

The Application No.1042 of 2012. Vs. Unknown

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Court : Chennai

Decided On : Mar-14-2012

Judge : A.Arumughaswamy, J.

Acts : Indian Penal Code (IPC) - Sections 420, 468

Appeal No. : A.Nos.1042 of 2012 and 2536 of 2011

Appellant : Vira Properties (Madras) Pvt Ltd.

Respondent : Baba Enterprises.

Judgement :

ORDER

1. The Application No.1042 of 2012 has been filed to set aside the order dated 16.02.2012 passed by this Court in A.No.2536 of 2011.
2. The Application No.2536 of 2011 has been filed to direct the respondents to furnish security for a sum of Rs.3,28,215.30 being the claim of the applicant arising under the Loan Agreement No.CE 18459 dated 19.01.2007 within a time stipulated by this Court and in case of default to order attachment before judgment of the movable properties of the 1st respondent more fully described in the Schedule A to the Judges Summons.
3. The brief facts of the case are as follows:

The applicant in A.No.1042 of 2012 has availed a loan to the tune of Rs.9,20,000/- from the respondent bank to purchase a Mobile Crane 12 x W bearing Registration No.TN 59 AL 9393 with Engine No.S433-685460 and Chassis No.166372 and as per the loan agreement, the applicant has to pay 35 equal instalments at the rate of Rs.31,300/- per month. Admittedly, the applicant has regularly paid upto 28th instalment and the 29th instalment which falls on June 2009 was paid by him only in the month of August 2009 and according to the applicant, July 2009 to September 2009 instalments are only due to the respondent.

4. It appears that the applicant in A.No.1042 of 2012 has purchased yet another Rhino 110 C bearing Registration No.TN 59 AC 3939 with Chasis No.164913 and Engine No.S433-C79834 and the said vehicle has been hypothecated with the ICICI Bank. Further, according to the applicant, he has been paying the monthly instalments without any break. While so, for the two instalments, he has wrongly seized TN 59 AC 3939 for which the petitioner gave complaint to the police and on the next day, the then Manager of the respondent company, by name, one Subramanian, has given a police complaint against the applicant as if the vehicle number has been tampered. Based on the same, the Inspector of Police, Rajapalayam (North) has registered a case against the applicant in Crime No.553/2009 for the offences under Sections 420 and 468 of IPC on 21.09.2009. Thereafter, the applicant has approached this Court by filing Crl.O.P. (MD.) No.9339 of 2009 and obtained an order of anticipatory bail on 13.10.2009 and at the time of granting anticipatory bail, the applicant has also deposited Rs.1,25,000/- towards his loan account with the respondent before the Court.

5. Learned Counsel for the applicant vehemently contended that the vehicle of the applicant which was hypothecated with the ICICI Bank has been wrongly attached and the vehicle has been kept in the police station from the year 2009 onwards. Thereafter, the Inspector of Police, Rajapalayam North Police Station has registered a case against the applicant at the instigation of the respondent. Therefore, they both are liable to be punished. The learned Counsel for the applicant further contended that in view of the above, the order passed by this Court in A.No.2536 of 2011 has to be set aside.

6. Per contra, the learned Counsel for the respondent contended that there is no wrongful attachment at all. The learned Counsel further contended that since the applicant himself changed the number plate of the vehicle to get rid of the respondent bank, the application has to be dismissed.

7. Heard the submissions made on either side.

8. At the outset, as I have already pointed out, it is not in dispute that the applicant has purchased Mobile Crane 12 x W and the same was hypothecated with the respondent bank whereas the latter was hypothecated with the respondent bank viz., M/s. Kotak Mahindra Bank Ltd.

9. Now the first point that arises for consideration is as to whether the attached vehicle Chasis No.164913 and Engine No.S433-C79834 and Registration No.TN 59 AC 3939 which was not hypothecated to the Respondent Bank viz., M/s. Kotak Mahindra Bank Ltd.

10. The petitioner on availing the loan from the respondent, has purchased Mobile Crane bearing Registration No.TN 59 AL 9393 and he has paid 28 instalments and on August, 2009, he has paid 29th instalment instead of June, 2009. On 17.09.2009, the vehicle was seized by the Manager of the respondent's company. The petitioner gave a police complaint on the next day. The Courier Acknowledgment has been produced to prove the service of the petitioner's complaint. According to the petitioner the vehicle in question is not hypothecated to the Respondent Bank.

