BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.01.2020

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P(MD)No.6847 of 2017

and

Crl.M.P(MD)No.4591 of 2017

Arunkumar, Branch Manager,
Savery Transport Finance Company Limited,
Kulithalai Branch,
Trichy – Karur Main Road,
Kulithalai, Karur Dt ... Petitioner/Accused

Vs

Malayalasamy ... Respondent/Complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code to call for the records pertaining to the above C.C.No.55 of 2017, on the file of the learned Judicial Magistrate No.1, Kulithalai and to quash the same.

For Petitioner : Mr.K.M.Karunakaran
For Respondents: Mr.V.Illanchezian,

ORDER

This petition has been filed by the Branch Manager of a Finance Company as against the complaint filed against him in C.C.No.55 of 2017 on the file of the learned Judicial Magistrate No.I, Kulithalai.

2.The respondent/complainant lodged a complaint as against this petitioner before the learned Judicial Magistrate No.I, Kulithalai and the same was taken cognizance of by the learned Judicial Magistrate as against this petitioner for the offence under Sections 406, 408, 420, 423 and 424 IPC and issued summons to the petitioner and as against the same the petitioner has filed this criminal original petition.

3.The case of the complainant is that in the year 2014, he purchased a Hero Honda Splender Two Wheeler, bearing Registration No.TN 45 AU 2860 and he mortgaged the same with the petitioner and obtained loan twice. He obtained a loan for third time on 24.05.2016 for a sum of Rs.19,000/- from the petitioner. However, the respondent did not pay the EMI amount on 24.06.2016 and 24.07.2016. Therefore, on 27.07.2016 the vehicle was seized and notice was issued on 28.07.2016, calling upon the respondent/ defacto complainant to close the account by paying the balance amount including the interest and other charges on or before 04.08.2016, otherwise, the vehicle would be sold and the amount would be adjusted towards loan amount, interest and other charges. According to the complainant, the petitioner has also sold the vehicle on 04.08.2016.

4. The learned Counsel for the petitioner submitted that the respondent/complainant has borrowed a sum of Rs.19,000/- on 24.05.2016 and failed to pay the EMI falling on 24.06.2016 and 24.07.2016 and therefore, the petitioner seized the vehicle from the respondent on 27.07.2016 and sold the vehicle on 04.08.2016, after issuing notice to the respondent/complainant.

5.Admittedly, this vehicle was not purchased on any hire-purchase agreement in the year 2014 and the vehicle was mortgaged with the petitioner finance company and on the basis of mortgage, the petitioner gave a sum of Rs.19,000/- to the respondent/complainant on 24.05.2016. A separate pronote was executed by the respondent/defacto complainant in favour of Savery Transport Finance Company Limited with an interest of 18% per annum. Apart from this pronote, there is no hire-purchase agreement or any other document available with regard to the said transaction. While so, the petitioner company without any authority seized the vehicle and sold it. Therefore, this Court, in the absence of any hire-purchase agreement authorising the petitioner to seize the vehicle, is not inclined to interfere with the complaint and hence, this criminal original petition is dismissed and consequently connected miscellaneous petition is closed. The trial Court is directed to proceed with the complaint and dispose of the case in C.C.No.55 of 2017 as expeditiously as possible.

Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar(CS)

dsk

To

The Judicial Magistrate No.1,
Kulithalai.

+1 CC to M/s.K.M.KARUNAKARAN, Advocate (SR-1803[F] dated 13/01/2020
+1 CC to M/s.V.ILLANCHEZIAN, Advocate (SR-1781[F]

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SMA/06/02/2020/2P/4C