

Sunil Kumar Vs. State of Kerala

Sunil Kumar Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1126932

Court : Kerala

Decided On : Jan-29-2014

Judge : Honourable Mr. Justice P.D.Rajan

Appellant : Sunil Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.D.RAJAN WEDNESDAY, THE 29TH DAY OF JANUARY 2014 9TH MAGHA, 1935 CrI.MC.No. 3650 of 2012 ----- [C.C.NO. 620/2009 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, TIRUR] ----- PETITIONERS/ACCUSED: ----- 1. SUNIL KUMAR, MANAGER, SHRIRAM TRANSPORT FINANCE COMPANY LIMITED, RAINBOW COMMERCIAL COMPLEX, NADUVILANGADI.P.O, TIRUR.

2. SHAJU, COLLECTION AGENT, SHRIRAM TRANSPORT FINANCE COMPANY LIMITED, RAINBOW COMMERCIAL COMPLEX, NADUVILANGADI.P.O, TIRUR. BY ADVS.SRI.PHILIP T.VARGHESE, SRI.THOMAS T.VARGHESE, SMT.ACHU SUBHA ABRAHAM. RESPONDENTS/STATE AND DEFACTO COMPLAINANT: ----- 1. STATE OF KERALA, REPRESENTED BY THE - PUBLIC PROSECUTOR, HIGH COURT OF

KERALA, ERNAKULAM, PIN-682 011.

2. AMBILY, W/O.GANGADHARAN, KOLLAYIKKAL HOUSE, THIRUMITTAKKODE AMSOM, NELIKKATHIRI DESOM, OTTAPALAM TALUK, PALAKKAD DISTRICT-679 533. R1 BY PUBLIC PROSECUTOR SMT. M.T. SHEEBA. THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29/01/2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Prv. CRL.M.C. NO.3650/2012 APPENDIX PETITIONERS' ANNEXURES: ANNEXURE A1: TRUE COPY OF COMPLAINT FILED BY THE R.2. NOW PENDING AS C.C. NO.620/2009 IN THE JUDICIAL FIRST CLASS MAGISTRATE COURT, TIRUR DTD. 28/11/2008. ANNEXURE A2: TRUE COPY OF THE

ORDER

OF THE CONSUMER DISPUTES REDRESSAL FORUM, MALAPPURAM IN C.C. NO.76/2009 DTD. 08/03/2011. RESPONDENTS' ANNEXURES: NIL. //TRUE COPY// P.S. TO JUDGE. Prv. P.D.RAJAN, J Crl.M.C.No.3650 of 2012 Dated 29th January, 2014

ORDER

This petition is filed under Section 482 of Code of Criminal Procedure to quash the proceedings in C.C.No.620 of 2009 of Judicial First Class Magistrate Court, Tirur.

2. Petitioners are accused in the above case, who are allegedly involved in offences punishable under Section 420 read with 34 of IPC. The second respondent in this petition is the defacto complainant. According to her, she purchased a Mahindra Nissan Tipper Lorry (Reg.No.KL11R.9067) for Rs.4,50,000/- on hire purchase agreement. Rs.1,60,000/- was paid and as per the above agreement, her title deed and other relevant documents were entrusted to the petitioners. The balance amount of Rs.2,90,000/- was agreed to be repaid by monthly instalments of Rs.10,800/- on condition that in case of default of repayment, the vehicle will be retained by them until the payment as per the agreement is made. As payment was not made on demand, the vehicle was sold. The first respondent stated that she was dishonestly induced to entrust the vehicle to the petitioners and was cheated. It was in such circumstances that she filed Annexure A1 complaint before the Crmc 3650/12 2 Magistrate Court. Hence

petitioners have approached this court with this petition to quash the above proceedings.

3. Heard both sides. Learned counsel appearing for the petitioners contended that the petitioners had no dishonest intention to cheat the second respondent. It is only a civil transaction as per hypothecation of the vehicle. Annexure A2 is the order passed in C.C.No.76 of 2009 by District Consumer Disputes Redressal Forum, Malappuram on 8.3.2011 and that transaction between the petitioners was purely of a civil nature and therefore the jurisdiction under Section 482 Cr.P.C may be invoked. Learned counsel relied on the decisions reported in Charanjit Singh Chadha & others V. Sudhir Mehra (2001 (7)SCC417 and V.Y.Jose and another V. State of Gujarat and another (2009(3)SCC78.

4. Learned counsel for the second respondent, defacto complainant contended that the transaction is not of a civil nature. On the other hand, petitioners cheated the second respondent and prima facie case is made out against them and this is not an appropriate time to invoke the jurisdiction under Section 482 Cr.P.C.

5. Now the question that arise for consideration is Crmc 3650/12 3 whether Annexure A1 is to be quashed by invoking the jurisdiction under Section 482 Cr.P.C. According to this section, nothing in the code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

6. It is clear from the complaint that petitioner purchased the lorry and paid portion of the sale proceeds to the petitioners. When she defaulted monthly premium, she approached the petitioners and disclosed her inability to pay it. At that time, petitioners told that they will retain the vehicle till payment of the premium amount. Believing the words of the petitioners, the 2nd respondent handed over the vehicle to them. Subsequently, they sold the vehicle. It is admitted that she paid major portion of the debt and that amount was not returned. Ignoring that without intimating the same, the petitioners sold the vehicle. Whether this amounts to cheating or not is a fact to be verified by the learned Magistrate. The available records show that prima facie case is made out against the petitioners. Crmc

3650/12 4 7. The Apex Court in *State of Haryana V. Bajanlal* (1997 SC Crime 426) held that where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, the proceedings are liable to be quashed. The inherent powers of the High Court contemplated u/s 482 Cr.P.C has to be exercised only for the three purposes mentioned in the section. This power cannot be invoked naturally in a matter where it is covered by a specific provision of the code. Therefore it means that if the matter in question is not covered by any provision of the code, it comes into operation, for the three purposes mentioned in the section. Inherent jurisdiction to make such orders necessary to "give effect to any order" under this code or to prevent "abuse of the process" of any court or to secure "the ends of justice". The above principle was followed in *R.P.Kapoor V. State of Punjab* (AIR 1960 SC866).

8. Considering the averments in the complaint, prima facie case is made out against the petitioners. Therefore, this is not a fit case to invoke the jurisdiction under Section 482 Crmc 3650/12 5 Cr.P.C. The petition lacks merit and is accordingly dismissed. P.D.RAJAN, JUDGE lgk

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com