
(2015) 07 MP CK 0086

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 5974 of 2014

Arpit Jain

APPELLANT

Vs

Vijay Sisodiya

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 379, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 379

Citation : (2015) 3 JLJ 57

Hon'ble Judges : S.R. Waghmare, J

Bench : Single Bench

Advocate : Vinay Saraf, for the Appellant; Nilesh Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.R. Waghmare, J—By this petition under section 482 of the CrPC the petitioner Arpit Jain has prayed for quashment of Criminal Case No. 35600/2013 pending before the Judicial Magistrate First Class, Indore. Briefly stated the facts of the case are that the respondent Vijay Sisodiya had filed a criminal complaint against one Chalamandalam Investment and Finance Co. Ltd. alleging that Tata Truck bearing registration No. 1109 was purchased by the respondent from Sanghi Bros. (Indore) Pvt. Ltd. The agreement of hire purchase was signed by him but since it was in English language, he could not understand the agreement. Counsel urged that he issued 48 security cheques in favour of the company, the vehicle was registered at No. MP46/G-0664. That the installment were payable two months after the purchase, however, the financial condition of the respondent Vijay Sisodia was in dire straits and he could not pay the installment on the stipulated time and on the date of the incident i.e. 23.11.2012 when the vehicle was parked in front of the residence of his brother Surendra Singh at Bicholi Mardana, Indore; one Jabbar along with 2-3 persons came there at 9 O'Clock in the night and asked his brother to remove the vehicle since they

wanted to park their dumper there. They took the keys from Surendra Singh and took away the truck without any permission of Surendra Singh. Hence this report was filed by brother Surendra Singh at P.S. Palasia but the police did not take any action and thereafter the criminal complaint was filed. It also happened that the name of the petitioner and Jabbar were added by way of amendment. Cognizance was taken by the Magistrate for offence under section 379 of IPC against accused Jabbar vide order dated 13.11.2013. Hence this petition for quashment of the order.

2. Counsel for the petitioner has vehemently urged the fact that the name of the petitioner was added by way of amendment on 3.9.2013 and was an abuse of process of law. The complaint was initially recorded under section 200 of the CrPC and no case was made out for offence under section 379 of the IPC against the petitioner Arpit Jain. Counsel submitted that it was a settled position of law that if the borrower failed to make the payment of installments of loan, the financier is entitled to take possession of the financed vehicle as per the terms of the contract and filing of the complaint was bad in law and the alleged ingredients of the offence under section 379 of the IPC were not made out. It was also alleged that the vehicle was voluntarily handed over by Surendra Singh brother of the complainant and in this sense also the intention to cause wrongful gain or wrongful loss is absent in the present case and the important fact cannot be marginalised is that respondent has admitted that his financial condition was not good and therefore, he could not make the payment of instalments. Similarly there is no mens rea and the petitioner cannot be accused for offence under section 379 of IPC. Counsel prayed for quashment of the further proceedings since it would result of miscarriage of justice and the order was manifestly unjust, unwarranted and perverse. Counsel prayed that the proceedings be quashed.

3. Counsel for the petitioner placed reliance on K.A. Mathai @ Baku and another v. Kora Bibbikutty and another [(1996) 7 SCC 212], to state that where the case was considered by the apex Court that the bus was purchased under the hire purchase agreement and complainant had defaulted in payment and the financier had taken possession of the bus with the help of A-1 and A-2 and the Court held that the offence of theft was not made out and the Financier was right to resume possession. Similarly more or less the same has been held in the matter of M/s. Sundaram Finance Ltd., Jabalpur Vs. Mohd. Abdul Wakeel and another, (2001) CriLJ 2441 : (2001) 3 MPHT 124 , Charanjit Singh Chadha and Others Vs. Sudhir Mehra, (2001) 7 AD 75 : AIR 2001 SC 3721 : (2001) 3 ARBLR 497 : (2007) 2 CPJ 41 : (2001) CriLJ 4255 : (2001) 7 JT 226 : (2001) 6 SCALE 29 : (2001) 7 SCC 417 : (2001) AIRSCW 3487 : (2001) 7 Supreme 239 , Mohan Singh Rathore and Another Vs. State of Madhya Pradesh, (2006) 2 CTLJ 102 : (2006) 1 MPHT 32 : (2006) 1 MPLJ 271 , The Managing Director, Orix Auto Finance (India) Ltd. Vs. Shri Jagminder Singh and Another, (2006) 2 BC 108 : (2007) 2 CPJ 45 : (2006) 1 CTC 670 : (2006) 1 CTLJ 82 : (2006) 2 JT 344 : (2006) 142 PLR 601 : (2006) 2 SCALE 297 : (2006) 2 SCC 598 , Sardar Trilok Singh and Others Vs.

Satya Deo Tripathi, AIR 1979 SC 850 : (1980) CriLJ 822 : (1979) 4 SCC 396 : (1979) SCC(Cri) 987 : (1979) 11 UJ 306 , Anup Sarmah Vs. Bhola Nath Sharma and Others, (2012) 4 RCR(Civil) 1002 : (2013) 1 RCR(Criminal) 62 : (2012) 11 SCALE 1 : (2013) 1 SCC 400 , and Isaac Jaise and Another Vs. Jasmit Singh Saluja and Another, (2003) CriLJ 1980 : (2002) ILR (MP) 1025 : (2003) 1 MPLJ 274 .

