

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)  
MISC. CRIMINAL CASE No. 4961 of 2018**

**BETWEEN:-**

**PRASAD KORI**  
.....

**.....APPLICANT.**

*(BY SHRI PRAKASH UPADHYAY – ADVOCATE)*

**AND**

- 1. THE STATE OF MADHYA PRADESH THR.  
P.S. AWADHPURI DISTT. BHOPAL (M.P.)**
- 2. KAILASH KRIPLANI S/O SHRI HANSRAJ**  
.....

**.....RESPONDENTS**

*(STATE BY SHRI VIJAY KUMAR PANDEY, PANEL LAWYER)  
(RESPONDENT NO. 2 BY SHRI AMIT BHURRAK- ADVOCATE)*

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Reserved on : 12/01/2023  
Pronounced on : 09/02/2023

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*This application having been heard and reserved for judgment/order, coming on for pronouncement this day, the Court passed the following:*

**ORDER**

This petition under Section 482 of Cr.P.C. is preferred for quashment of the proceeding of case No. RCT/9911636/2017 pending before the JMFC, Bhopal.

2. Applicant is a Deputy Manager of Kotak Mahindra Bank a duly constituted attorney which is a Banking Institution. On 17.05.2017 respondent No 2 lodged a written complaint against the present applicant and his vendors vide complaint No 39/17 and the same was taken as a First Information Report under section 154 of the Criminal Procedure Code on 28/06/2017. It was complained that the respondent No 2 has purchased two vehicles (Bus) bearing registration No. MP04PA2613 & MP04PA2503 with the financial assistance from the Kotak Mahindra Bank in the years 2015. The respondent No. 2 turn out to be a chronic defaulter, and even after a services of reminder and request, the respondent No. 2 did not regularize the loan accounts.

due to the continuous defaulting both the loan account the public money was in jeopardy and the Applicant's Bank was becoming a losing venture and hence as a last resort invoking the clause of agreement the vehicle was restored into the possession of the Bank with due compliance of the Law but on the complaint of respondent no. 2 FIR in Crime No. 85/17 under Sections 188 read with Section 34 of IPC was registered and later on charge-sheet was filed under Sections 188 read with 34 and Section 379 of IPC.

3. Learned counsel for the applicant submits that it is established facts that respondent no. 2 had taken financial assistance (loan) from the applicant's Bank i.e. KOTAK MAHINDRA BANK and has defaulted in repayment of the loan amount. As per the terms and conditions of the agreement the matter was referred for arbitration. The Arbitrators have passed the award in favour of the applicant's Bank, thereby entitling applicant- Bank to recover the due amount from respondent no. 2. As respondent No. 2 was not making the payments due to the applicant's Bank, the Bank as a last resort has taken the possession of the vehicles with due compliance of the law.

There is specific clause 2.11 in the agreement and as per agreement the Bank is entitled to take possession of vehicle and to sell, transfer/ and or otherwise dispose of any and all security created in favour of the Bank in case of non-payment of loan. It is also submitted that there is no iota of evidence against the applicant so as to make him liable for any offence whatsoever.

4. Learned counsel for the applicant placed heavy reliance on the judgment of Hon'ble Apex Court in the case of **Anup Sarmah Vs. Bhola Nath Sharma & others 2013 (1) SCC 400**. It is submitted by learned counsel for applicant it is well settled that the criminal case will not stand against the financier, if the financier is exercising its right which is mutually agreed through the agreement signed by both the parties to an agreement. In **Charanjit Singh Chadha v. Sudhir Mehra [(2001) 7 SCC 417 : 2001 SCC (Cri) 1557]** The Apex Court held that financier has a right to possess the vehicle as per terms of the hire-purchase agreement, does not amount to a criminal offence. It is also submitted that the Sec. 379 could only be attracted if any immovable property intending to take dishonestly (Sec. 378) and

Section 24 defines dishonestly as Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person which is not the case of the respondent No. 2.

