
(2012) 03 P&H CK 0257
In the Punjab And Haryana At Chandigarh
Case No : CRM No. M-11531 of 2009

Amit Garg and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Penal Code, 1860 (IPC) — Section 379

Citation : (2012) 03 P&H CK 0257

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—The contour of the facts and material, which requires to be noticed, relevant for the limited purpose of deciding the core controversy, involved in the instant petition and oozing out, from the record, is that complainant Jitender Singh respondent No.2 (for brevity "the complainant") got his Rhino vehicle, bearing registration No.HE-99-BR-7679 financed from the International Autotrak Finance Limited (in short "the finance company") and executed an agreement dated 7.8.2008 (Annexure P2) in this respect. Two cheques, out of eight post dated cheques issued by respondent No.3, were encashed by the finance company and the remaining cheques were stated to have been dishonoured, vide statement of account (Annexure P3). The finance company claimed to have issued notices (Annexures P4 & P5), but the remaining payment was not made by the complainant in this context.

2. According to the complainant that on 18.4.2009, having parked the vehicle in question in Court parking, he and PW Naresh Yadav went to meet Rishal Singh, Advocate in the Court premises. When they came back, the vehicle was found missing. It was alleged that the petitioners-accused, who were the officer/officials of the finance company, have illegally stolen the vehicle of the complainant. In the back ground of these allegations, a criminal case was

registered against the petitioners-accused, by means of FIR, bearing No.121 dated 21.4.2009(Annexure P9), on accusation of having committed an offence punishable u/s 379 IPC by the police of Police Station Model Town, Rewari.

3. The petitioners-accused did not feel satisfied and preferred the present petition to quash the impugned FIR (Annexure P9) and all other subsequent proceedings arising therefrom, invoking the provisions of Section 482 Cr.PC.

4. After hearing the learned counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, to my mind, there is no merit in the instant petition in this behalf.

5. Ex facie, the arguments of learned counsel that the complainant did not return the entire amount of loan and interest, despite notices (Annexures P4 & P5) and since the police was informed, vide information/receipt (Annexures P7 & P8) about the taking of possession of the vehicle, so, no offence is made out against the petitioners-accused, are not only devoid of merit but misplaced as well.

6. As is evident from the record, that the complainant got financed his vehicle in question from the finance company, through the medium of agreement (Annexure P2). The mere fact that some instalments and interest are due towards him, ipso facto, will not give a licence to the petitioners-accused to commit the theft of his vehicle. The accused ought to have taken the legal course to recover the loan in pursuance of terms and conditions of the agreement. Once it is proved that the petitioners-accused have forcibly taken/stolen the vehicle of complainant, then naturally, they are liable to be prosecuted for the commission of indicated offence. In any case, they cannot be permitted to take law in their own hands in this relevant connection. This matter is no more *res integra* and is now well settled.

7. An identical question came to be decided by Hon''ble Apex Court in case *Manager, ICICI Bank Ltd. v. Parkash Kaur and others* 2007 (2) RCR (Criminal) 76. Having considered the provisions of hire purchase agreement, it was ruled that "we are governed by the rule of law in the country. The recovery of loans or seizure of the vehicles could be done only through legal means. The Banks cannot employ gundas to take possession by force and the Bank should resort to procedure recognized by law to take possession of the vehicles, in cases, where the borrower may have committed default in payment of the installments, instead of taking resort to strong arm tactics of gundas." The ratio of law laid down in the aforesaid judgment "*mutatis-mutandis*" is applicable to the facts of the present case and is the complete answer to the problem in hand.

8. What cannot possibly be disputed here is that the Hon''ble Supreme Court has authoritatively held, in a celebrated judgment in case *State of Haryana and others Vs. Ch. Bhajan Lal and others*, which was again reiterated in case *Som Mittal v. Government of Karnataka* 2008 (2) R.C.R.(Criminal) 92, that the criminal prosecution can only be quashed in rarest of rare case at the initial stage as per the following conditions:-

(i) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of

(iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iv) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.

(v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(viii) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. Not only that, again the Hon"ble Apex Court in case Jeffery J.Diermeier & Anr. v. State of West Bengal & Anr. 2010 (3) R.C.R. (Criminal) 183, having interpreted the scope of section 482 Cr.PC, has ruled (para 16) as under:

16. Before addressing the contentions advanced on behalf of the parties, it will be useful to notice the scope and ambit of inherent powers of the High Court u/s 482 of the Code. The Section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of process of Court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according

to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.

10. As indicated earlier, that since there are direct allegations against the petitioners that they committed the theft of vehicle of the complainant punishable u/s 379 IPC, so, no ground for quashing the impugned FIR (Annexure P9) at this initial stage is made out.

11. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the main case, as there is no merit, therefore, the present petition is hereby dismissed in the obtaining circumstances of the case.

12. Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits during the trial of the main case, as the same has been so recorded for a limited purpose of deciding the instant petition in this relevant connection.