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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.10.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

CrI.OP.No.22433/2015 & M.P.No.1/2015

[Video Conferencing]

1.R.Sundararajan

2.K.Sunil Kumar

...Petitioners/Accused 1 & 2

Versus

M.Senthil Kumar

...Respondent/Complainant

Prayer : - Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in the C.C.No.88/2015 on the file of the Judicial Magistrate No.1, Panruti, Cuddalore District and quash the same.

For Petitioners : Mr.Jayabalan Mohan
for Mr.P. Srinivasan

For Respondent : No appearance

ORDER

- (1) Heard the learned counsel for the petitioners.
- (2) The present petition has been filed by A1 and A2 in C.C.No.88/2015 now pending on the file of the Judicial Magistrate No.1, Panruti.
- (3) There is no representation on behalf of the respondent. Continuously, there had been no representation on behalf of the respondent even on earlier occasions and on 29.09.2021, this Court had passed an order that if again there is no appearance on behalf of the respondent, orders shall be passed based on the records available.
- (4) It appears that the petitioners herein and also A3 and A4, who are relatives of A2/2nd petitioner herein, had advanced money, for purchase of a vehicle by the respondent. In this connection, the 2nd petitioner/A2 is the financier and the 1st petitioner/A1 is his Power of Attorney Agent. A3 and



A4 who are not before this Court, have not entered into any Agreement with the respondent. They are strangers to the Agreement entered into between the petitioners herein and the respondent.

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- (5) In pursuant to the Agreement which is termed as HP Agreement on 17.02.2011, the 2nd petitioner herein/A2 had financed purchase of Tata Safari vehicle by the respondent herein. The said vehicle bore Registration No.PY-01-AG-1618.
- (6) Among various clauses provided in the Agreement, Clause 27 very specifically stated that in case there are any disputes between the parties arising out of the said Hire Purchase, the said dispute shall be settled by arbitration in accordance with the Arbitration Act, which prevailed at that particular point of time.
- (7) It is informed to me by the learned counsel for the petitioners that the respondent had given ten post dated cheques towards sale price of the said Tata Safari Vehicle. Three of them were honoured. The 4th cheque was initially dishonoured and later, honoured. The other six cheques have still not been presented for payment by the petitioners herein. The petitioners have not presented the said six cheques for payment because the respondent had given an undertaking that he would pay the entire amount due in cash and get back the said cheques. But, he had failed to pay the entire due amount.
- (8) The petitioners herein sought to take possession of vehicle. At that particular point of time, the respondent had given a complaint before the learned Judicial Magistrate No.1, Panruti, under Section 200 Cr.P.C., complaining that the accused have committed offences punishable under Section 415, 420, 506[i] IPC.
- (9) When there is a written Agreement, particularly between the petitioners and the respondent herein and when the respondent had willingly and with open eyes, signed the Agreement, the natural recourse which the respondent will have to take if there is breach of any of the terms of the Agreement, is to proceed in accordance with the terms of the Agreement. Giving a colour of criminal case owing to acts committed by either one of the parties to the Agreement, cannot be encouraged.
- (10) The respondent herein appears to be still in possession of the vehicle and is using it. It is very clear on a reading of the Agreement that the parties had agreed that the



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entire issue would turn out only to be a civil matter of lending money, taking on hire the vehicle owing to such lending and thereafter, repayment of the amount borrowed in instalments. Towards that purpose, the respondent had issued ten cheques. Three of them had been honoured. The 4th cheque had been initially dishonoured, but subsequently honoured and the remaining cheques are still with the petitioners herein. These facts itself shows that the respondent is bound by the said Agreement.

- (11) It is not known as to how the provisions under Section 415 IPC or any other offences under the IPC would stand attracted if the petitioners herein proceed in accordance with the Agreement to retake the possession of the vehicle. If the respondent contends that he had paid the entire amount, then it is very well open to him to state that fact during Arbitration proceedings. Going before the Criminal Court and filing a complaint under Section 200 Cr.P.C., will necessarily have to be viewed strictly by this Court and I have no hesitation in striking off the Calendar Case as against the petitioners herein.
- (12) In the result, the Criminal Original Petition is allowed and the proceedings in C.C.No.88/2015 on the file of the Judicial Magistrate No.1, Panruti, Cuddalore District, is hereby quashed as against the petitioners/A1 and A2. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

AP

To

1.The Judicial Magistrate No.1,
Panruti, Cuddalore.

2.Do Thro The Chief Judicial Magistrate
Cuddalore

Cr1.OP.No.22433/2015

GJ(CO)
SP(09/11/2021)