

(2012) 04 MP CK 0158
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 1949 of 2010

Santosh Gaharwar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 394, 420, 467, 468, 471

Citation : (2012) ILR (MP) 2300 : (2012) 4 MPHT 208

Hon'ble Judges : R.C. Mishra, J

Bench : Single Bench

Advocate : Manish Datt, for the Appellant; Rahul Jain, G.A. for the Non-Applicant No. 1/State, for the Respondent

Final Decision : Allowed

Judgement

R.C. Mishra, J.

Arguments heard.

1. This is a petition, u/s 482 of the Code of Criminal Procedure (for short "the Code"), for quashing of the order-dated 9.2.2010 passed by Shri M.K. Tripathi, JMFC, Waidhan, District Singrauli, upon a complaint made by respondent No. 2, directing issuance of process against the petitioner, in respect of the offences punishable under Sections 394, 420, 467, 468, 471 & 506B of the IPC. The petitioner is the Manager of Waidhan Branch of M/s. Shriram Transport Finance Co. Ltd. with whom the respondent No. 2 had entered in to a hire purchase agreement in respect of a 10-wheeler Hiva (Tipper), subsequently registered as MP-53/H.A. 0141 and financed by M/s. Shriram Transport Finance Co. Ltd., Branch at "Waidhan. The vehicle met with an accident on 23.8.08 and therefore, some of the installments could not be paid.

2. Clause 6(b) of the agreement was couched to these terms -

6. SHRIRAM's RIGHT ON DEFAULT:

In the event of the Borrower committing any act of default, as aforesaid, then, notwithstanding anything to the contrary herein contained, Shriram shall be entitled at its absolute discretion, to interalia:

(a)....

(b) Repossession of Asset : To take possession of the hypothecated assets from wheresoever it may be and remove the hypothecated asset including all accessories, bodywork and fittings and for the said purpose, it shall be lawful for Shriram or Shriram authorized representatives, servants, officers and agents forthwith or at any time and without notice to the Borrower(s) to enter upon the premises, or garage or godown where the hypothecated assets shall be lying or kept and to take possession or recover or receive the same and if necessary to break open such place of storage; Shriram will be within its rights to use a tow-van to carry away the assets. Any damage to the land or building caused by removal or the asset shall be the sole responsibility of the Borrowers).

3. The complaint contained the following allegations:-

On 22.3.09, the petitioner, without consent of respondent No. 2, took over possession of the vehicle and despite request made by respondent No. 2 for grant of opportunity to deposit the remaining installments, did not restore the custody of the vehicle.

4. As explained by the Supreme Court in Charanjit Singh Chadha and Others Vs. Sudhir Mehra, repossession of vehicle by the financier in default of payment of installment as per terms of agreement would not attract criminal liability for the offence of cheating or theft/robbery. Moreover, there was no sufficient evidence justifying issuance of process in respect of their offences.

5. It is true that the Apex Court in Manager, ICICI Bank Ltd. Vs. Prakash Kaur and Others, , has deprecated the procedure resorted to by the lending bank/ financial institution for recovering possession of the vehicles taken on hire-purchase basis forcibly on the ground that the borrower has defaulted in paying certain installments, but, in the present case, possession of the vehicle was taken over only after due service of corresponding notice dated 2/3/2009 on the respondent No. 2. The complaint was obviously filed only to harass the petitioner and wreak personal vengeance.

6. To sum up, even if the allegations made against the petitioner in the complaint, are taken at their face value and accepted in their entirety, no offence would be made out. As such, the case against the petitioner falls under category (1) and (7) of the cases, as enumerated in State of Haryana and others Vs. Ch. Bhajan Lal and others, , attracting inference under the inherent powers. The petition, therefore, stands allowed. The order-dated 9.2.2010 (supra) and the consequent proceedings against the petitioner are hereby quashed.