(2011) 11 UK CK 0078

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No.727 of 2007

Sanjeev Madan and R. Sharma — APPELLANT

Vs

State of Uttarakhand and another — RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2011) 11 UK CK 0078

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble Servesh Kumar Gupta, J.—By way of this petition, moved u/s 482 Cr.P.C., the prayer has been made to quash the order dated 17.9.2007 passed by the Chief Judicial Magistrate, Dehradun in criminal case no.1805 of 2007 (old case no.181/2007), titled as State Vs. Sanjeev Madan and another. It has also been prayed to quash the entire proceedings of the said criminal case.

2. Having heard the learned counsel of either party, it transpires that respondent no.2 Sunil Gujral, under a Hypothecation Agreement, borrowed a loan of Rs.6.92 lacs in May, 2006 from ICICI Bank. Out of this loan, a Tata 1109 Truck No.UA-07/ N-2459 was purchased. The agreement number was LVDEH00006862766 while the E.M.I. was Rs.18,110/-. After making the payment of five or so installments, respondent no.2 made default in the payment of installments consecutively for two months, so, the letter was sent by the Bank on 12.12.2006, asking the amount of two installments, worth Rs.36,720/-, within seven days from respondent no.2, with the clause that the vehicle will be seized otherwise as per terms of the agreement.

3. The petitioners are the regular employees of the ICICI Bank.

4. Instead of waiting for seven days, as mentioned in the letter dispatched to respondent no.2, the bank officers/ petitioners, after giving information to the

Station House Officer, P.S. Dalanwala, just on the next day, i.e. on 13.12.2006 to the effect that the borrower has defaulted on the scheduled repayment of loan, and has thereby failed to comply with the terms and conditions of the agreement, hence pursuant to their rights of the above cited loan-cum-hypothecated agreement, the Bank wishes to take possession of the captioned asset. This communication was kept on the record of the P.S. Dalanwala on dated 13.12.2008 and on the same day, the vehicle was seized or possession thereof was taken by the bank authorities and the information of this seizure was also given to the P.S. Dalanwala on the same day.

5. The Bank issued a notice on 15.12.2006 to respondent no.2, asking him to pay the full and final settlement of the outstanding amount to the tune of Rs.6,79,206/- within seven days from the date of receipt of letter, and to take back the delivery of the vehicle again. It was also mentioned that if the bank fails to hear, within the stipulated time, then it will be assumed that borrower is no longer interested in settling the account, hence necessary steps would be taken to dispose of the asset to the best quote, received by the Bank, and the sale proceeds, so received, will be credited to the account of the borrower.

6. Respondent did not respond, so the Bank, as per procedure prescribed, made the sale of the vehicle on 28.3.2007 to one Mr. Kapil on auction basis for the total sale consideration of Rs.4,64,000/-. Still, the amount of Rs.2,19, 166/- was outstanding, payable to the bank by the borrower.

7. This time, respondent no.2 sent a notice dated 5.4.2007 which amount to a reply of the earlier notices sent by the Bank to him, that the Bank did not wait for seven days and seized the vehicle on 13.12.2006, even before the receipt of the notice by him. It was asked by respondent no.2 that Bank should take its notice back, otherwise the legal action would be initiated against it.

8. It appears that respondent no.2, who himself resided at Dehradun, was keeping a watch upon the activities of the Bank advanced towards the vehicle and he sent this reply on 5.4.2007 when the vehicle had been auctioned on 28.3.2007. Besides, he lodged FIR No.114/07 dated 13.5.2007, by way of moving application u/s 156(3) Cr.P.C. to learned Magistrate. The matter was investigated and chargesheet no.145/03 was submitted by the Police bearing crime no.131/07. The learned Magistrate took cognizance of the matter and issued arrest warrant of the petitioners vide impugned order dated 17.9.2007, whereagainst this petition has been filed.

9. Learned counsel for the petitioners has relied upon a precedent of Hon''ble Apex Court in the case of "Charanjit Singh Chadha and others Vs. Sudhir Mehra reported in VI (2001) SLT 312", wherein it was held that under Hire Purchase Agreement, the hirer continues to be the owner of the vehicle. If the vehicle is seized by the hirer on account of default of payment in the installments, then no offence is made out against the hirer because repossession of the goods as per the term of the agreement may not amount to any criminal offence. In that

matter too, when the vehicle was taken by way of adverse possession, then the FIR was lodged u/section 406, 420, 120-B IPC. The chargesheet was submitted and the High Court refused to quash the proceedings in exercise of its powers u/s 482 Cr.P.C. In that eventuality, the Apex Court was of the view that the borrower cannot be permitted to say that the owner of the vehicle has committed theft of the vehicle or has committed criminal breach of trust or cheating or criminal conspiracy. So, the High Court had seriously flawed in its decision while failing to exercise powers vested in it u/s 482 Cr.P.C.

10. Another precedent relied upon by learned counsel for the petitioners is also of the Hon''ble Apex Court in the case of "Manager, ICICI Bank Ltd. Vs. Prakash Kaur and others, reported in 2007 (2) UC 850". The ratio laid down in this case was also identical that no criminal case is made out against the seizure of the vehicle through Gundas in connection with default of payment of installments against the loan taken, but at the same time, the Hon''ble Apex Court deprecated the practice of ICICI Bank in taking the possession of the vehicle forcibly in such a manner and the Court, while laying down certain guidelines, observed that we are governed by the rule of law in the country. The recovery of loans or seizures of vehicle could be done only through legal means. The banks cannot employ Gundas to take possession by force.

11. In the instant case, undoubtedly the Bank should have waited for a week after giving the demand notice of dated 12.12.2006, but it was not done. Rather, at the same time, it is also not clear that how respondent no.2 remained fail to approach the Bank just after seizure of the vehicle, expressing his willingness to make the payment of the installments which he defaulted. He even did not contact the bank after receiving the notice dated 15.12.2006 and kept on waiting for almost five months and then sent a reply on 5.12.2007 to the Bank. The agreement between the parties also has not been brought on record, but certainly, the ICICI Bank is an esteemed financial institution of private sector and it may be assumed that certainly, it could have granted the loan under the strict terms and conditions of recovery. Respondent no.2 himself has failed to comply with those terms and conditions in making the payment of his EMIs, as stipulated in the loan agreement. So, in these circumstances, lodging of FIR by respondent no.2 and filing of chargesheet by the Police, was improper in the case in hand and it was almost an abuse of the process of the law.

12. In view of what has been stated above, this petition deserves acceptance. The petition is, accordingly, allowed. Impugned order of issuing the non-bailable warrant against the petitioners dated 17.9.2007 and also the proceedings of criminal case no.1805 of 2007 are hereby quashed.