5. It is also submitted that in the present case Section 188 IPC is also not attracted. Applicant has no knowledge regarding any order passed by the public servant. No such order was intimated to the Bank or applicant. It is also submitted that the even if all the allegations contained in the FIR accepted in toto, no offence is made out against the applicant. Under these facts and circumstances of the case, learned counsel for the applicant prays to quash the case No. RCT/9911636/2017 pending before the JMFC-Bhopal.

6. Learned counsel for State as well as learned counsel for respondent No. 2 submitted that a compromise is taken place between the parties, which was verified by the authority of this Court. Hence, they have no objection if the matter is settled amicably.

7. I have heard learned counsel for the parties and perused the record.

8. Applicant case is that the order passed by the Collector was not in his knowledge, therefore, no offence could be said to have been made under Section 188 of IPC. On perusal of the record it is clear that applicant/petitioner has no knowledge regarding takeover order of vehicle dated 12.05.2017.

***Section 188 IPC, which has a crucial bearing in the matter, reads thus:***

*“188. Disobedience to order duly promulgated by public servant — Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction.*

*If such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;*

*and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”*

*The provision provides for two types of punishments for knowingly disobeying a validly promulgated order by a public servant. Its ingredients are:*

*(1) there must be an order promulgated by a public servant.*

*(2) such public servant must be lawfully empowered to promulgate such order.*

*(3) A person must have a knowledge of such order directing him to abstain from an act or (b) to take certain order with certain property in his possession or under his management.*

*(4) He must disobey the order having its knowledge.*

*(5) Such obedience must cause or tend to cause (a) obstruction, annoyance or injury or risk of it to any person lawfully employ or (b) danger to human life, health and safety.*

**9.** Now it has to be examined whether the order of Collector/District Magistrate passed to the knowledge of applicant and he had knowingly disobeying it.

**10.** As already seen, a person booked under Section 188 IPC must have actual knowledge of public servant's order requiring him to do or abstain from doing some act. Acquiring or gaining of such knowledge is a pre-requisite. Any proof of general notification promulgated by a public servant would not satisfy the requirement.

**11.** It is true that the knowledge of accused could be presumed in certain circumstances but all the same a complaint/FIR must indicate, even though not in very express terms, that he had the knowledge of the order and had knowingly disobeyed it. Where the terms of complaint/FIR did not provide even an inkling in this regard, it cannot

be said to make out or constitute an offence under Section 188 and in such a situation, it would warrant to be quashed.

**12.** A bare perusal of the FIR and documents annexures with charge-sheet does not indicate that applicant has actual knowledge of Collector/ District Magistrate order. It is not the case of respondent No. 2 also that this order was served on him by whatever means/ modes or was either affixed on his premises or was gazetted on the relevant date.

**13.** Learned counsel for applicant submitted that it is well settled that FIR alleging non-compliance could be quashed by the High Court in exercise of its jurisdiction under Section 482 of Cr.P.C. on the basis of the settlement arrived at between the complainant and the respondent-accused. During the pendency of this petition before this Court, compromise has taken place and matter has amicably settled. Section 379 of IPC is compoundable and Section 188 of IPC is not attracting in the present case.

**14.** It is true that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of

incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice.

**15. Hon'ble Apex Court in the case of Central Bureau of investigation Vs. Sadhu Ram Singla and others (2017) 5 SCC 350**

held as under:-

*“29. In Shakuntala Sawhney v. Kaushalya Sawhney [Shakuntala Sawhney v. Kaushalya Sawhney, (1980) 1 SCC 63] , Hon'ble Krishna Iyer, J. aptly summed up the essence of compromise in the following words: (SCC p. 65, para 4)*

*‘4. ... The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship or reunion.’*

*30. The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything; except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice.*

**16.** Having carefully considered the peculiar facts and circumstances of the present case, and also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, and in view of the continuance of the criminal

proceedings, after a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of court and an exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties.

**17.** Accordingly, appeal filed by the applicant is **allowed and disposed off**. The proceeding of case No. RCT/9911636/ 2017 pending before the JMFC, Bhopal is hereby quashed in regard of **applicant- Prasad Kori only**.

Certified copy as per rules.

**(RAJENDRA KUMAR (VERMA))  
JUDGE**

**MISHRA**