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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.7686 of 2019

and

Crl.MP(MD)No.4278 of 2019

Sanjai Agarwal
SREI Equipment Finance Ltd.,
CBD Belapur,
Navi Mumbai,
Maharashtra State : Petitioner/A2

Vs.

- 1.The State of Tamil Nadu
represented by its Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
Tamil Nadu State.
(FIR No.83 of 2019)
- 2.Mrs.Chandrakala &
Mrs.Chandrakala Ruben Nadar,
Director,
Jharsanya Logistics Pvt Ltd.,
Registered Office at
B-2 Building, Unit No.207,
2nd Floor, Opp IMAX Theatre,
Wadala Truck Terminal,
Wadala Aanik Road,
Mumbai-400 037.
Maharashtra State : Respondents/Complainants



Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the case in FIR No.83 of 2019 on the file of the first respondent and quash the same as against the petitioner.

For Petitioner : Mr.Ananthi C.Rajesh
For 1st Respondent : Mr.SS.Madavan
Government Advocate
(Criminal side)
For 2nd Respondent : M/s.T.Villavankothai

O R D E R

This petition has been filed seeking quashment of the case in FIR No.83 of 2019 on the file of the first respondent.

2.The case of the prosecution in brief:-

On 30/10/2018 at about 12.00 midnight, the accused persons along with 12 persons came to the work spot of the de-facto complainant, abused her in filthy language and damaged the mobile phone and also criminally intimidated to pay proper installment. They also stolen the vehicle worth about Rs.13,000/-. On the basis of the



complaint given by the de-facto complainant, a case in Crime No.83 of 2019 was registered for the offences under sections 147, 294(b), 323, 427, 506(ii) and 379 IPC.

3. Seeking quashment of the same, this petition has been filed by the petitioner.

4. Heard both sides.

5. The learned counsel appearing for the petitioner would submit that there was a due amount of Rs. 40,00,000/- from the second respondent and the petitioner is in Bombay and no-way connected with the affairs with the company branch and the cheque transaction took place. Repossession notice was received by the second respondent and after that, there was no action on their behalf. According to him, it is clear case of *mala fide* exercise of right.

6. The learned counsel appearing for the second respondent would submit that there was no delay on the part of the second respondent in payment of the installments and the petitioner company engaged several



hooligans by violating the procedure and the guideline made by the Reserve Bank of India. while re-possessing the vehicle. So according to the second respondent, by violating the proper procedure, the alleged repossession has been undertaken.

7.Per contra the learned counsel appearing for the petitioner would rely upon various proceedings that have been undertaken prior to the above said re-possession, on 08/09/2018, which was also represented on 06/11/2018, 08/12/2018 and 18/01/2019. Notices appear to have been issued to the second respondent regarding the option that to be exercised by the petitioner, which was also a fled in the typed set of papers and the statement of the account is also available. The vehicle was re-possessed even prior to the date of FIR in Crime No.83 of 2019. Originally, CSR enquiry was undertaken in CSR No.1202 of 2018 and subsequently, the case was registered.

8.The learned counsel appearing for the petitioner would also rely upon two decisions viz., (1)ICICI Bank Vs. Shanti Devi Sharma and others (SLP(Crl.) No.4935 of 2006, dated 15th May 2008); and G.Palanisamy Vs The Branch



Manager, State Bank of India, B.P.Agraharam Branch, Erode.T.S (WP NO.23670 of 2021, dated 23/04/2012) for the purpose of argument that without following the arbitration proceedings, the repossession has been undertaken. In ICICI Bank Vs. Shanti Devi Sharma and others [(SLP(Crl.) No.4935 of 2006, dated 15th May 2008)], the Hon'ble Supreme Court was of the view that in respect of hire purchase agreement, the official must follow the terms and conditions and taking over of the possession, by illegal means has been deprecated, which was also followed by this court in the case of G.Palanisamy Vs. The Branch Manager, State Bank of India, S.P.Agraharam Branch, Erode-5.

9.But here, as mentioned earlier, possession notice has been issued to the second respondent not once, but four times. In case of dispute, as mentioned earlier, he ought to have invoked in the jurisdiction of the arbitration clause in the agreement. So, I am of the considered view that continuation of the criminal proceedings against the petitioner will be an abuse of process of law and court.



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10. In the result, this criminal original petition is **allowed**. The impugned FIR in Crime No.83 of 2019 on the file of the 1st respondent is quashed as against the petitioner. Consequently, connected Miscellaneous Petition is closed.

13/04/2022

Index:Yes/No
Internet:Yes/No
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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.



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To,

1.The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
Tamil Nadu State.

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



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G. ILANGO VAN, J

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