BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:12/04/2022
CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.21832 of 2018
and
Crl.MP(MD)No.10146 of 2018

1.M/s.Choamandalam Investments and
Finance Company Limited,
No.12, II Floor, Elem Complex,
Doovipuram Main Road,
Thothukudi rep. by its Manager K.Sankar

2.K.Sankar : Petitioners/A1 and A2

Vs.

1.The State of Tamil Nadu
represented by the Inspector of Police,
North Police Station,
Thoothukudi District. : R1/Complainant

2.K.N.Maharajan : R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the FIR in Crime No.165 of 2018 on the file of the first respondent and quash the same.

For Petitioner : Mr.B.Janarth Kumar alias Janath Ahamed
For 1st Respondent : Mr.SS.Madhavan Government Advocate (Criminal side)
For 2nd Respondent : Mr.R.Anand

O R D E R

This petition has been filed seeking quashment of the FIR in Crime No.165 of 2018 on the file of the first respondent.

2.**The case of the prosecution in brief**:-

The second respondent has lodged a complaint with the following allegations:- He obtained vehicle loan from the first petitioner to the tune of Rs.11,70,000/- through hypothecation agreement for the vehicle bearing registration No.TN-18-K-0320 in the name of his wife namely Jeyabarathi. That amount was repaid properly. But due to demise of his wife, he could not repay the amount properly.

Subsequently, THE second respondent has obtained Form 31. But he intentionally delayed the same and sold his vehicle, on 07/10/2017. Subsequent to that only, the complaint has been given on 08/11/2017. A2 trespassed into the house of the 2nd respondent and abused in filthy language and threatened him with dire consequences. He also simultaneously preferred a complaint under section 156(3) Cr.P.C before the Judicial Magistrate No.3, Thoothukudi, on 19/12/2017. In pursuance of the above said order, FIR was registered in Crime No.165 of 2018 for the offences under sections 294(b), 420, 447, 506 (ii) and 120(B) IPC.

3.Seeking quashment of the above said case, this petition has been preferred mainly on the ground that even as per the allegation made in the complaint, the ingredients of the offences are not attracted. A1 is the company and A2 was working as Branch Manager in Cholamandalam Investment and Finance Company Limited and having found that 2nd respondent has defaulted in payment of the amount, he issued a notice, on 15/02/2017 and thereafter also, that was not paid. Seizure intimation was given on 02/05/2017 and post-seizure intimation was issued, on 15/09/2017. But the second respondent was not willing to settle the issue and pay any amount. But he sold vehicle to the 3rd party.

4.Heard both sides.

5.The learned counsel appearing for the petitioners would straightaway rely upon the judgment of the Hon'ble Supreme Court in the case of Anup Sarmah Vs. Bhola Nath Sharma and others [(2013)1 SCC 400] and Sardar Trilok Singh and others Vs. Satya Deo Tripathi [(1979)4 SCC 396] for the purpose of argument that what the right that was conferred upon this petitioner was exercised by virtue of the contract of hire purchase agreement, that was entered into between the 2nd respondent and the company, which has been exercised in a lawful manner. So as per the settled proposition law, as stated in the above said judgment, continuation of the criminal proceedings will nothing, but an abuse of process of court and law.

6.Per contra, the learned counsel appearing for the 2nd respondent would submit that against the contract of the hire purchase only, in order to cheat the second respondent, such a legal action was undertaken by the petitioners and even after the payment of proper dues, the petitioners demanded Rs.11,00,000/- as due to be paid. So requested the petitioners to give a statement of the account. But that was not furnished to them. According to the petitioners, it is a clear case of cheating. In the final report as well as in the complaint, it has been stated by the second respondent that the contract of hire purchase agreement was entered into between his wife and the company. But the loan agreement was entered into between the 2nd respondent and the company. So the contention on the part of the second respondent that the loan agreement was entered between his wife and the petitioners' company is not correct on record. The applicant name has been mentioned only as K.N.Maharajan and no-where the 2nd respondent wife name is mentioned.

