

Sumith P Prasad vs State of Kerala

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Court : Kerala

Decided On : Nov-17-2020

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : Crl.MC/1325/2010

Appellant : Sumith P Prasad

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
TUESDAY, THE 17TH DAY OF NOVEMBER 2020 / 26TH KARTHIKA,
1942 Crl.MC.No.1322 OF 2010 CC 4013/2007 OF JUDICIAL
MAGISTRATE OF FIRST CLASS -I, ALUVA PETITIONER/ACCUSED:
NITHEESH, COLLECTION MANAGER, HDFC BANK, MATHER
SQUARE, NEAR NORTH RAILWAY STATION, ERNAKULAM. BY
ADVS.SRI.P.G.THAMPI (SR.) SRI.P.PAULCHAN ANTONY
SRI.S.SREEKUMAR (SR.) RESPONDENT/COMPLAINANT:

1 STATE OF KERALA, REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM. 2

SEBASTIAN.T.T, S/o THOMAS, THAIKUTIL, VAZHAKKALA, KAKKANAD P.O., ERNAKULAM. R2 BY ADV. SRI.K.G.CLEETUS R1 BY PUBLIC PROSECUTOR SMT.M.N.MAYA THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17.11.2020 ALONG WITH CrI.MC.1325/2010. THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.M.C.Nos.1322 & 1325 of 2010 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
TUESDAY, THE 17TH DAY OF NOVEMBER 2020 / 26TH KARTHIKA,
1942 CrI.MC.No.1325 OF 2010 CC 4013/2007 OF JUDICIAL
MAGISTRATE OF FIRST CLASS -I, ALUVA PETITIONER/ACCUSED:
SUMITH P PRASAD, AREA LEGAL MANAGER, HDFC BANK, S.L
PLAZA, PALARIVATTOM P.O., ERNAKULAM. BY
ADVS.SRI.P.G.THAMPI (SR.) SRI.P.PAULOCHAN ANTONY
SRI.S.SREEKUMAR (SR.) RESPONDENT/COMPLAINANT: 1 STATE
OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA,ERNAKULAM. 2 SEBASTIAN T.T., S/o THOMAS,
THAIKUTIL, VAZHAKKALA, KAKKANAD P.O., ERNAKULAM. R2 BY
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UDAYAKUMAR THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY
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1325 of 2010 3

ORDER

Earlier, this Court by order dated 3/1/2014 quashed

the private complaint by relying on Sree Krishna Sharma v. State of Kerala [2013 (1) KLT 666], Anup Sarmah v. Bhola Nath Sharma and others [(2013) 1 SCC 400] and Charanjit Singh Chadha v. Sudhir Mehra [(2001) 7 SCC 417], but it was subsequently recalled on the reason that no notice was given to the defacto complainant.

2. It is the accused No.1 and 2, who came up against the registration of crime under Sections 379, 341, 392, 394, 120(B), 411, 403 and 465 r/w Section 34

IPC. The dispute is pertaining to an alleged hypothecation of a Maruthi car in connection with a loan facility extended by the accused. Subsequently, the vehicle was seized by the accused. The decisions drawn in Bhahuleyan v. State of Kerala and others [2007 (3) KHC 663], George V.A. and others v. Abraham Augustine and Another [2012 (1) KHC 729] and Sundaram Finance Ltd. v. The State of Kerala and another [AIR 1966 SC 1178] were relied on against the involvement of goondas in seizing the vehicle violating the law and CrI.M.C.Nos.1322 & 1325 of 2010 4

order situation.

3. There is lot of difference between a hire- purchase arrangement and a hypothecation of movable

property. In the former case, there would be hirer and owner of a vehicle and the hirer would become the owner only on compliance of the agreed terms and conditions within the stipulated time. Till that time, the financier would remain as the owner of the goods. But in the matter of hypothecation of movable property, there would be a loan transaction and hypothecated property would stand as security. Admittedly, there is no document or any material to show the creation of a hire purchase arrangement, but the document entered into is named and styled as a hypothecation with a clause to seize the vehicle when there is default in repayment of the loan amount. Clause 14.2 in the hypothecation agreement empowers the financier to seize the vehicle in the event of default of payment of installment agreed into. But the agreement is only a printed form agreement and as such, the binding nature

of printed clauses yet to be decided

sufficient to attract the main offence alleged i.e.

offence of theft under Section 379 IPC. Since there is a clause in the hypothecation agreement giving a right to take possession or seize the vehicle on

non-payment of loan amount as agreed, it would prima facie sanctify the act of the accused in taking possession of the vehicle. The legal validity or binding nature of the said clause has to be agitated in a properly instituted

suit. Hence, no offence under Section 379 IPC will stand attracted. Needless to say that the other offences alleged in connection with the main offence under Section 379 IPC also will not stand. As such, the

complaint and its further proceedings are hereby quashed. Both the CrI.M.C. are allowed accordingly. Sd/- P.SOMARAJAN DMR/- JUDGE CrI.M.C.Nos.1322 & 1325 of 2010 6 APPENDIX OF CrI.M.C. 1322/2010 PETITIONER'S ANNEXURES: ANNEXURE A : COMPLAINT FILED UNDER SECTION 156(3) BEFORE JFMC-1 ALWAYE DATED 17.11.2007. ANNEXURE B : SURRENDER LETTER DATED 05.05.2007. RESPONDENTS' ANNEXURE: ANNEXURE R2(a) : TRUE COPY OF DUPLICATE NOTICE AND THE ENDORSEMENT. ANNEXURE R2(b) : TRUE COPY OF REPORT DATED 24.05.2010 PREPARED BY ONE MANIKANDAN, PC 8757 WHICH IS SUBMITTED BY THE STATION HOUSE OFFICER, THRIKKAKARA. ANNEXURE R2(c) : TRUE COPY OF ORDER IN CrI.M.C. No.1322/10 DATED 03.01.2014. // TRUE COPY // P.A. TO JUDGE CrI.M.C.Nos.1322 & 1325 of 2010 7 APPENDIX OF CrI.M.C 1325/2010 PETITIONER'S ANNEXURES: ANNEXURE A : COMPLAINT FILED UNDER SECTION 156(3) BEFORE JCMC-1 ALWAYE DATED 17.11.2007. ANNEXURE B : SURRENDER LETTER DATED 05.05.2007. RESPONDENTS' ANNEXURES: ANNEXURE R2(a) : TRUE COPY OF DUPBLICATE NOTICE AND THE ENDORSEMENT. ANNEXURE R2(b): TRUE COPY OF REPORT DATED 24.05.2010 PREPARED BY ONE MANIKANDAN PC 8757 WHICH IS SUBMITTED BY THE STATION HOUSE OFFICER, THRIKKAKARA. ANNEXURE R2(c) : TRUE COPY OF ORDER IN CrI.M.C.No.1325/2010 DATED 09.01.2014. // TRUE COPY // P.A. TO JUDGE