(2007) 12 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 41286-M of 2007

Rajesh Sharma APPELLANT

Vs

The State of Haryana and Others RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190, 200, 451, 482

Citation : (2007) 12 P&H CK 0018

Hon'ble Judges : S.S. Saron, J

Bench : Single Bench

Advocate : Sanjay Vashishth, for the Appellant; Ashok Jindal, for the Respondent No. 1 and 2, AAG, Haryana, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Saron, J.—This petition u/s 482 of the Code of Criminal Procedure (`Cr.P.C.'' for short) has been filed by the Petitioner for issuing appropriate directions to Respondents No. 1 and 2 to take appropriate legal action in accordance with law by taking cognizance of the incident that occurred on 3.7.2007. The Tavera vehicle of the Petitioner it is stated was snatched at gun point by the musclemen of the HDFC Bank Ltd. (Respondent No. 3). In this regard a complaint dated 3.7.2007 (Annexure P-2) was filed by the Petitioner before the Superintendent of Police, Faridabad(Respondent No. 2).

2. The case of the Petitioner is that he owns a Tavera vehicle bearing registration No. HR38M-2614 which has been financed by the HDFC Bank Ltd. (Respondent No. 3.). A copy of the Registration Certificate (Annexure P-1) has been placed on record. Earlier the vehicle was got financed from ICICI Bank, New Delhi. Thereafter in December, 2006 a representative of the HDFC Bank Ltd. (Respondent No. 3.) informed the Petitioner by visiting his house that he is entitled for personal loan. The Petitioner agreed and signed various blank papers. The Registration Certificate of the Tavera vehicle was also taken for verification purposes. The HDFC Bank Ltd. (Respondent No. 3.) refinanced the loan of Tavera

vehicle without the consent of the Petitioner and started deducting instalments of Rs. 18, 403/- as Equated Monthly Instalments (EMI). On suspicion, the Petitioner asked for statement of accounts and HDFC Bank Ltd. (Respondent No. 3.) sent a photocopy of the loan agreement of statement of accounts, which, for the first time, revealed to the Petitioner that his signatures and photographs were forged and two false identifications had also been shown. Regarding these allegations a separate criminal complaint has been filed by the Petitioner which is pending in the court at Faridabad and is fixed for recording preliminary evidence.

3. On 3.7.2007 at about 8.00 a.m. the Petitioner was going in his Tavera vehicle to Delhi for the treatment of his wife in a hospital. The wife of the Petitioner was already under treatment for In Vitro Fertilisation (IVF). When the Petitioner reached near K.C. Cinema, Faridabad, five-six well built persons came in a Scorpio vehicle and snatched the vehicle that was being driven by the Petitioner by causing him fist blows. The vehicle was snatched at gun point. While going back with the vehicle, it was proclaimed by those persons that the vehicle may be taken by the Petitioner from their head office at Rajouri Garden, Delhi after depositing the due instalments. It is alleged that a sum of Rs. 35, 000/- and documents regarding treatment of the wife of the Petitioner which were lying in the dash board of the vehicle, were also taken. The Petitioner immediately made a complaint to the police by dialling 100 from his personal mobile phone but no satisfactory response was given. Then he sent a representation dated 3.7.2007 (Annexure P-2) to the Superintendent of Police (Respondent No. 2) and Director General of Police, Haryana. It is submitted that according to the terms and conditions regarding payment of the instalments of loan, the Petitioner was to pay only two instalments.

4. Learned Counsel for the Petitioner has submitted that the incident of forcibly snatching the vehicle by musclemen of HDFC Bank Ltd. (Respondent No. 3.) clearly make out the commission of a cognizable offence for which FIR is liable to be registered by the Respondents No. 1 and 2 against the accused. Reliance is placed on the judgment of the Supreme Court in Manager, ICICI Bank Ltd. V. Prakash Kaur and Ors., 2007 (2) RCR (Cri) 76. It has been observed therein that a financier or bank cannot take away a vehicle forcibly by hiring musclemen and that they can only proceed in accordance with law. It is submitted that the action of Respondent No. 3 bank in employing Gundas and musclemen for taking possession of the vehicle cannot be termed as an act which is in accordance with law. It is also submitted that Respondent No. 3 -bank despite being served, has not put in appearance , which in fact amounts to acceptance of the averments made by the Petitioner. It is also submitted that the bank is liable to be directed to return the vehicle.