11. After the complaint of the petitioner the Respondent Bank Manager Mr.K.Subramanian also gave a complaint on 21.9.2009 to the Rajapalayam North Police Station (Virudhunagar District), against the petitioner under Sections 420 and 468 of IPC. It is useful to extract a portion of the complaint of the respondent dated 21.09.2009 which is as follows: VERNACULAR (TAMIL) PORTION DELETED

From this, it is clear that the respondent has fully known the Engine Number and Chassis Number of the vehicle are different except the vehicle Number has been

mentioned as TN 59 AL 9393 instead of TN 59 AC 3939. To get over this, the Respondent would say that the documents of the hypothecated vehicle bearing Engine No. S23307984 and Chassis No. 164913 have been seized from the vehicle in question as if the seized vehicle which was hypothecated one. It will not a surprise to see that in a seized vehicle the copy of the hypothecated documents have been made available to get over the change in the Engine Number and the Chassis Number. Therefore, from this, I am of the view the vehicle which was attached by the respondent is bearing Engine No. S433079834 and Chassis No. 164913 admittedly which is not hypothecated to the Respondent the attachment is a wrongful one.

12. It is pertinent to note that the vehicle which was attached by the Respondent is bearing Chassis No.164913 and Engine No.S433079834. The applicant has given a police complaint on 20.09.2009 through Courier stating that the attached vehicle was at no point of time hypothecated with the respondent bank. But to the shock and surprise of this Court, it is seen that on the next day, one K.Subramanian who claims to be the Manager of the respondent bank has given a complaint against the applicant under Sections 420 and 468 of IPC. The complaint of the respondent dated 21.09.2009 would clearly go to show that the attached vehicle was not hypothecated to the Respondent Bank. From this, one can come to a safe conclusion that in order to get over from that situation, a new number plate has been inserted by the respondent since they felt as if it is a vehicle bearing Reg. No.TN 59 AL 9393 instead of TN 59 AC 3939 which was hypothecated with the respondent bank. From the perusal of all these documents, I am of the view that the respondent has wrongfully seized the vehicle and to get over this the respondent's Manager one K.Subramanian gave a false complaint against the petitioner before the Rajapalayam North Police and the Sub-Inspector of Police, who in turn registered a case in Crime No.553/2009 under Sections 420 and 468 of IPC against the petitioner.

13. The contention of the Respondent's counsel is that on seeing the number plate the Respondent has seized the vehicle. It cannot be admitted that the financier on the capacity of the Manager of the respondent Bank, who is advancing several Crores of Rupees to the public has attached the property on seeing the numerical

plate of the vehicle. This Court is of the view that the respondent seized the vehicle fully knowing the Engine and Chasis numbers are not one of the hypothecated one. Therefore, the contention of the respondent that the vehicle in question was wrongly attached cannot be accepted. Further, in order to get over from the same, the respondent has also given a complaint against the applicant with the connivance of the police. All these things cannot be tolerated and it cannot be unnoticed by this Court. Even though the applicant has admitted his liability to pay the balance amount, the respondent can recover the same in the manner known to law.

14. So far as the balance amount is concerned, on a perusal of the records, it is seen that the applicant has paid 29 instalments leaving only six instalments. It is also seen that while obtaining anticipatory bail, the applicant has paid Rs.1,25,000/- before the Court.

15. In view of all the above, the application No.1042 of 2012 is allowed and the orders passed in A.No.2536 of 2011 dated 16.02.2012 is set aside with the following directions :

a. It is not in dispute that the applicant has suffered a loss for the past three years for non-operation of the Crane. Therefore, the applicant is at liberty to claim damages against the respondent bank within six months from today; b. The Deputy Superintendent of Police, Virudhunagar is directed to initiate the departmental proceedings against the Sub-Inspector of Police and Station House Officer, Rajapalayam North Police Station who has registered a case in Crime No.553/2009 dated 21.9.2009 under Section 420 and 468 of IPC. and inform to this Court about the initiation of the departmental proceedings. The Deputy Superintendent of Police, Virudhunagar is further directed to release the vehicle immediately to the applicant; and c. The petitioner is at liberty to initiate criminal proceedings against the Respondent's Bank and their concerned officials by preferring a complaint.

16. This Court once again expressing his unhappiness towards the Respondent's Bank for adopting the illegal method to seize the vehicle which was not hypothecated to the Respondent's Bank. In the event of any failure to comply with

the above directions, the applicant is also at liberty to approach this Court for suitable directions to recover the due amount. Note :

Office is directed to issue copy to:

1)the Superintendent of Police, Virudhunagar District

2)the Deputy Superintendent of Police, Rajapalayam

3) The Sub-Inspector of Police, Rajapalayam North Police Station who has registered the case in Crime No.553/2009

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