IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.3841 of 2021
and
Crl.M.P.Nos.2284 & 2285 of 2021

Heerachand Surana ...Petitioner / Accused

-Vs-

1.The Union Territory of Puducherry Rep. by
The Station House Officer,
Katterikuppam Police Station,
Puducherry.
(Crime No.70 of 2006) ...... 1st Respondent / Complainant

2.Sengadir ... 2nd Respondent / Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.871 of 2016 on the file of the Judicial Magistrate No.IV, Puducherry and to quash the same.

For Petitioner	: Mr. V.S. Senthilkumar
For R1	: Mr. M. V. Ramachandramuthry, Addl. Public Prosecutor, Puducherry
For R2	: No appearance

ORDER

This Criminal Original Petition has been filed seeking to quash the proceeding in C.C.No.871 of 2016 on the file of the learned Judicial Magistrate No.IV, Puducherry, filed for the offence under Section 379 IPC.

2.It is alleged in the final report that the petitioner had committed theft of the lorry bearing Registration No.PYT - 397 which belong to the complainant. Hence, the complaint.

3.The learned counsel for the petitioner would submit that the original owner of the lorry J. Ayyanar had purchased the lorry and entered into a Hire Purchase Agreement with the petitioner. The said J. Ayyanar had defaulted in payment of dues to the petitioner and hence, the petitioner had a right to repossess the vehicle under the Hire Purchase Agreement. The existence of the Hire Purchase Agreement between the petitioner and the said Ayannar cannot be justifiably refuted by the respondents. The learned counsel also produced the copy of the Hire

Purchase Agreement dated 30.10.1998, wherein the parties had agreed that, if there is a default in payment, the petitioner shall be entitled to repossess the vehicle.

4.The learned counsel further relied upon the judgment of the Hon'ble Supreme Court reported in ***(2001) 7 SCC 417, Charanjit Singh Chadha and others Vs. Sudhir Mehra*** and the judgment of this Court reported in ***2015 SCC Online Mad 10573, HDFC Bank Limited Represented through its Branch Manager Vs. State Represented by The Inspector of Police, and another***.

5.The learned Additional Public Prosecutor submitted that the investigation revealed that the 2nd respondent had purchased the vehicle from the said Ayyanar and he was not aware of any alleged dues to the petitioner. The learned Additional Public Prosecutor also submitted that it appears the said Ayyanar had created records to make it appear that he had cleared the dues and sold it to the 2nd respondent. The learned Additional Public Prosecutor further submitted that since the 2nd respondent was not aware of the documents created by Ayyanar, he was justified in lodging the complaint and that during investigation, the lorry was seized and handed over to the 2nd respondent.

6.Though notice was sent to the 2nd respondent, it was returned with an endorsement 'no such person'. This Court instructed the learned Additional Public Prosecutor to direct the 1st respondent to inform the defacto complainant about the pending proceedings. On instructions, the learned Additional Public Prosecutor submitted that the whereabouts of the 2nd respondent are not known to the 1st respondent.

7.This Court finds that admittedly there is a Hire Purchase Agreement between the said Ayyanar and the proprietary concern belonging to the petitioner. The said Ayyanar had defaulted in payment of dues. The act of repossession, in such circumstances, cannot be called as theft. The Hon'ble Supreme Court in ***Charanjit Singh Chadha*** *(*referred *supra)* had held as follows:

> *"17. The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to*

him have been fulfilled. Therefore, the repossession of goods as per the terms of the agreement may not amount to any criminal offence. The agreement (Annexure P-1) specifically gave authority to the appellants to repossess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire-purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. We, therefore, allow this appeal and set aside the impugned judgment. The complainant and any other proceedings initiated pursuant to such complaint are quashed."

8.This Court had followed the above said judgment in ***Charanjit Singh Chadha*** *(*referred *supra)* and another judgment of the Hon'ble Supreme Court in ***CDJ 2012 SC 792, Anup Sarmah V. Bhola Nath Sharma*** in ***HDFC Bank Limited (***referred ***supra)*** and held as follows:

5. *The decisions rendered by the Hon'ble Supreme Court in the judgments referred to above, have been reiterated by the Apex Court in the recent judgment in Anup Sarmah v. Bhola Nath Sharma, reported in CDJ 2012 SC 792, wherein it has been held thus:*

> *"8. In view of the above, the law can be summarised that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the latter. Thus, in case vehicle is seized by the financier, no criminal action can be taken against him as he is repossessing the goods owned by him."*

6. *From the aforesaid judgments of the Apex Court, it is vividly clear that the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and the ownership remains with the latter/financial institution.*

7. *In the case on hand, no criminal action could be taken against the petitioner herein, as the petitioner has repossessed the vehicle for default committed by the defacto complainant in respect of the loan obtained by him. Therefore, this Court is of the view that the FIR registered in Crime No. 66 of 2015 on the file of the respondent police is liable to be set aside.*

9.The observations made in the above judgments squarely apply to the facts of this case.

10.Therefore, this Court is of the view, that the impugned proceedings as against the petitioner for the alleged offence under Section 379 IPC cannot be sustained. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

07.06.2023

smv

Index : Yes/No
Speaking order : Yes / No
Neutral Citation : Yes / No

To,

1.The Station House Officer,
Katterikuppam Police Station,
Puducherry.

2.The Judicial Magistrate - IV, Puducherry.

3.The Public Prosecutor,
High Court of Madras.

SUNDER MOHAN,J.
smv

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