

(2012) 06 GAU CK 0115

In the Gauhati High Court

Case No : Criminal Revision (P) No. 736 of 2004

Standard Finance (P) Ltd.

APPELLANT

Vs

State of Assam and others.

RESPONDENT

Date of Decision : 04-06-2012

Acts Referred:

Criminal Procedure Code, 1973 — Section 482
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 — Section 120(B), 34, 379, 406, 420
Penal Code, 1860 (IPC) — Section 120(B), 34, 379, 406, 420

Citation : (2012) 6 GLR 459

Hon'ble Judges : I.A.Ansari, J

Bench : Single Bench

Advocate : For the petitioner : None appeared.??For the Respondent : Mr. D Das. Addl. P.P., Advocates appearing for Parties

Judgement

1. This revision, made under Section 482 Cr.P.C., has put to challenge the order, dated 23082004, passed, in Complaint Case No. 266C/2004, whereby the learned Additional Chief Judicial Magistrate, Kamrup, having taken cognizance of offences, under Sections 406, 420, 379 and 506 IPC, directed issuance of notice and search warrant for recovery of vehicle, bearing registration No. AS06/A 3145, from the custody of accused Alok Ranjan Saikia and Gopal Morain.

2. None has appeared on behalf of the petitioners as well as the private respondent. However, Mr. D Das, learned Additional Public Prosecutor, Assam, is present and he is accordingly heard.

3. The case of the petitioners, as discernable from the present petition and the materials on record, is as under:

(i) The petitioner No. 1, namely, M/S Standard Finance (P) Ltd., lodged a complaint, in the Court of the learned Chief Judicial Magistrate, Guwahati, which came to be registered as Complaint Case No. 4351C of 2003, the case of the complainant, M/S Standard Finance (P) Ltd., being, in brief, thus: The

complainant No. 2, namely, Sri Gopal Marial, is Manager of M/S Standard Finance (P) Ltd., a registered nonbanking company, with its head office at NBS Commercial Building, GS Road, Guwahati, the object of the complainant company being to provide financial help to the intending creditors by way of loan. The accused Nos. 1 and 2, namely, Sri Bulbul Borgohain and Sri Dhruba Jyoti Borgohain respectively, approached the complainant company seeking finance, on the basis of hire purchase agreement, to purchase a Tata Bus, bearing registration No. AS06/A 3145, with accused No. 1 as hirer and accused No. 2 as guarantor.

(ii) Thereafter, the two accused executed an agreement on 14021995, whereunder accused No. 1 became the hirer and the accused No. 2 became the guarantor, the loan being repayable in 36 consecutive installments, beginning from 21041995 and ending on 21041998, with an option to the accused to become absolute owner of the said vehicle in accordance with the terms and conditions of the hirepurchase agreement, dated 14021995, aforementioned. The Tata Bus, bearing registration No. AS06/A 3145, was accordingly purchased and registered showing the complainant, namely, M/S Standard Finance (P) Ltd, as the financier. In course of time, accused No. 1, namely, Sri Bulbul Borgohain made the payment of the entire dues of the complainant company, but thereafter, accused No. 1 along with the accused No. 2 approached the complainant company to provide more financial assistance to them on the ground that they were in need of financial help. The complainant company accordingly entered into yet another agreement, on 02111998, with the said two accused and gave them, by way of loan, a sum of Rs. 50,000/ to be repaid to the complainant company in 18 equal installments, the loan having been obtained by hypothecating the said vehicle. While the first installment of the second loan was to be paid on 02121998 and the last, i.e., the 18th installment, was to be paid on 02052002, yet not a single installment was paid by the said two accused and a sum of Rs. 1,28,139/ got accumulated as principal amount along with interest and other service charges.

(iii) The complainant company, then, took over possession of the said vehicle from one Sri Ranjit Gogoi, an authorized agent of the accused No. 1., the possession of the said vehicle having been taken over by one Debojit Gogoi, an authorized agent of the complainant company. However, the complainant company, later on, came to know from a letter No. NIL, issued by the opposite party No. 2 herein, namely, Nagen Duwarah, that he had purchased the said vehicle from Alok Ranjan Saikia of Jorhat. From the said latter, the complainants also came to know that the hypothecation of the said vehicle had been cancelled by the District Transport Officer, Dibrugarh, on 23062000. Upon inquiry made from the office of the District Transport Officer, Dibrugarh, as to how the hire purchase agreement, which the said two accused had entered into with the present petitioners, stood cancelled without any No Objection Certificate having been issued by the complainant company, though as per the agreement between the parties concerned, the hire purchase agreement could have been cancelled

