

THE HON'BLE SRI JUSTICE N. TUKARAMJI
CRIMINAL PETITION NO. 15633 OF 2014

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C') by the sole accused in FIR No. 531/2014, registered under Sections 420,406,506 of Indian Penal Code, 1860 (for short 'IPC') on the file of Narayanaguda Police Station, with a prayer to quash the crime/FIR and the consequential proceedings.

2. Heard Learned counsel for the petitioner, learned Assistant Public Prosecutor and learned counsel for the 2nd respondent.

3. The case of the 2nd respondent/complainant is that petitioner/accused had entered into hire purchase agreement on 09.04.2007 wherein the tractor of model 2007 was handed over for total consideration of a loan of Rs. 3,50,000/- with an agreement of repayment scheduled in 24 installments at Rs. 15,500/- each. However, on default of payment of installment, the 2nd respondent/complainant filed the complaint on 09.07.2014 before the 9th Additional Metropolitan Magistrate, Hyderabad alleging that, when the company executive

approached the petitioner/accused for collection of amount found him absconding. However, on regular visits and efforts to seize the vehicle, the representative was informed that the tractor was sold by the accused. Therefore, on one day the vehicle was found in the possession of the 3rd person with tampered number plate and the enquiry revealed that the tractor was purchased by him and threatened the representative with due consequences, if they visit him again. Thus, the petitioner/accused with a malafide intention and for wrongful gain by cheating committed criminal mis-appropriation of entrusted property. The Learned Magistrate forwarded the complaint under Section 156(3) of the Cr.P.C and the Station House Officer, Narayanaguda Police Station registered the impugned crime.

6. The learned counsel for the petitioner pleaded that earlier the *de facto-complainant* had lodged complaint on 09.01.2009 with similar averments, wherein final report was filed as lack of evidence on 07.05.2011. However, with ulterior motive to extract money the present complaint has been filed by recasting the complaint. Further, pleaded that the petitioner is innocent and false case was foisted. For that reason,

continuance of the proceedings to the amount of abuse of process of Court. Thus, prayed for quashment of the crime proceedings.

7. Learned Assistant Public Prosecutor submit that there are certain allegations in the complaint to find the fact or otherwise the fair investigation is required. Hence, pleaded for continuance of the proceedings.

8. Learned counsel for the 2nd respondent/complainant contended that the petitioner had availed hire purchase account and without fulfilling the conditions, fraudulently transferred the vehicle in favour of 3rd person. Thus the accused had intentionally committed an Act of causing loss to the complainant, there by committed criminal misappropriation.

9. On further enquiry by this Court, learned counsel has fairly contended that the present complaint is based on the transaction referred in the earlier complaint, in FIR No. 155 of 2009 dt: 06-04-2009. However, as the involvement of the dealer had came to light, fresh cause of action is claimed and the present complaint was initiated.

10. Peruse the materials on record and the pleadings are given due consideration. The accusation by the complainant is that the petitioner/accused had availed tractor under hire purchase agreement. The material placed on record, in regard to the earlier complaint and agreement, in the crime/FIR No. 155 of 2009 is indicating that the Police after investigation filed final report as lack of evidence. To note, the earlier complaint was initiated against the petitioner herein as surety and the dealer, where as the present complaint was solely against the petitioner/accused resting the aforementioned agreement. Be that as it may, notably the complaint is not referring any particulars of the hire agreement or the vehicle. This position is indicating that the proceedings are initiated maliciously to outflank the earlier proceedings which were adversely reported by the investigating agency against the complaint. In this position, continuing the proceedings against the petitioner would be abuse of process of Court, hence the crime proceedings are liable to be set aside.

11. Resultantly, the petition is allowed, and all the proceedings in FIR 531/2019 on the file of Narayanaguda Police Station are hereby quashed.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

N. TUKARAMJI, J

Dt: 28.11.2022

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THE HONOURABLE SRI JUSTICE N. TKUARAMJI

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Date:28.11.2022

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