

(2000) 08 KL CK 0078
In the High Court Of Kerala
Case No : Criminal M.C. No. 1790 of 2000

Noushad and Another

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 395

Citation : (2000) 2 KLJ 603

Hon'ble Judges : K.A. Mohamed Shafi, J

Bench : Single Bench

Advocate : K.R. Sunil, for the Appellant; Syed Mohammed Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.A. Mohamed Shafi

1. This M.C. is filed by accused Nos. 1 and 7 in Crime No. 10/98 registered by the Thodupuzha Police now pending in S.C. No. 154/1998 before the Assistant Sessions Court, Thodupuzha to quash the entire proceedings against them. The defacto complainant filed a complaint before the S.I. of Police, Thodupuzha alleging offence punishable u/s 395 of I.P.C. against the petitioners and others and accordingly the Thodupuzha Police registered Crime No. 40/98. After completing the investigation the investigating officer filed Annexure-A5 charge-sheet against the accused including the petitioners herein alleging offence punishable u/s 395 of I.P.C. before the Judicial First Class Magistrate's Court-II, Thodupuzha. The learned Magistrate registered the case as C.P. No. 21/98 and committed the same to the Court of Session, Thodupuzha. Accordingly the above case is registered against the petitioners and other accused.

2. The 2nd petitioner-1st accused is the proprietor of Sierra Finance and the 1st petitioner -7th accused is an employee under him. The defacto complainant entered into a hire-purchase agreement in respect of a 1984 Model Ashok

Leyland bus bearing registration No. KRQ 3717 evidenced by Annexure-A1 whereby he is liable to pay the hire amount of Rs. 180,000/- in 24 monthly instalments commencing from 30.9.1996 to 30.8.1998 as evidenced by Annexure-A2 payment schedule. The petitioners have contended that since the defacto complainant defaulted the payment of the instalments and violated the conditions stipulated in the hire-purchase agreement, the 1st petitioner was authorised to re-possess the vehicle from the hirer as per the terms of the agreement and Annexure-A3 is the copy of the letter dated 16.1.1998 authorising the 1st petitioner to seize the vehicle. Accordingly the vehicle was re-possessed on 20.1.1998 and the financing company intimated that fact to the hirer, the defacto complainant. The petitioners have contended that after registering Crime No. 40/98 the S.I. of Police, Thodupuzha has seized the vehicle from the custody of petitioners and produced the same before the Judicial First Class Magistrate's Court-II, Thodupuzha and the Magistrate had given interim custody of the vehicle to the defacto complainant.

3. The petitioners have contended that they have only exercised their legal right to re-possess the vehicle as per the terms and conditions stipulated in Annexure-A1 hire-purchase agreement since the defacto complainant had defaulted to pay the instalments of the hire amount and therefore, no offence punishable u/s 395 or any of the allied provisions of the I.P.C. will lie against the financier regarding re-possession of the vehicle. Therefore, according to them, the crime registered as per Annexure-A4 F.I. Statement given by the hirer, the investigation conducted therein. Annexure-A5 final report filed by the investigating officer and the cognizance taken by the court for the offence punishable u/s 395 of the I.P.C. are absolutely illegal and unsustainable and therefore, they are liable to be quashed by invoking the jurisdiction of this Court u/s 482 of the Cr. PC. In Annexure-A4 F.I. Statement it is only stated that the petitioners and others forcibly pulled down the driver and conductor and asked the passengers to get down from the bus and after the passengers were driven out of the bus by threat the bus was driven away. There is absolutely no allegation that apart from threat any physical force is used by the petitioners and others in evicting the passengers, driver and conductor from the bus and taking possession of the bus and driving it away. Annexure-A 1 agreement and Annexure-A2 payment schedule establishes that the bus in question was under hire-purchase agreement with the 2nd petitioner and there is stipulation in Annexure-A 1 agreement that if the hirer defaulted payment of any hire purchase instalment, the financier is entitled to repossess the vehicle. Annexure-A3 is the authorisation given by the financier to the 1st petitioner to re-possess the vehicle. Therefore, it is clear that in this case the financier has re-possessed the vehicle by exercising the right under Annexure-A1 hire-purchase agreement. Therefore, the action the financier in re-possessing the vehicle will not attract the offence punishable u/s 395 or the allied offences under the I.P.C. Therefore, the prosecution of the petitioners for the offence punishable u/s 395 of the I.P.C. is absolutely illegal and unsustainable. The dispute, if any, between the defacto

complainant and the financier with regard to the hire-purchase agreement is a matter to be decided by the competent civil court. Under the circumstances the prosecution of the petitioners in this case u/s 395 of the I.P.C. is liable to be quashed by invoking the jurisdiction of this court u/s 482 of the Cr. P.C.

Hence this Crl.M.C. is allowed and Annexure-A5 charge-sheet and S.C. 154/98 pending before the Assistant Sessions Court, Thodupuzha against the petitioners in pursuance of the charge-sheet are quashed.