only on issuance of No Objection Certificate, if issued by the complainant company. In the meanwhile, however, the said Nagen Duwarah (i.e., the opposite party No. 2 herein) has also lodged an Ejahar against Sri Debojit Gogoi, authorized agent of the complainant company, on 16082003, and, based on the said Ejahar and treating the same as First Information Report (in short, "FIR"), a case has been registered against Sri Debojit Gogoi, under Section 420/379 IPC, and, during investigation, the vehicle, in question, has been seized by the police on 14092003 and the said vehicle is, presently, in the custody of the police. Thus, the accused Nos. 1 and 2 had fraudulently cancelled the hire purchase agreement and sold the said vehicle to Sri Alok Ranjan Saikia and, thereafter, transferred the same to the opposite party No. 2 herein, namely, Nagen Duwarah inasmuch as the registration certificate of the said vehicle shows the name of Sri Nagen Duwarah as the absolute owner of the said vehicle with effect from 21082002, the vehicle having been transferred by the accused No. 1, namely, Sri Bulbul Borgohain, to Sri Alok Ranjan Saikia on 20052000; but the hire purchase agreement was cancelled after about one month later, i.e., 23062000. Without cancelling the hire purchase agreement, the vehicle, in question, could not have been transferred. The complainant, therefore, alleged that the two accused, namely, Sri Bulbul Borgohain and Sri Dhruba Jyoti Borgohain, had entered into a conspiracy and fraudulently got the hire purchase agreement cancelled and thereby committed the offence of breach of trust, forgery and cheating. The complainants accordingly sought for taking of cognizance of appropriate offences, issuance of warrants of arrest against the accused and also issuance of search warrant for recovery and seizure of the said vehicle, namely, the bus bearing registration No. AS06/A 3145.

4. On the basis of the complaint and the statement of the complainant No. 2, Manager of the complainant company, learned Judicial Magistrate, Kamrup, Guwahati, passed an order, on 30092003, taking cognizance of offences under Sections 120(B)/406/420/464/468/34 IPC and directed issuance of summons to the accused. On the basis of the subsequent petition filed, thereafter, by the complainant company, the learned Judicial Magistrate, Kamrup, passed an order, on 09012004, directing the Officer in Charge of concerned police station to execute the search warrant, seize the said vehicle and give the said vehicle to the zimmar of the complainant on execution of a bond of Rs. 3,00,000/ subject to the complainant producing the vehicle as and when called upon to do so.

5. Thereafter, the opposite party No. 2 herein, namely, Nagen Duwarah, lodged a complaint case, which gave rise to Complaint Case No. 266C of 2004, wherein he stated that he was the rightful and legal purchaser of the vehicle, bearing registration No. AS06/A 3145, from Sri Alok Ranjan Saikia, who had come forward to sell the same, at Rs. 4,15,000/, by saying that the said vehicle was free from encumbrances, charges, etc, but strangely enough, on 13082003, the vehicle was taken away by the accused showing that the vehicle was hypothecated with M/S Standard Finance (P) Ltd. and the loan amount had not been liquidated, the intention of the accused being to cheat the complainant, Sri

Nagen Duarah. This apart, accused Sri Alok Ranjan Saikia and Sri Gopal Marial had threatened the complainant. Based on this complaint and on the basis of the statement of the complainant, an order was made by the learned Magistrate, in Complaint Case No. 266C of 2004, taking cognizance of offences under Sections 406/420/379/506 IPC and also directing issuance of notice to accused Sri Alok Ranjan Saikia and Sri Gopal Marial to produce the vehicle, in the Court, on or before 20092004, and it is this order, dated 23082004, which stands impugned in the present revision.

6. While considering the present revision, it needs to be noted that by order, dated 23082004, passed in Complaint Case No. 266C of 2004, the learned Additional Chief Judicial Magistrate, Dibrugarh, has not issued search warrant; rather, a notice has been directed to be issued to the complainants/petitioners herein, namely, M/s Standard Finance (P) Ltd. and Sri Gopal Marial. In such circumstances, particularly, when no process has yet been directed to be issued, in the said case, against the present petitioners, this Court is of the view that it would not be appropriate, at this stage, to interfere with the impugned order, dated 23082004, and that the appropriate course for the present petitioners is to appear, in terms of the order, dated 23082004, in Complaint Case No. 266C of 2004, in the Court of the learned Additional Chief Judicial Magistrate, Dibrugarh, and if, thereafter, any process is issued against the present petitioners, they may do the needful in accordance with law.

7. This criminal petition, in the light of the directions, which have been issued by the impugned order, dated 23082004, is premature and cannot, therefore, be sustained.

8. Because of what have been discussed and pointed out above, this revision fails and the same shall accordingly stand dismissed.

9. Before parting with this revision, it is, however, made clear that if the present petitioners appear, in terms of the order, dated 23082004, in the Complaint Case No. 266C of 2004, the learned Court below shall do the needful in accordance with law bearing in mind the fact that Complaint Case No. 4351C of 2003, is pending, in the Court of the learned Chief Judicial Magistrate, Guwahati, as indicated above.

10. With the above observations and directions, this Criminal Revision stands disposed of.