

Case No. 47

IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH: AT HYDERABAD

TUESDAY THE SEVENTH DAY OF DECEMBER  
ONE THOUSAND NINE HUNDRED AND NINETY NINE

PRESENT

THE HON' BLE MR.JUSTICE: J. CHELAMESWAR  
CRIMINAL PETITION NO. 2857 OF 1999

Between:

1. R. Prasada Reddy
  2. K.S. Devanathan
- Petitioners

And

1. State of A.P., rep. By P.P.
  2. Ghanta Subba Rao.
- Respondents

(Respondent No.2 is impleaded as per Court Order dt.7.12.99 in CrI. MP. No. 3289/99.)

**Repossession by financier - defaulting borrower files criminal case - Repossession taken in terms the right under the agreement - offences such as 323, 341 and 427 of I P C cannot be said to be made out - Complaint quashed.**

Petition under Section 482 of the Cr.P.C. praying that in the circumstances stated in the petition, the High Court will be pleased to quash the proceedings in CC No.47/ 99 on the file of the Addl. Munsif Magistrate, Addanki, Prakasam District.

The petition coming on for hearing, upon perusing the petition and upon hearing the arguments of Mr.C.Praveen Kumar, Advocate for the petitioners and the Public prosecutor for the respondent No.1 and of Mr. T. Rajendraprasad, Advocate for the Respondent No.2.

**THE COURT MADE THE FOLLOWING ORDER**

**THE HONOURABLE SRI JUSTICE J. CHELAMESWAR  
CRIMINAL PETITION NO. 2857 OF 1999**

**ORDER:**

This is a petition filed under Section 482 of the Code of Criminal Procedure praying that the proceedings in C.C.No.47 of 1999 on the file of the learned Additional Munsif Magistrate, Addanki, Prakasam District be quashed. The petitioners are the Branch Manager and the Manager of a Company called Sundaram Finance Limited.

The de facto complainant purchased a lorry bearing No. AP-27.-T 6829 on 8.3.1997. For the purchase of the said lorry, the de facto complainant obtained a loan of Rs. 6,50,000/- from the above mentioned Sundaram Finance Limited and entered into an agreement to repay the said amount in 36 instalments: however, it appears, the de facto complainant defaulted in payment of the instalments. Therefore, the Finance Company while invoking the terms of the agreement between the parties, seized the vehicle on 2.2.1999 when the vehicle was proceeding towards Balarsha with a load of Subabul Sticks. In the process of the seizure, it is alleged by the de facto complainant that the crew of the lorry were manhandled by the henchmen of the accused. Therefore, a private complaint was filed on the file of the learned Judicial First Class Magistrate, Addanki alleging the commission of offences under Section 379,384,447 and 506 of the Indian Penal Code. The learned Magistrate referred the complaint to the police. The police in turn registered a crime and after investigation filed a charge sheet on 18.4.1999 alleging the commission of offences under Sections 323,341,421 read with Section 34 of the Indian Penal Code.

Apart from that the de facto complainant also filed O.S.NO.119 of 1999 on the file of the learned Junior Civil Judge, Ongole for the delivery of the possession of the lorry. Pending the said suit, he also filed an application for interim custody of the lorry. A conditional order was passed directing the de facto complainant to pay an amount of Rs. 4,26,701/- on or before 15.5.1999. It appears, the said condition was not complied with.

The learned Senior Counsel appearing for the petitioner argued that while conceding for the sake of arguments that either the petitioners herein or some other persons seized the vehicle as alleged by the de facto complainant, the same is done as

per the agreed terms between the parties- the de facto complainant and the company. The dispute is purely a civil dispute and the criminal court ought not to have entertain the complaint. In support of his submission, the learned Senior Counsel placed reliance upon a Supreme Court judgment reported in *TRILOK SINGH VS SATYA DEO*. There also in similar circumstances, the Supreme Court quashed the similar complaint having regard to the facts and the circumstances of the case. The facts are almost identical with the present case on hand.

The de facto complainant who filed an implead petition argued that in view of the allegation that the crew of the vehicle were manhandled and the cargo was thrown on the road, thereby causing loss to the de facto complainant as that would expose the defacto complainant to a civil action for damages by the owner of the cargo as the cargo was entrusted to the de facto complainant for transport, therefore, the offence punishable under Section 427 of the Indian Penal Code is committed. Further argued that the question whether the offences punishable under Sections 323,341, and 427 of the Indian Penal Code is concerned, is a question of fact which could be decided only at the time of the trial and therefore this Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure would not normally be interfered with the mater.

A reading of the charge sheet does not disclose any fact which if established would prove the commission of the offence under Section 323 or 341 of the Indian Penal Code, except one statement which says that L.Ws.2 and 3 were manhandled, there is nothing on the record to establish that any or all of the crew received any injury which resulted in bodily pain, disease of infirmity.

Coming to the offence under Section 427 of the Indian Penal Code, the learned counsel for the petitioner argued that the Finance Company had only the right to seize the vehicle and it had no right to seize the cargo and therefore the cargo was unloaded in the presence of the crew of the vehicle. The learned counsel for the petitioner further argued that the de facto complainant is the bailee of the goods and the crew is the agent of the bailee and when the cargo was unloaded in the presence of the crew, the vehicle was taken in exercise of the right conferred under the agreement on the Finance Company, it can not be said that the offence of mischief was committed with regard to the cargo. I see force in the submission made by the learned counsel for the petitioner.

The Criminal Petition is allowed and the proceedings in C.C.No.47 of 1999 on the file of the learned Additional Munsif Magistrate, Addanki are hereby quashed.