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(2010) 09 AHC CK 0277

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 8019 of 2010

Shahid Ali — APPELLANT

Vs

State of U.P.and others — RESPONDENT

Date of Decision: Sept. 20, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 406, 504

Citation: (2010) 09 AHC CK 0277

Hon'ble Judges: Rajiv Sharma, J and S.N.H.Zaidi, J

Final Decision: Disposed Of

Judgement

Rajiv Sharma and S.N.H. Zaidi,JJ.

1. Heard learned Mr H A Alvi, learned Counsel for the petitioner, learned A.G.A. and Mr Amol Kumar, learned Counsel for opposite party No.3.

2. The submission of learned Counsel for the petitioner is that on 28.3.2005, ICICI Bank sanctioned a sum of Rs.4,70,000/ for purchase of Qualis to the petitioner by entering into a contract. As the requisite amount has not been paid, ICICI Bank Ltd. sent a notice under Section 138 of the Negotiable Instrument Act to the petitioner. Thereafter, the Bank had also filed a criminal case before the Judicial Magistrate II against the petitioner on 1.11.2007 which is still pending. Subsequently, on 31.12.2007, as per deed of assignment, ICICI Bank Ltd. assigned all debts/dues/loans payable by the petitioner to Kotak Mahindra Bank Ltd. Thereafter, on 17.4.2008, petitioner was summoned by the Court of Judicial Magistrate II Lucknow, whereas a civil suit was filed by Kotak Mahindra Bank in the year 2009. Thereafter, the opposite party No.3 had lodged an F.I.R. against the petitioner and 19 other persons under Sections 406/504 IPC.

3. According to the petitioner, Civil Case No.179/2009 and Criminal Complaint No.9201/07 are already pending and the opposite party No.3 has lodged the instant F.I.R.

The object of the criminal law is to protect the innocent and punish the guilty. It is not the function of police and criminal law to do any thing with the dispute relating to the loan and its realization. It is the function of Civil Courts to decide the dispute relating to the loan, hypothecation and its realization. Therefore, the petitioners need protection.

Learned A.G.A. and the counsel for the Bank opposed the petition.

4. As the amount has not been repaid, recovery proceedings were initiated as per terms and conditions of agreement. Further, the instant F.I.R. has been lodged alleging therein that the petitioner is expected to transfer the vehicle. In order to verify as to whether the petitioner has transferred the vehicle or not, R.T.O. was called for and the original records have been produced by the learned A.G.A. A perusal of the original papers, it reflects that the vehicle has not been transferred and still it is in the name of the petitioner and as such, without verifying the aforesaid facts from the office of Regional Transport Officer, the opposite party No.3 has lodged the instant F.I.R.

5. Considering the peculiar facts and circumstances of the case, the writ petition is finally disposed of with a direction that the petitioner shall not be arrested in Case Crime No. 529/2010, under Sections 406/504 I.P.C. Police Station Hazaratganj District Lucknow till submission of police report under Section 173(2) Cr.P.C. before the Court concerned, subject to his cooperation in the investigation.