7.The learned counsel appearing for the petitioners would rely upon the Column 11(ii) of the Terms of Loan Agreement, which reads as under:-

> "11(ii)**Repossession:** In case the Borrower fails to make payment of the dues or surrender the asset to the Company and/or rectify the breach of the terms of the contract in compliance with the notice mentioned above, to the satisfaction of the Company, without prejudice to its other rights available under the Agreement, the Company may be entitled to take possession of the Asset (referred to as 'repossession') and for the said purpose, enter any place or places where the Asset may then be or is likely to be, remove or take possession of the same. The Borrower agrees and undertakes not to prevent or obstruct the Company from exercising its right of repossession of the Asset in the event of default by the Borrower. It shall be the sole responsibility of the Borrower to remove any goods (perishable, non-perishable) available in the Asset at the time of its repossession by the Company and the Borrower shall make his/their own arrangements to transfer such goods from the said Asset to and transport it back at his own cost and expenses and the Company shall not be liable to the Borrower for any damage, depreciation value, loss in transit etc, or for any damages arising on account of non-delivery of the same to anyone during or after such repossession. The Company shall not be responsible for any loss or destruction and damage to the hypothecated Asset, whether by theft, fire, rain, flood, earthquake, lightening, accident or other case whatsoever to the repossessed Asset, notwithstanding anything to the contrary contained Section 151 of the Indian Contract Act.

8.So according to the petitioners, legal notice was issued on behalf of the 2nd respondent, on 15/02/2017 to the notice issued by the Company, wherein it has been mentioned that only his wife namely Jeya Bharathi entered into loan agreement and the lorry was purchased in her name. The total amount was agreed to be paid was Rs.11,70,000/-. Because of untimely death of his wife, he was not in a position to pay the installment properly. After that, the loan was changed in the name of the 2nd respondent utilizing the documents, which have been obtained from him in blank papers.

9.It has also been admitted that the notice, dated 31/12/2016 was received by him and but it was written in Hindi language. So he was unable to understand the contents. Because of the above said issue, even the FC permit expired. So the name change also could not be undertaken. Notice was issued to the Company to change the name of the owner and that was replied, on 10/03/2017 by the Company, wherein it has been stated that only the above request was made by the 2nd respondent, the loan was transferred in his name, after the death of his wife and the loan amount was rescheduled, agreement was also entered. Only subsequent to that, there was a delay in paying the installment. They have also advised the second respondent to approach the branch and settled the issue of installment and thereafter, on 02/05/2017, final call letter was sent to the second respondent, wherein the total amount due is also mentioned. He was required to pay the amount within seven days and on the same day itself, pre-seizure intimation policy was also sent. So, another notice was issued on 15/09/2017 stating that since the second respondent did not comply the terms of contract and also failed to pay the installment, repossession was effected, on 15/09/2019. It was also intimated to the second respondent. The Inspector of Police, North Police Station, Thoothukudi was also informed that the vehicle was also repossessed, as per the above said intimation. So, these documents shows that because of non payment of the installments and breach of the terms of the agreement, the 1st petitioner company has exercised the lawful right. So those things cannot be termed as cheat, fabrication of false records etc. The 2nd respondent has given a criminal colour to the whole issue and he ought to have approached the concerned authority. Since the Arbitration Clause is also mentioned in the agreement, without resorting to such a lawful course, he lodged a complaint, which is not at all permissible in law. It is clear process of agreement. To cover up the entire issue, the allegation of abusing them in filthy language, trespass and criminal intimidation and conspiracy has been included in the complaint.

10.Absolutely, there is no genuineness or bona fide on the part of the 2nd respondent in lodging the complaint. It is strained with mala fide, as set out by the Hon'ble Supreme Court in the **Bajanlal's** case. When we go through the entire records, it is seen that it is a clear case of mala fide exercise of the right. So on that ground, the entire proceedings is liable to be quashed.

11.In the result, this criminal original petition is **allowed.** The impugned FIR in Crime No.165 of 2018 is quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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.

TO

1. The Inspector of Police,
   North Police Station,
   Thoothukudi District.

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

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12.04.2022

KG(CO)
GC(30.06.2022) 5P 3C