(2007) 11 RAJ CK 0019

In the Rajasthan High Court

Aarif Khan APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:
Penal Code, 1860 (IPC) — Section 365, 392

Citation : (2008) 3 RCR(Criminal) 450 : (2008) 2 RLW 1318

Hon'ble Judges : Raghuvendra S. Rathore, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Raghuvendra S. Rathore, J.—This bail application u/s 438 Cr.P.C. has been filed by the petitioner in FIR No. 331/07 dated 19.9.2007 registered at Police Station-Shastri Nagar, Jaipur for the offences u/s 392, 323, 365 of IPC and against the order dated 3.10.2007.

2. The petitioner had initially moved an application for anticipatory bail before the learned Session Judge, Jaipur City, Jaipur which came to be decided by the Addl. District Judge No. 5, Jaipur City, Jaipur. Learned court below vide its order dated 3.10.2007 rejected the bail application filed by the petitioner. Being aggrieved and dissatisfied of the said order, the petitioner has filed this anticipatory bail application.

3. Broadly speaking, facts of the case are that the petitioner is an authorized agent of ICICI Bank Ltd. The said bank is a banking company, which provides wide range of financial facilities to the public. One Smt. Urmila Devi had approached the aforesaid bank and availed financial loan for commercial vehicle Ace. The Bank agreed to the request of the borrower - Smt. Urmila Devi. Accordingly an agreement was entered into between the parties on 29th of July, 2006, wherein it was stipulated that the borrower shall pay monthly installments and in case of breach of terms of agreement, the agreement would stand terminated and the rights of the borrower would forthwith be determined.

Therefore, upon such termination the borrower was to return the vehicle to the Bank and to pay all the dues as well as other charges.

4. According to the petitioner, the borrower failed to pay the monthly installments and had also failed to respond. When the borrower committed breach of agreement, due demand notice was issued to her but the same was also not respondent too. Therefore, the Bank resumed possession of the vehicle, as per terms and conditions of the agreement on 19th of July, 2007, with due intimation to the concerning police station namely Shastri Nagar, Jaipur.

5. Thereafter the borrower, through her husband-Pratap Singh, lodged a report against the Bank on 19th of July, 2007 at 8.00 PM and the same was registered as first information report at Police Station- Shastri Nagar, Jaipur for the aforesaid offences. It has been stated in the report that the vehicle in question has been taken away from the driver after getting some papers signed. It has also been mentioned in the report that the vehicle had been got taken away on the instructions of the Manager Recovery of the Bank. Such recovery, it is stated in the report is illegal. In the police ''Karwahi'' appended to the report, it has been clearly mentioned that no injury was found on the person of Gopal, nor he wants any medical examination to be conducted.

6. Learned Counsel for the petitioner has submitted that the report has been lodged by the complainant after deliberately suppressing the material facts and the version contained therein is totally false. He has further submitted that the Bank or its representative are entitled to retake the possession of the vehicle in view of terms & conditions of the agreement. Therefore, it has been submitted by the learned Counsel that repossession of vehicle cannot be said to have resulted into commission of any offence. It has been submitted that repossession of a vehicle is a right of financing Bank and a dispute related to it, is of purely civil nature. Learned Counsel for the petitioner in this regard placed reliance on some case law, which have also been mentioned in the order impugned passed by the court below, including the case of Charanjit Singh Chadha and Others Vs. Sudhir Mehra,

7. On the other hand, the learned Public Prosecutor as well as learned Counsel for the complainant have opposed the bail application. They have submitted that repossession of the vehicle by the Bank through their representative i.e. the petitioner, is contrary to law. They further submitted that the Bank who has financed the vehicle, should have adopt the due procedure for resuming the repossession of the vehicle. They have also relied on the judgment which had been mentioned in the order of rejection passed by the court below including the case of Manager, ICICI Bank Ltd. Vs. Prakash Kaur and Others,

8. I have given my thoughtful consideration to the submissions made by the learned Counsels on either side. It is an undisputed facts that the wife of the informant namely Smt. Urmila Devi and approached the Bank and availed finance for a commercial vehicle. Furthermore, it is a fact that an agreement had been

executed between the parties on 29.7.2006 with the stipulation of determining the rights of the borrower and the eventuality in which the agreement would stand terminated. The borrower would then be liable for return of the vehicle and also the dues and charges, as per the agreement. It is a settled preposition of law that in an agreement between the parties giving authority to the financier to repossess the vehicle such company/Bank continues to be the owner of the vehicle and no criminal offence could be said to have been committed by the financier/Bank, who is the owner of the vehicle, when on failure of the borrower to pay the installments dues, the financier takes the possession of the vehicle.

9. In the case of Prakash Kaur (supra), a writ petition was filed before the High Court against the Union of India, Police Authorities of the State, chief executives and other Senior officers of ICICI Bank and also their authorized representative. The petitioner, in that case, requested the police authorities to register a report against the persons concerned for having committed various criminal offences. Since no steps had been taken by the authorities, the petitioner filed a writ petition and prayed for direction to register a First information report at the concerning Police station against the respondents in the writ petition. In the said writ petition, the High Curt directed the police authorities for registration of the report and its investigation by a competent officer. It was against the said order passed by the High Court on 7.12.2006 that appeal was filed before the Hon''ble Supreme Court.

It is noteworthy that the Apex Court after taking into consideration the facts and circumstances of the case as well as the suggestion made by the learned Counsel for the appellant- Bank, was pleased to allow the appeal and ordered that the impugned order be set aside. Further it was ordered that first information report, if already registered in terms of impugned order, the same would also stands quashed along with the investigation commenced thereupon. In other words, the order passed by the High Court for registration of a criminal case on the basis of application filed by the borrower was set aside and his request for registration of a report against repossession of vehicle by financier was disallowed.

10. As regards the question of criminal liability and any criminal offence having been committed in the case of present nature, it has been well settled by the Apex Court that such like disputes arises out of the terms & conditions of agreement, therefore, the disputes are of civil nature and even the repossession of the vehicle in question by the financier is taken, as per the terms of agreement.

As regards the other case law cited by the learned Counsel for the parties, it would be suffice to say that in bail matters, no case law is a binding precedent and each case has to be decided on its merits after taking into consideration the facts and circumstances.

11. Without expressing any opinion on the merits of the case and taking into consideration the facts and circumstances of the case, I deem it proper to grant

indulgence of anticipatory bail to the petitioner. Consequently, the ball application u/s 438 Cr.P.C. is allowed.

12. The S.H.O./I.O./Arresting Authority, Police Station Shastri Nagar District-Jaipur is directed that in the event of arrest of the petitioner Aarif Khan S/o Shri Mohd. Azim Khan in F.I.R. No. 331/2007, he shall be granted bail provided he furnishes a personal bond in the sum of Rs. 50,000/- together with two sureties in the sum of Rs. 25,000/-each to his satisfaction on the following conditions:

(a). that the petitioner shall make himself available for interrogation by a police officer as and when required;

(b) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case as to dissuade him from disclosing such facts to the court or any police officer, and

(c) that the petitioner shall not leave India without previous permission of the court.