(2014) 06 KL CK 0197

In the High Court Of Kerala

Case No : Crl. MC. No. 3123 of 2014

HDFC BANK — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 16-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482

Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2014) 06 KL CK 0197

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : T. Rajesh, Advocate for the Appellant; P. Maya, Public Prosecutor, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

K. Ramakrishnan, J.—This is an application filed by the petitioner challenging the condition imposed by the Chief Judicial Magistrate Court, Ernakulam in Crl.M.P.975/2014 u/s 482 of the Code of Criminal Procedure (hereinafter called the ''Code'').

2. It is alleged in the petition that petitioner is a scheduled bank and the de facto complainant in Crime No.439/2012 of the Ernakulam Town North Police Station which was registered on receipt of a private complaint filed by the petitioner before the concerned Magistrate Court which was forwarded to the police for investigation u/s 156(3) of the Code. As part of the investigation, the police had seized the vehicle bearing Reg.No.KL-07-BM-9999 from the hirer of the vehicle. Thereafter, the petitioner filed Crl.M.P.No.975/2014 and the 3rd party filed Crl.M.P.922/2014, both for interim custody and the learned Magistrate by Annexure V common order dismissed the application Crl.M.P.922/2014 filed by the third party and allowed the application Crl.M.P.975/2014 filed by the petitioner with conditions inter alia to execute a bond for Rs.50,00,000/- with two solvent sureties each for the like sum each and further condition of

producing the vehicle as and when required and the vehicle shall not be alienate or transferred till the disposal of the case. The first condition is being challenged by the petitioner by filing this petition.

3. Though earlier respondents 2 and 3 were impleaded as party of this petition, later at the request of the petitioner at their risk as per order in Crl.M.A.5558/2014, they were deleted from the party array.

4. Heard the counsel for the petitioner and the learned Public Prosecutor.

5. The only grievance of the petitioner Bank was that they are prepared to execute a bond for Rs.50,00,000/- by the power of attorney holder of the bank and also produced bank guarantee for that amount instead of executing bond with sureties.

6. The application was opposed by the Public Prosecutor.

7. It is an admitted fact that on the basis of loan arrangement between petitioner bank and the accused, the accused purchased the car with Reg.No.KL-07-BM-9999 and he had committed default in payment of the amount and also he tried to dispose of the vehicle. So the petitioner filed a private complaint before the Chief Judicial Magistrate Court, Ernakulam against the accused and that was forwarded to the police for investigation u/s 156(3) of the Code and on receipt of the same, Crime No.439/2012 of Ernakulam Town Police Station was registered alleging offence under Sections 406 and 420 of the Indian Penal Code. As part of the investigation, the vehicle was seized by the investigating officer from the possession of the accused and it was produced before the court. Thereafter, a third party by name Rajiv filed Crl.M.P.No.922/2014 and the petitioner Bank filed Crl.M.P.No.975/2014 for interim custody of the vehicle and after considering the contention of both parties, the application filed by said Rajiv was dismissed and the petition filed by the petitioner was allowed and interim custody was granted to the petitioner with the following conditions:

i) The HDFC bank shall execute a bond for Rs.50,00,000/- with two solvent sureties each for the like sum.

ii) The vehicle shall be produced before the court if and when required to do so.

iii) The bank shall not alienate or transfer possession till the disposal of the case.

8. However, the accused did not make any claim for the vehicle so far. No petition has been filed by the petitioner in Crl.M.P.922/2014 challenging the order passed by the Court below. However, the only modification the petitioner wants is instead of executing a bond with sureties, they may be permitted to execute the bond by the power of attorney and furnish bank guarantee for the amount for a particular period. The purpose of executing a bond is to procure the presence of the vehicle whenever it is required, and if it is not produced, proceed against the person who executed the bond for realisation of the amount as enforcement of the bond. So, if the amount is secured by bank guarantee then in

the absence of production of vehicle the bank guarantee can be invoked and the amount can be realised by the court. So the petitioner can be permitted to furnish bank guarantee instead of insisting for two sureties apart from executing self bond for this amount. So the petition is allowed and condition is modified as follows:

i) The petitioner bank through their power of attorney is permitted to execute a bond for Rs.50,00,000/- undertaking themselves to produce the vehicle as and when required and not to alienate or transfer the vehicle till the disposal of the case without permission of the court.

ii) The petitioner shall furnish a bank guarantee for Rs.50,00,000/- in favour of the Additional Chief Judicial Magistrate Court, Ernakulam for a period of two years.

If the petitioner violates the condition No.1 or not producing the vehicle or transfers the vehicle, then the court is entitled to invoke the bank guarantee and realise the amount in enforcement of the bond executed by the power of attorney holder of the bank. If the case is not disposed of within that period, then bank guarantee will have to be renewed from time to time till the disposal of the case.

With the above modifications and conditions the petition is disposed of.

