
(1990) 05 P&H CK 0074

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2895-M of 1988 (O&M)

Sham Lal Verma and anr.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 28-05-1990

Acts Referred:

Citation : (1990) 2 RCR(Criminal) 625

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

Advocate : H.S. Sidhu, I.P. Singh, K.S. Sidhu, Advocates for appearing Parties

Judgement

S.S. Grewal, J.

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) relates to quashment of impugned First Information Report No. 19, dated 23/12/1987, under Sections 406 & 420 IPC registered at Police Station Samrala (Annexure P1) and subsequent proceedings taken thereunder.

2. In brief, facts relevant for the disposal of this case, as emerge from impugned First Information Report (Annexure P1) registered on the basis of the statement of Lachhman Singh, first informant, are, that in the year 1982 he returned from Greece and brought with him Rs. 1,70,000/-. He became friend of Varinder Kumar and his uncle coaccused Sham Lal. In December, 1982 he purchased Truck No. CHW 9291 owned by Sham Lal. On the guarantee furnished by Virender Kumar, petitioner, the first informant paid Rs. 38,000/ and the rest was to be paid by him to the said vendor by instalments. The first informant plied the truck for about 13 months. During this period he paid seven instalments of the vehicle amounting to Rs. 5200/ through Punjab National Bank, Parwanoo with whose arrangement Sham Lal (petitioner) had purchased the truck, on the basis of hirepurchase agreement. After about 13 months or so both the accused/petitioners came to the village of the first informant and told him that they wanted to show the said vehicle to Parwanoo Bank and also informed him that they would return the vehicle on the following day. The first informant sent

the truck with the accusedpetitioners. His driver Dheri also accompanied them at that time. On the following day the truck driver returned and informed the first informant that both the accusedpetitioners gave him beating after they reached the house of Sham Lal petitioner in Manimajra and threw him out of the truck. The first informant enquired from both the accusedpetitioners about this truck but they did not give any satisfactory reply. Thus, both the petitioners by playing fraud on the first informant took away his truck from his house in village Diwala.

3. On behalf of the accusedpetitioners it was pleaded that they had purchased the truck in question after obtaining loan from the Punjab National Bank, Parwanoo and had hypothecated the truck with the said bank. They further agreed to repay the loan amount in instalments and were allowed to ply that truck. It was further pleaded that the first informant agreed to purchase the truck for a consideration of Rs. 1,80,000/ and at that time it was made clear to him that the payment of loan due against that vehicle to the tune of Rs. 1,42,000/ was due and it would be the responsibility of the first informant to pay the said loan in instalments in time; that agreement dated 91283 was duly executed between the parties and there was specific clause in agreement that the first informant will be responsible to make the payment of loan instalments in time, and in case he delays the payment, or, makes any default in depositing the loan instalments, the accusedpetitioners shall have the right to take possession of the vehicle from him, and, the agreement for sale is Annexure P2. It was further pleaded that the first informant (Lachhman Singh) plied the truck and earned lot of money but did not deposit the instalments of loan with the said bank as was agreed upon, vide, agreement Annexure P2. Thereafter, the bank issued registered notice dated 19484 to the accusedpetitioners. In this respect notice for payment was also given to the guarantor by the Bank. The petitioners asked the first informant to make the payment but he refused to do so, and, due to fault of the first informant, the bank filed a suit for the recovery of balance amount standing against the accusedpetitioners. On 2231986 the complainant met the accusedpetitioners along the truck at Manimajra. At that time the petitioners asked the first informant as to why he has not deposited the amount due to the bank, which, had issued notice against the accusedpetitioners. At that stage the complainant showed his inability not to make the payment, and, himself handed over the truck to the accusedpetitioners with the understanding that he would make the payment immediately. and, would take back that truck. The police was duly informed, and, information in this regard was recorded in the Daily Diary Register. copy whereof is Annexure P1. Police was also duly informed that the complainant himself had handed over the truck to the petitioners, and, report (Annexure P4) in this respect was also recorded at the police station.

4. The accusedpetitioners waited for some time but Lachhman Singh complainant failed to make the payment to the bank, which, instituted a suit against the petitioners who, then gave the registered legal notice to the complainant for making the payment copy whereof is Annexure P5. The first informant failed to make the payment and the truck was given to the bank and ultimately the truck

was sold with the consent of the bank, and the entire sale proceeds were deposited with the bank by the accusedpetitioners. The accusedpetitioners had also deposited some amount from their own pocket. Thus, with the sale proceeds of the truck, the bank loan was cleared, The petitioners had to suffer loss because of the illegal act of the first informant, as he did not make the payment to the bank. The first informant in connivance with the local police got a false case registered against the petitioners, who, were also illegally detained in the police station. It was further pleaded that subsequent purchaser of the truck has also filed a suit against the present petitioners regarding the same truck and the said suit is pending in the Civil Court at Ambala and that the registration of the impugned first information report, and, the investigation conducted therein amounts to abuse of the process of the Court.

5. The learned counsel for the parties were heard.

On behalf of the petitioners, it was submitted that the dispute between the parties mainly relates to the rights of the parties in the truck, which was originally purchased by the petitioners on hirepurchase agreement through the Punjab National Bank, Parwanoo. Since the complainant failed to repay instalments to the bank, the complainant himself handed over the possession of the truck to the petitioners, who, gave the same as per agreement to the bank, and, the truck in question had to be sold in order to repay the loan taken from the bank. Apart from the fact that the truck in question had been purchased by the accusedpetitioners on hire purchase agreement through the bank, which, retained ownership of the truck before the loan amount was cleared, the accusedpetitioners allegedly sold the truck in question to the complainant, from whom the truck was subsequently seized, and sold by the Bank to realise the loan due to the Bank. Such dispute between the parties is purely of a civil nature and the criminal proceedings initiated in respect of such dispute against the accusedpetitioners on the basis of impugned First Information Report (Annexure P1) amount to abuse of the process of the Court and the same are liable to be quashed in view of the authority of the apex Court in *Trilok Singh and others v. Satya Deo Tripathi*, AIR 1979 Supreme Court 850.

6. For the foregoing reasons, the impugned First Information Report (Annexure P1) and consequent proceedings taken thereunder against the present petitioners are directed to be quashed and this petition is accordingly allowed. The aggrieved parties, if so advised, may approach competent civil Court for adjudication of their rights. It is however made clear that nothing herein observed for the disposal of this petition shall in any manner be construed to affect the rights of the parties on merits.