5. Reply has been filed by Darshan Singh, HPS,DSP, NIT, Faridabad on behalf of Respondents No. 1 and 2 . It is inter alia stated that the Petitioner, who is the borrower of the loan, had defaulted in the payment of the same. Besides, on 28.6.2007 prior to repossession of the vehicle in question, a representative of

the HDFC Bank Ltd. (Respondent No. 3.) had given due intimation to Police Station Kotwali Hardwar (Uttarkhand). On the basis of the statement of Anwar, who was the driver of the vehicle in question, consent was given for surrender of the vehicle due to non-payment of instalments. It is submitted that after the complaint was received from the Petitioner, the matter was referred to DSP (Traffic) for inquiry who has submitted a report dated 18.8.2007 from which it transpired that the Petitioner had also filed a complaint against the bank u/s 156(3) Code of Criminal Procedure which is pending in the court of learned Judicial Magistrate 1st Class, Faridabad. It is stated that the vehicle was taken in custody in the area of Police Kotwali Hardwar (Uttar Khand) by the representative of the HDFC Bank who served notice to driver Anwar on 28.6.2007. Thereafter the matter being sub judice before Judicial Magistrate 1st Class, Faridabad and the vehicle being taken in possession in Hardwar, it is submitted that no cause of action had taken place within the area of Police Station SGM Nagar, Faridabad.

6. Learned Counsel appearing for the State has submitted that the petition involves disputed questions of facts and, therefore, it merits dismissal and in any case the Petitioner is liable to be relegated to the remedy of filing a private complaint.

7. Learned Counsel for the Petitioner has contended that the entire allegations as made by the Respondents are false and the matter which is pending before the JMIC at Faridabad is not regarding the incident of 3.7.2007 but it is regarding the surreptitious manner in which the loan was sanctioned by the authorities of the HDFC Bank Ltd. (Respondent No. 3.) by forging his signatures and photographs and also the false identifications that were put. It is emphasised that the bank having not put in appearance to deny the averments with regard to the incident of 3.7.2007, would warrant the registration of FIR.

8. I have given my thoughtful consideration to the contentions of learned Counsel appearing for parties and perused the record.

9. The question whether the incident of 3.7.2007 took place or not is not to be determined in proceedings u/s 482 Code of Criminal Procedure The same in fact, is a disputed question of fact and in the absence of evidence or materials it is not liable to be gone into at this stage. Even the plea regarding release of the vehicle is not to be entertained in proceedings u/s 482 Code of Criminal Procedure In case the vehicle has indeed been taken in possession as is stated in the reply filed on behalf of Respondents No. 1 and 2, the possession of the same would have to be taken on ''superdari'' in accordance with the provisions of Section 451 Cr.P.C from the court of the Illaqa Magistrate concerned. It is no doubt correct that the Supreme Court in Manager, ICICI Bank Ltd. V. Prakash Kaur and Ors. (Supra) has deprecated the practice of the bank taking possession of truck by hiring musclemen and has held that banks cannot employ Gundas to take possession by force but the question whether such an incident indeed had taken place as already noticed, is not liable to be gone into in the absence of material

on record. In so far as registration of FIR is concerned, the Supreme Court in Aleque Padamsee and Ors. v. Union of India and Ors. (2007)6 Supreme Court Cases 171, has held that the correct position in law is that the police officials ought to register FIR whenever facts brought to their notice show that a cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 Code of Criminal Procedure Therefore, in case the Petitioner is aggrieved by the inaction of the police officials in not registering the FIR, the modalities contained in Section 190 read with Section 200 Code of Criminal Procedure are to be adopted and observed. This Court, in exercise of its inherent jurisdiction u/s 482 Code of Criminal Procedure is normally not to issue directions for the registration of a FIR. The Petitioner, however, has an alternative remedy of filing a private complaint before the Illaqa Magistrate in accordance with law.

10. In the present case it has not been clearly stated by Respondents No. 1 and 2 in their reply as regards the incident of 3.7.2007. It is only submitted that the possession of the vehicle in question was taken by the HDFC Bank Ltd. (Respondent No. 3.) in the area of Police station Kotwali Hardwar (Uttarkhand). Learned Counsel for the Petitioner has, however, submitted that he has documents to show that he paid the toll tax and also made telephone calls on the date of the incident to the higher officials from his mobile phone. Besides, he also claims to have material to show that the vehicle was got repaired on 27.6.2007 and 28.6.2007 from Delhi Automobiles and as such the vehicle could not could not have been taken in possession earlier to that as has been alleged. The contentions of the learned Counsel for the Petitioner cannot be brushed aside lightly as Respondent No. 3 has chosen not to put in appearance despite notice having been issued to it. However, these are again disputed questions of fact which would require the leading of evidence and this Court is not to embark upon an inquiry into the veracity of facts and thereafter determine them.

11. In the circumstances it would be just and expedient that the Petitioner avails his alternative remedy of filing a private complaint in accordance with law, if so advised. However, this Court would not in the circumstances and keeping in view the disputed questions of facts involved order the registration of a FIR.

In view of the aforesaid observations, the present petition is dismissed.

