

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE

M.Cr.C. No.6044/2016

Raj Singh S/o Shivcharan Singh

Vs.

State of Madhya Pradesh & another

Ms. Sudha Shrivastava, learned counsel for the applicant.
Shri Pankaj Wadhvani, learned counsel for the respondent No.1/State.
Shri Anshul Shrivastava, learned counsel for respondent No.2.

ORDER

(Passed on this day of May, 2017)

This application is filed under Section 482 of Cr.P.C. for quashment of F.I.R arising out of Crime No.289/2015, Police Station-Jharda, District-Ujjain under Section 406 of IPC and resultant charge-sheet under Section 406/34 and proceedings in Criminal Case No.108/2016 pending before Judicial Magistrate, First Class, Mahidpur, District-Ujjain.

2. The relevant facts are that the applicant is Manager of Magma Finance Company Limited. The complainant/respondent No.2

purchased a Swaraj tractor taking financial assistance from Magma Finance Company Limited. A hire purchase agreement was signed by him. Between March 2011 to March 2015, he paid Rs.3,41,572 against a loan of Rs.3,00,000/-. It was alleged that one Neeraj, who is co-accused in this case, contacted the complainant posing himself as an agent of Magma Finance Company Limited, obtained Rs.25,000/- from him, which he did not deposit in the account of the company. After the respondent No.2 made default in payment of loan amount, the company seized the vehicle under the provisions of hire purchase agreement and after giving him further notice and opportunity to pay the remaining amount, sold the vehicle to third person. When the F.I.R. was lodged, the same was registered and the present applicant is facing trial before the Judicial Magistrate First Class, Mahidpur, District-Ujjain.

3. The applicant further submits that respondent No.2 made default in payment of Rs.2,05,913. His statement of account is annexed as (Annexure-P/2). An arbitrator was also appointed by the company. He passed the award, which is annexed as (Annexure-P/3). After giving him intimation, the company seized the vehicle on 18.05.2015. The intimation letter is annexed as (Annexure-P/4). The tractor was sold to some third person after intimating him to deposit the remaining amount of Rs.2,05,913, which is annexed as (Annexure-P/5).

4. According to learned counsel for the applicant, this is purely a

civil dispute. The company was well within its right to seize the vehicle under the provisions of Hire Purchase Act. Learned counsel places reliance on judgment of Hon'ble the Apex Court in case of *Anil Mahajan Vs. Bhor Industries Ltd. And another (2005) 10 SCC 228* and order passed by co-ordinate Bench of this Court in M.Cr.C. No.3921/2012 *G. Satish Babu Vs. State of Madhya Pradesh* by order dated 17.11.2016. Learned counsel for the applicant also places reliance on judgment of Calcutta High Court in case of *Palash Chatterjee Vs. State of West Bengal 2007 Cri.L.J. 4215*. Learned counsel for the applicant submits that in case of Palash Chatarjee (supra), the Calcutta High Court placed reliance on judgment of Hon'ble the Apex Court and held that the finance company has a right under the provisions of Hire Purchase Act to seize the vehicle in case of default of payment. It was also held that if the vehicle is under the provisions of Hire Purchase Act, the property in the vehicle lies with the finance company inspite of the fact that vehicle is registered in the name of the purchaser only when payment in terms of hire purchase agreement is complete. The property in the vehicle passed to the purchaser. Meanwhile, if default is made, the company is entitled to seize the vehicle and recover its amount dues to it under the Hire Purchase Act.

5. Learned counsel for respondent No.2 vehemently opposed the application and submits that the possession of the vehicle was legally handed over to him and without his permission, the company had no

right whatsoever to seize the vehicle and sale it to third party since the applicant was responsible for conducting the affairs of the company. He is personally liable for criminal act on his part.

6. Learned counsel for the State also opposed the application.

7. I have taken into consideration the rival contentions of counsel for the parties. It is apparent that in the light of the principle laid down by Hon'ble the Apex Court, finance company had right to seize the vehicle. In case of default, in this case, proper intimation was given to the applicant. Even an arbitrator was appointed and there is an award in favour of the company before selling the vehicle. Also an intimation was given to the applicant. In this view of the matter, this appears to be a dispute of civil nature and no case is made out against the present applicant under Section 406 of IPC.

Accordingly, this application is allowed. F.I.R. arising out of Crime No.289/2015, Police Station-Jharda, District-Ujjain and proceedings before the Judicial Magistrate First Class, Mahidpur in Criminal Case No.108/2016 are hereby quashed so far they relate to the present applicant. The other co-accused person shall face trial before the Magistrate. The present applicant is discharged from offence under Section 406/34 of IPC.

(Alok Verma)
Judge

Ravi