BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.03.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

Crl.O.P.(MD) No.14057 of 2022
and
Crl.M.P.(MD).No.9035 of 2022

M/s.Cholamandalam Investment and Finance,
Co.Ltd., represented by its Branch Manager,
Mr.Navin Kumar,
S/o.Lakshminarayanan,
No.1887, Muthu Meena Building,
Thanjavur-613001. ... Petitioner/Accused

Vs.

1.The State rep by the
The Inspector of Police,
Thanjavur Town South Police Station,
Thanjavur .
Crime No.536 of 2022 . ... 1st Respondent/Complainant

2.T.Suresh Kumar ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the FIR in Crime No.536 of 2022 on the file of the first respondent police, Thanjavur and quash the same as illegal insofar as the petitioner is concerned.

For petitioner : Mr.B.Janarth Kumar

For R1 : Mr.B.Nambiselvan
Additional Public Prosecutor

ORDER

This petition has been filed to quash the FIR in Crime No.536 of 2020 on the file of the respondent police.

2.The case of the prosecution is that the petitioner is a Finance Company. The second respondent/defacto complainant obtained loan from the petitioner's Company for purchasing a Bolero Pickup vehicle bearing Reg.No.TN-49-CA-6741. After purchasing the vehicle, he committed default in making the payment of installments. Thereby, the petitioner's Company seized the vehicle after following due process of law. Aggrieved by the same, he made a false complaint before the Law Enforcing Agency against the petitioner and the same was registered in Crime No.536 of 2022 for the offence punishable under Section 379 of IPC. Challenging the same, present petition has been filed.

3.The learned counsel appearing for the petitioner would submit that the petitioner is a Finance Company and the second respondent/defacto complainant obtained a vehicle loan from the petitioner's Company in the year 2020. Subsequently, he could not be able to pay the installments for the past several months. As per the hypothecation agreement, till the clearance of all installments, the petitioner is the owner of the vehicle. Thereby, the petitioner's Finance Company seized the vehicle from him after following due process of law. Without any iota evidence, he made a false complaint before the Law Enforcing Agency. Pursuant to which, the Law Enforcing Agency also registered a case against the petitioner is unsustainable one. The said issue is squarely covered by the judgment of the Honourable Supreme Court of India, in **Anup Shrmah Vs.Bholanath Sharma And Others** reported in **2013 (1) SCC 400**. Accordingly, he prayed for quashing the FIR registered against the petitioner by allowing this petition.

4.The learned Additional Public Prosecutor appearing for the State would submit that the second respondent/defacto complainant made a complaint before the Law Enforcing Agency as if his vehicle was stolen. Thereby, the present case has been registered against the petitioner. All the cases cannot be canvassed by the Law Enforcing Agency.

5.The fact in the present case is not in dispute. Admittedly, the second respondent/defacto complainant approached the petitioner's

Finance Company for obtaining loan for purchasing a Bolero Pickup vehicle bearing Reg.No.TN-49-CA-6741 under hypothecation agreement dated 12.02.2020. Even in the complaint, he has admitted the fact that he committed default in making the payment of installments. Hence, he is a chronic defaulter. After following the due process of law, the vehicle was rightly seized by the petitioner's Finance Company. But, without disclosing about the seizure of the vehicle, he made a complaint before the Law Enforcing Agency and the Law Enforcing Agency also registered a case against the petitioner is not sustainable one. The similar issue was already came up for consideration before the Hon'ble Supreme Court in **Anup Shrmah Vs.Bholanath Sharma And Others** reported in **2013 (1) SCC 400**. The relevant portion of the said order is as follows:-

> *"7.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 the vehicle is seized by the financier, no criminal action can be taken against him as he is repossessing the goods owned by him."*

6.When there was hire purchase agreement, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the financial company. Thus, the vehicle was rightly seized by the financier, no criminal action can be taken against him. Hence, the the Law Enforcing Agency registered a case against the petitioner is malicious one and the same is liable to be quashed.

7.Accordingly, the FIR in Crime No.182 of 2022 on the file of the respondent police is hereby quashed and the Criminal Original Petition stands allowed. Consequently, the connected miscellaneous petition is closed.

01.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
dss

M.DHANDAPANI. J.

dss

To

1.The Inspector of Police,
Thanjavur Town South Police Station,
Thanjavur .

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

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