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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.7209 of 2017
and
CrI.M.P.Nos.5198 & 5199 of 2017

Anand Mahindra, CEO & Chairman,
Mahindra & Mahindra Motors,
Mahindra Towers, 3rd Floor,
Akruli Post, Kandavalli (East),
Mumbai - 400 101.

...Petitioner

Versus

V.Anand

...Respondent

Prayer: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records pertaining to the complaint in CrI.M.P.No.1880/2015 in C.C.No. Of 2015 on the file of the III Judicial Magistrate, Puducherry and quash the same.

For Petitioner : M/S.Surana and Surana

For Respondent : Mr.R.Ashwin Kumar
Legal Aid Counsel

ORDER

The Criminal Original Petition has been filed to call for the records pertaining to the complaint in CrI.M.P.No.1880/2015 in C.C.No. Of 2015 on the file of the III Judicial Magistrate, Puducherry and quash the same.

2. This Court on 14.02.2022 passed the following order:



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"The petitioner has been shown as the first accused in a private complaint filed by the respondent for offences under Sections 406, 420 r/w 34 IPC before the Judicial Magistrate III, Puducherry. The petitioner/first accused is the CEO & Chairman of Mahindra & Mahindra Motors. The second accused is the Proprietor, M/s. RajaRajan& Sons, Authorized dealers for Mahindra & Mahindra Ltd., Puducherry. The details of the Proprietor is not mentioned. Further, according to the petitioner/first accused, there is no transaction between the petitioner/first accused and the respondent at any point of time directly. The respondent has approached the second accused for purchase of XUV-500W8 (SUV) Car. Thereafter, there seems to be some dispute with regard to the delivery of the Car on time. It is purely a transaction between the second accused/the Proprietor, M/s. RajaRajan& Sons, Authorized dealers for Mahindra & Mahindra Ltd., Puducherry and the respondent. A letter dated 17.11.2014, addressed to the Superintendent of Police, Puducherry (South) and the Station House Officer, Villinur Police Station, Puducherry is an admitted document by the respondent. In the above said letter, the respondent admits that he had booked XUV-500W8 (SUV) Car and paid Rs.1,00,000/- on 21.03.2014 and thereafter availed loan from Tamil Nadu Mercantile Bank and paid a sum of Rs.12,50,000/- through RTGS to the second accused on 24.07.2014 and the entire price of the Car, Rs.14,30,912/- has been paid, but the vehicle was not handed over.

2. On going through the entire documents and statement, nowhere it is stated that the respondent had met the petitioner/first accused or written to the petitioner/first accused raising



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allegations against the second accused at any point of time before availing the loan or making any payment.

3. The learned counsel for the petitioner submits that the second accused's dealership had been terminated for misconduct and not adhering to the dealership guidelines. The petitioner has nothing to do with the second accused. Further, there is an arbitration proceedings initiated against the second accused by the petitioner.

4. Finding that the respondent though served with the notice and his name being printed in the cause list, the respondent failed to appear. Since the case is kept pending from the year 2017 without any progress, this Court appoints Mr.R.Ashwin Kumar (Mobile 8861473214) as legal aid counsel for the respondent. The learned counsel for the petitioner to take private notice to the legal aid counsel and furnish the copy of the petition and necessary documents to the legal aid counsel. Post the matter on 28.02.2022."

3. In continuation of the order of this Court dated 14.02.2022, the learned counsel for the petitioner submitted that the lower Court issued summons in CMP.No.1880 of 2015 against the petitioner is not appropriate for the reason that summons state that the petitioner to answer to a charge under Sections 138 and 142 of Negotiable Instruments Act. The complaint is for offences under Sections 406, 420 r/w 34 of IPC. Further, in the case of private complaint, there is nothing to show that cognizance taken and in pre-cognizance stage, no summons can be issued to the accused. In this case, admittedly, it is only at the M.P. Stage, cognizance have not been taken. Further, submitted that on going through the complaint as a whole, it is seen that the complaint does not disclose any offences under Section 406 & 420 IPC and there is no entrustment with the petitioner. Further, in a business transaction, the question of 420 IPC would not arise. At the most,



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grievance can be against A2, with whom, the respondent had some transactions. There is nothing to show that the respondent had ever met the petitioner and there was any promise made and any money received. The amount is paid to the dealer and the petitioner is a manufacturer, who is stationed at Mumbai. He further submitted that the lower Court mechanically without following the procedures as per 190, 200 & 202 Cr.P.C issued summons. Now, on 12.01.2022, certified copy of the complaint was applied and it is in conformity with photostat copy of the complaint earlier filed along with this quash petition.

4.Mr.Ashwin Kumar, legal aid counsel appearing for the respondent fairly submitted that summons is not proper for the reason that it was issued to answer the charge under Sections 138 & 142 of Negotiable Instruments Act. He further submitted that in the case of 138 of Negotiable Instruments Act, where, there is a delay such summons issued at pre-cognizance stage. As per the Negotiable Instruments Act, there is a stipulated time, to file a complaint following certain condition. If there is any delay, such petitions are filed. In this case, it is only a private complaint, warrant procedure for offences under Sections 406, 420 r/w 34 of IPC. In such cases, issuance of summons in CMP.No.1880 of 2015 would not be proper. He further submitted that from the uncontroverted allegations made in the complaint, there is nothing to show that the petitioner had any interdiction or he received any amount for booking the Mahindra XUV 500 W8(SUV) Car from the respondent. He relied upon the decisions of the Hon'ble Apex Court in the case of *G.V.Rao Vs. L.H.V.Prasand and others* reported in MANU/SC/3156/2000, *Ajay Mitra Vs. State of M.P. And Ors* reported in MANU/SC/0052/2003 and *D.Basanth Kumar Ranka and Ors. Vs. State of Ors.* reported in MANU/TN/4133/2015.

5.Considering the submissions and on perusal of the materials, it is seen that the respondent filed a private Complaint for offences under Sections 406, 420 r/w 34 of IPC. The issuance of summons in CMP.No.1880 of 2015, for offences under Sections 138 & 141 of Negotiable Instruments Act reflecting the non-application of mind of the lower Court. Further, on going through the entire complaint, it is seen there is no case made against the petitioner, a dispute in business transaction, is now attempted to be given criminal clog and colour with an ulterior motive, which is nothing but an abuse of process of Law.



6.In view of the same, this Court is inclined to quash the proceedings with regard to the petitioner/A1 alone.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mpl/sms

To

The III Judicial Magistrate,
Puducherry.

+2cc to Mr.Surana and Surana, Advocate, S.R.No.12967

Cr1.O.P.No.7209 of 2017
and
Cr1.M.P.Nos.5198 & 5199 of 2017

RN(22/03/2021)
MT(CO)