the defacto complainant/second respondent submitted the petitioner/accused failed to give No Objection Certificate for effecting the name transfer for the car and the cheque given by him for Rs.2,00,000/- without any funds in his Bank Account, constitute an offence of cheating.

6.The learned Additional public prosecutor appearing for the first respondent submitted that even after the sale had taken place the accused failed to discharge his part of the contract i.e to settle the dues to the finance company i.e Megma Finance where he has obtained a loan, for the said vehicle. Hence, the ingredients required u/s 420 of I.P.C was established in this case. Therefore, they have filed F.I.R u/s 420 of I.P.C.

7.Considering the facts of the case, it is clear that the accused and the second respondent has entered into a sale agreement on 02.08.2003 and the petitioner/accused agreed to sell his car in favour of the second respondent/defacto complainant and the entire sale consideration i.e Rs.5,00,000/- was received . It appears that the entire amount was discharged and now the second hand car is free from all encumbrances and there is no violation of terms and conditions stated in the sale agreement. In the sale agreements, it has been agreed by the accused that he will clear all the dues pertaining to the car.

8.On a perusal of the Judgment cited by the learned Counsel in Dinesh Dutt Josh Vs State of Rajasthan, while dealing with the inherent powers of the High Court, the Supreme Court held as under:-

"..... The principle embodies in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non protest I.e when the law gives anything to anyone it gives also all those things without which the thing itself would be unavailable. The Section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

Jurisdiction under Section 482 of the code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies

available in law. Before issuing process of criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid down certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

9. Bearing in mind the aforesaid legal position in regard to the scope and width of powers of the High court under Section 482 of the Code and going through the facts of the present case, it is seen that there was a written sale agreement between the parties and there is no intention to cheat by both of them. Further the accused has not intentionally deceived the defacto complainant or cheated him. Hence, the necessary ingredients required U/S 420 I.P.C is not established.

In such circumstances this petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Station House Officer,
J-3 Guindy Police Station,
Guindy, Chennai.

+1cc to Mr.R.Chandra Sekar, Advocate sr.100631

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