BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2021

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P(MD)No.13388 of 2017

and

Crl.M.P(MD)No.9019 of 2017

Muthu : Petitioner

Vs.

Subramani : Respondent

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the complaint in C.C.No.139 of 2017 on the file of the Judicial Magistrate Court No.1, Kulithalai and quash the same as illegal as against the petitioner herein.

For Petitioners : Mr.T.Vadivelan
For Respondent : Mr.K.Suresh
for Mr.P.T.Ramesh Raja

ORDER

This criminal original petition has been filed seeking to quash the proceedings in C.C.No.139 of 2017 on the file of the Judicial Magistrate Court No.1, Kulithalai.

2.The petitioner is an authorised seller of Honda Two Wheeler Vehicles, having show room on Tiruchirappalli main road at Musiri. The petitioner has filed this quash petition to quash the complaint pending against him in C.C.No.139 of 2017 on the file of the learned Judicial Magistrate No.1, Kulithalai.

3.The case in C.C.No.139 of 2017, was filed by the respondent/ complainant, purchaser of a two wheeler vehicle. The respondent /complainant has approached the petitioner for purchasing a Honda Shine Self Disc Alloy 125 CC Engine and has also requested to make arrangements for loan towards the purchase. Based on the request of the respondent, the petitioner booked a vehicle bearing Engine No.JC65E70559971 and Chases No. ME4Jc652FG7176043 and reserved the same in the name of the respondent on 29.09.2016. The petitioner has also arranged loan for the purchase of the said vehicle through a financial service company, namely, Indusind Marketing Financial Services Company/ A-1 by entering into a contract with the said finance company and also executed necessary documents in their favour. As per the loan agreement, at the time of delivery of the vehicle, the complainant had to pay one third of amount of the vehicle, i.e.,Rs.24,666/-. The loan was also sanctioned in the name of the complainant and a sum of Rs.48,770/- was credited into the account of the petitioner by the first accused finance company. But the respondent / complainant has not taken delivery of the vehicle since he was admitted in the hospital and underwent a surgery. In the meantime, the petitioner has issued a legal notice through his Advocate on 09.03.2017 calling upon the complainant to pay a sum of Rs.11,355/- towards the monthly due pursuant to the loan availed by him. In response to the legal notice, the complainant has also sent a reply notice on 03.04.2017. Therefore, the petitioner is said to have repaid the amount to the financial services company on 27.04.2017. Thereafter, the respondent filed this complaint, the same has also been taken on file by the learned Judicial Magistrate No.I, Kulithalai and summon was issued to the petitioner. Aggrieved over the same, the petitioner two wheeler dealer has come before this Court to quash the complaint pending against him.

4.Mr.Vadievelan, learned Counsel for the petitioner submits that this respondent / complainant approached the petitioner on 29.09.2016 and booked a Honda Shine Self Disc Alloy 125 CC Engine, bearing Engine No.JC65E70559971 and Chases No. ME4Jc652FG7176043. Based on his request, the petitioner has arranged for the loan through a financial service company the first accused. As per the terms of purchase on loan the complainant had to pay a sum of Rs.24,666/-, which is one third of the purchase amount, as initial payment towards the purchase of the vehicle and the balance amount would be paid through loan. The petitioner did not pay the one third amount. However, on his application the first accused sanctioned the loan amount and also credited the same in the account of the dealer petitioner herein on 30.09.2016. The petitioner has made several efforts to contact the respondent / complainant to collect the remaining amount but that was not fructified. The respondent / complainant has not paid the one third amount due to be paid by him and he claims that he has been hospitalised and underwent a surgery. However, in support of this contention, he has not produced any document either along with his complaint or before this Court. The petitioner has issued a legal notice through his Advocate on 09.03.2017 and for which, a reply notice was also issued by the respondent on 03.04.2017.

5.Mr.Vadivelan, learned Counsel for the petitioner by referring the complaint would submit that even according to the complainant he has not paid the initial payment of Rs.24,666/- as per the terms of purchase and the respondent / complainant also claimed that he has been hospitalised and underwent surgery. According to him, the transaction is purely of civil in nature, but a criminal colour has been given and the trial Court has without any application of mind entertained the complaint in a mechanical manner.

6.Mr.Suresh, learned Counsel appearing for the respondent would submit that without delivery of the vehicle, the petitioner has taken out a sum of Rs.3,325/- and Rs.6,650/- from the respondent/ complainant's account of Lakshmi Vilas Bank and therefore it is a clear case of fraud committed by the petitioner.

7.This Court paid its anxious consideration to the rival submission and perused the materials placed on record.

8.Admittedly, the complainant has purchased a two wheeler and requested the petitioner dealer to arrange a loan for the same. As per the loan agreement he had to pay a sum of Rs.24,666/- as initial payment to the dealer and the remaining amount of Rs.48,770/- would be credited to the credit of the dealer, petitioner herein by the first accused. The complainant has not paid the one third amount as per the terms of purchase. However, the loan was sanctioned in the some of the complainant and was credited in the account of the petitioner the dealer, on 30.09.2016. The petitioner seems to have taken steps to contact the complainant but he could not be contacted. Therefore, the petitioner on 09.03.2017 sent a legal notice to the respondent / complainant and thereafter the monthly dues of Rs.3,325/- and Rs.6,650/- were deducted from the respondent's bank account through the cheques produced by the complainant at the time of availing the loan. The complainant has issued reply to the legal notice issued by the petitioner. Moreover, the petitioner has also returned the loan amount and credited in his account to the first accused finance company on 27.04.2017. The entire transaction appears to be of civil in nature. However, a criminal complaint has been lodged and the same has been taken on file by the learned Judicial Magistrate considering these facts. Therefore, this Court is of the opinion that this quash petition deserves to be allowed.

9.Accordingly, the criminal original petition is allowed and the proceedings in C.C.No.139 of 2017 on the file of the learned Judicial Magistrate No.1, Kulithalai is hereby quashed. However, it is open to the parties to workout their remedy before the appropriate forum. Consequently, connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate No.1,
Kulithalai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P(MD)No.13388 of 2017
27.04.2021

KB(25.06.2021) 4P 3C