4. Finally Counsel relied on Anup Sarmah Vs. Bhola Nath Sharma and Others, (2012) 4 RCR(Civil) 1002 : (2013) 1 RCR(Criminal) 62 : (2012) 11 SCALE 1 : (2013) 1 SCC 400 , to state that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier but ownership remains with the latter and if the vehicle was seized by the financier no criminal action can be taken against him as he is only repossessing goods owned by him and there was no reason for interference. Counsel prayed that the petition be allowed and the proceedings in the trial Court be quashed.

5. Counsel for the respondent, on the other hand, has fully supported the order framing charge and the consequent proceedings. Counsel submitted that the investigation proceedings were not complete and the Court has to evaluate the material on record and in such cases the investigation proceedings cannot be quashed. And it was impossible for the High Court to look into the materials while exercising the jurisdiction under section 482 of the CrPC. Counsel placed reliance on State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, (2004) CriLJ 598 : (2003) 9 JT 284 : (2003) 9 SCALE 704 : (2004) 1 SCC 691 : (2004) 1 UJ 165 , to state that when the factual position of the case at hand was completely different, the financier cannot recover the vehicle illegally and proper show cause notice had to be issued and snatching a vehicle amounted to theft under section 379 of the IPC. In the present circumstances the vehicle was handed over by the brother Surendra Singh on trust and it was without the knowledge of the owner that the truck has taken away by playing a fraud. Counsel prayed that the petition was without merit. He also relied on Ms. Shivraj Wires Limited and others v. State of Punjab and another [2013 (1) DCR 184], whereby the Court was considered the case for offence under section 138 of the N.I. Act and the question was regarding quashment of the FIR and subsequent proceedings quashing the complaint itself under section 138 of the N.I. Act and the Court had held that allowing the amendment application prior to recording of preliminary evidence is not against the law as no prejudice is caused to the accused and the High Court of Punjab had held that it did not call for any interference. In the present case also, Counsel submitted that the amendment had introduced the name of Jabbar and Arpit Jain since they were essential parties to the complaint and the accused in the said case. Hence Counsel prayed that the petition be dismissed. He placing reliance on State of Orissa and Others Vs. Ujjal Kumar Burdhan, (2012) CriLJ 2015 : (2012) 2 Crimes 141 : (2012) 2 JCC 1218 : (2012) 3 SCALE 508 : (2012) 4 SCC 547 , to state that although the powers of the High Court under section 482 of the CrPC are very wide, the apex Court had held that they do not confer arbitrary jurisdiction and it has to be

exercised sparingly with circumspection and the High Court should not interfere unless the case of gross abuse of power is made out against the person-in-charge of investigation and the apex Court had held that the High Court had erred in quashing investigation initiated by the Vigilance Department and counsel prayed that in the present case also the offence registered against the complainant cannot be quashed without taking proper evidence and the criminal prosecution cannot stifle in this fashion. Finally relying on *HDFC Bank Limited v. State of Rajasthan and another* [2015 Cr.LJ (NOC) 107 (H.P.)], counsel submitted that the High Court at Jaipur had considered the alleged vehicle hypothecated by the Bank and complainant had made default in payment of installments of loan and similar recovery by agents of the bank allegedly stopped the motorcycle of complainant and torn his shirt and had taken away Rs. 50,000/- from his pocket along with motorcycle and the Court had considered the question of the facts regarding the recover)" being legal and use of force were questions which could not be adjudicated in petition under section 482 of CrPC and had to be determined during the course of the trial. Counsel prayed that in the present case also the same benefit be granted to the petitioner. Similarly placing reliance on *Citicorp. Maruti Finance Ltd. Vs. S. Vijayalaxmi*, (2011) 4 RCR(Civil) 876 : (2011) 12 SCALE 537 : (2011) 6 UJ 3894 : (2012) AIRSCW 251 , and counsel submitted that the recovery by the financial institution was against the process of law and use of force cannot be permitted. Counsel prayed that the petition was without merit and the same be dismissed. On considering the above submissions, I find that the sole question arises for adjudication is whether the criminal proceedings can be quashed at this stage. The authorities relied on by the Counsel for the petitioner also categorically stated that mens rea and dishonest intention have to be established for offence under section 379 and at this stage it would be difficult to come to conclusion whether the recovery by the financial institution or the petitioner was in accordance with the provisions of law. And without there being proper scrutiny of evidence to stifle the proceedings at this stage would be improper and proceedings under section 482 of the CrPC cannot be utilised for quashing the proceedings at this stage and should not amount to abuse of process of law as already stated above. I find that although much has been made about the accused having defaulted in payment, but at the same time the important fact cannot be marginalised or blinked away is that whether the recovery is in accordance with the provisions of law and whether the respondent had legal remedy available to him. In this light also the petition cannot be allowed. The trial Court would be able to adjudicate the matter only after adducing proper evidence and hence the present petition is dismissed as being without merit.