

(2009) 07 MAD CK 0470

Madras High Court

Case No: Criminal OP. No. 23698 of 2006

Santhilal Chorida

APPELLANT

Vs

State by Inspector of Police,
Ulunderpet Police Station,
Villupuram District and
Chinnasamy

RESPONDENT

Date of Decision: July 6, 2009

Hon'ble Judges: Aruna Jagadeesan, J

Bench: Single Bench

Advocate: S. Saravanakumar, for the Appellant; S. Senthil Murugan -R1 and Mr. P. Sampath Kumar -R2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Aruna Jagadeesan, J.

The Petitioner, against whom the complaint has been filed by the 2nd Respondent under Sections 409, 403, 405, 415, 418 and 109 IPC, has filed this Criminal Original Petition, seeking to quash the FIR as well as the charge sheet in CC.No.119/2006 on the file of the Judicial Magistrate, Ulundurpet, Villupuram District.

2. The brief facts, which are necessary for disposal of this Criminal Original Petition, are as follows:-

The Petitioner is carrying on finance business in Ulundurpet, Villupuram District. The 2nd Respondent has availed a loan of Rs. 2,30,000/- for purchase of lorry, bearing Registration No.TCM-2714 under hire purchase agreement, as per which, the 2nd Respondent has to pay the installments and in lieu of it, he has handed over the documents relating the vehicle, such as permit, RC Book and the insurance policy to the Petitioner. According to the Petitioner, the 2nd Respondent did not pay the loan amount regularly and there is a balance of Rs. 60,700/- due from the 2nd

Respondent. While so, the 2nd Respondent has given a complaint before the District Collector, Villupuram District on 9.8.2004 and another complaint before the Superintendent of Police, Villupuram against the Petitioner, alleging that though the entire loan amount has been paid, the Petitioner failed to return the documents relating to the vehicle, thus preventing the 2nd Respondent from plying the vehicle, causing" (sic)ss and damage to the 2nd Respondent.

3. According to the Petitioner, both the authorities closed the complaint on the ground that it is of civil nature and no criminal offence was made out. In spite of it, the 2nd Respondent has filed the private complaint against the Petitioner with an ulterior motive in order to wreck vengeance against him.

4. The learned counsel for the Petitioner would submit that the above said transaction is purely of civil nature and the criminal proceedings initiated against the Petitioner is an abuse of process of law. He would further submit that the 2nd Respondent has not come to the court with clean hands, as he has suppressed the previous complaint given by him to the District Collector, Villupuram District and the Superintendent of Police, who in turn forwarded the same to Inspector of Police, Economic Wing 2 and those complaints were closed on the ground that no prima facie case is made out. It is contended by the learned counsel for the Petitioner that the Petitioner has got right to resume possession of the vehicle and have retention of the documents relating to the vehicle, as the purchaser/2nd Respondent defaulted in making payments. In such view of the matter, he would argue that the allegations made against the Petitioner do not attract any of those offences as alleged in the complaint.

5. In support of his contentions, the learned counsel drew the attention of this court to the judgment rendered in the case of [Sardar Trilok Singh and Others Vs. Satya Deo Tripathi](#), that in case, default is committed by the hirer in paying the installments, the Financier under the hire purchase agreement has got all right to seize the vehicle and the dispute will be only of civil nature and launching criminal Prosecution is abuse of process of law. Similar view was expressed by the Honourable Supreme Court in the cases of [Charanjit Singh Chadha and Others Vs. Sudhir Mehra](#), and K. A. Mathai alias Babu v. Kora Bibbikutty, (1996) 7 SCC 212 .

6. On a perusal of the decision of the Honourable Supreme Court referred to above, it is clear that on facts those decisions are distinguishable. In those cases referred to by the learned counsel for the Petitioner, the hirer had committed default by non paying the installments and under agreement, the Financier had a right to take repossession of the vehicle and when the criminal proceedings were initiated against the Financier, the Honourable Supreme Court had observed that it cannot be said that the Financier had committed theft of the vehicle or criminal breach of trust or cheating as alleged in the complaint.

7. In the present case, the allegation in the complaint shows that the 2nd Respondent has paid the entire installments and discharged the loan of Rs .4,20,000/- to the Petitioner, but the Petitioner refused to hand over the documents relating to the vehicle, thus preventing the 2nd Respondent from paying the insurance and tax to the authorities and the vehicle could not be plied without the documents, thus he had been put to heavy loss and damages.

8. The above said allegations contained in the complaint and the statements of witnesses recorded thereafter during the investigation prima facie show that the Petitioner, even after receiving the entire amount, has failed to return the documents on the ground that there is a balance amount to be paid and the said allegation prima facie attract the offence of cheating, criminal breach of trust and fraud. It is pertinent to note that in this case, after investigation, charge sheet has been laid and it cannot be said that the case is false and no criminal offence has been made out at this stage. The complaint and the consequential proceedings cannot be quashed on mere ground that the 2nd Respondent has got civil remedy. Besides that, the truthfulness or otherwise of the allegation made in the complaint cannot be gone into at this stage.

9. It is settled law that the charge sheet constitutes a prima facie evidence, constituting the offence for proceeding further in the matter. Necessarily therefore, the court has to look into relevant law and the allegations made in the charge sheet and then consider as to whether any offence has been committed to frame charges for trial before discharging the accused. It is repeatedly held by the Honourable Supreme Court that the statutory power u/s 482 of Code of Criminal Procedure has to be exercised sparingly with circumspection in the rarest of rare cases to do real substantial justice for the administration of which alone or to prevent abuse of process of law.

10. In the case on hand, on consideration of the allegations and in the light of the statements recorded, this court is of the considered view that the ingredients of the offences are disclosed and there is no material to show that the complaint is mala fide or vexatious and in that event, there would be no justification for interference by this court. Hence, this Criminal Original Petition is liable to dismissed and accordingly, it is dismissed.