IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20271 of 2013

Arising Out of PS.Case No. -1897 Year- 2012 Thana -PATNA COMPLAINT CASE District- PATNA

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1. Magma Fincorp Limited, Through Authorized Signatory & Legal Executive Namely Mr. Anchalesh Kumar Roy S/o Sri Tej Bahadur Roy, 101-102, 1st Floor, Rajendra Ram Plaza, Exhibition Road, Patna- 800001
2. Abhishek Kumar son of Sri Pramod Narayan Singh At Present Posted As Senior Executive At Magma Fincorp Limited, Rajendra Ram Plaza, Exhibition Road, Patna- 800001.
3. Binod Kumar Singh son of Sri Panchanan Singh At Present Posted As Senior Executive At Magma Fincorp Limited Rajendra Ram Plaza, Exhibition Road, Patna- 800001
4. Sonu Kumar Singh son of Sri Chandrakant Narayan Singh At Present Posted As Executive At Magma Fincorp Limited Rajendra Ram Plaza, Exhibition Road, Patna- 800001

.... Petitioner/s

Versus

1. The State Of Bihar
2. Rajeev Prasad S/o Sidheshwar Prasad R/o East Ram Krishna Nagar, Ram Krishna Nagar, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Sinha
Mr. Nagdeo Choubey

For the Opposite Party/s : Mr. Raj Kumar Rajesh
Mr. Damodar Prasad Tiwary, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

CAV JUDGMENT

Date: 19 -12-2016

Four petitioners , have invoked inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure , 1973 with a prayer to quash an order dated 7.12.2012 passed by Sri Ashutosh Khaitan, learned Judicial Magistrate, Patna (hereinafter referred to as the “Magistrate”) in Complaint Case No. 1897 of 2012. By the said order the learned Magistrate after conducting enquiry has taken cognizance of offences against all the accused persons i.e. the petitioners , for offences under Sections 379, 385 and 34 of the Indian Penal Code.

As per complaint petition short fact of the case is that the complainant in the month of April , 2008 took a loan of Rs. 2,00000/- from the petitioner no. 1 i.e. Magma Fincorp Limited for purchasing a Maruti Alto Car (hereinafter referred to as the “vehicle in question”) on 60 equal monthly installments of Rs. 4,600/- each. At the time of obtaining loan the complainant had also given thirteen blank Cheques to the accused persons on an assurance that after clearance of the loan amount the said Cheques will be returned. As per complaint petition the complainant regularly paid installment for about 1 ½ years and thereafter, for few months, due to the reason that his son who had heart problem from birth was being treated and he was engaged in rendering proper treatment to his son, the complainant could not pay the installments. Thereafter, the accused persons arrived at the house of the complainant and abused him and threatened to take back the vehicle in question. On 25th October, 2010 the accused persons forcibly tried to snatch the vehicle regarding which the complainant filed an informatory petition no. 3385 of 2010. Thereafter, some talk had taken place in between the accused and the complainant and they arrived to an agreement that the complainant will start making payment of the current installment and pending amount shall be cleared subsequently. On 3.3.2012 the complainant deposited Rs. 23,000/- i.e. five installments and thereafter the accused persons allowed the complainant to use the vehicle. The complainant further disclosed that on 30.6.2012 he telephonically asked the accused no. 4 , who is petitioner no. 4 to collect the installment amount since it was the last date. However, the complainant was asked to clear the said amount after two days. As per complaint petition on 1.7.2012 while the complainant in connection with his business work had gone to Sitamarhi through the vehicle in question in which machine’s and spare parts for an amount of about Rs. 1,00000/- was loaded, near Sitamarhi , 8-10 persons (henchman) surrounded his vehicle and there was scuffle with the complainant and forcibly they took the key of the vehicle. On being asked, they told that they had already prepared seizure memo and it was done as per direction of the Branch Manager and accused persons were staff of the Magma Fincorp Limited. The complainant was directed by those persons to pay the installments of loan up to the year April, 2013 at Patna and thereafter vehicle will be provided to the complainant. The complainant thereafter tried to lodge a complaint with the Police Station but it was not entertained. On 2.7.2012 the complainant came to the Patna Office of the accused persons where he was asked to pay Rs. 65,000/- more after clearing the remaining installments amount and also the expenses which was borne out of touching/pulling of the vehicle in question. He was also advised to consult the collection staff. On 3.7.2012 when the complainant telephonically had a discussion with the accused nos. 2, 3 and 4 ; the complainant was asked to come near Changar at Bye - Pass. The complainant thereafter alleged that on the same date at about 7.00 P.M. while he visited the place along with his brother as directed by the accused nos. 2, 3 and 4 i.e. petitioner nos. 2, 3 and 4 they immediately started abusing the complainant and they assaulted the complainant. The complainant alleged that the accused persons forcibly took Rs. 10,000/- from his pocket and snatched his golden chain. Besides threatening, the accused persons also demanded Rs. 50,000/- as extortion only then the vehicle was required to be given to the complainant. The complaint petition was filed in the court of learned Chief Judicial Magistrate, Patna who exercising power under Section 192(1) of the Cr.P.C. transferred the record to the court of Sri Ashutosh Khaitan, learned Judicial Magistrate 1st Class, Patna for enquiry and disposal, and thereafter firstly the statement of the complainant was recorded on S.A. and thereafter in support of the complaint petition the complainant during enquiry produced four witnesses. Finally, the learned Magistrate vide its order dated

7.12.2012 after taking cognizance of offences under Sections 379, 385/ 34 of the Indian Penal Code directed for summoning the accused persons who are petitioners before this Court.

Aggrieved with the order of cognizance petitioners approached this Court by filing the present petition. In this case on 3.3.2016 for the first time when the case was taken up notice was directed to be issued to the complainant / opposite party no. 2 and in the meanwhile, an order was passed to stay further proceeding in Complaint Case No. 1897 of 2012 pending in the court of learned Judicial Magistrate 1st Class ,Patna. On 2.5.2016 after hearing learned counsel for the parties the petition was admitted for hearing. Lower Court Record was summoned and interim order of stay dated 3.3.2016 was made absolute. After the Lower Court Record was received the matter was heard at length on 31.8.2016 , and finally, on 1.9.2016 after hearing all the parties judgment was reserved.

Sri Amaresh Kumar Sinha , learned counsel assisted by Sri Nagdeo Choubey, learned counsel for the petitioners has emphatically argued that in a case of civil nature colour of criminal offence was given and as such order of cognizance is liable to be set aside. It has been argued that it was the admitted case of the complainant that the vehicle in question was purchased on loan and the vehicle was under hypothecation of the petitioner no. 1. Initially, financing was done by the financing company namely M/s Magma Sarachi Limited . The said company was subsequently known as Magma Fincorp Limited. As per Hire -Purchase Agreement between the financing company and the complainant which was executed on 26.5.2008 , the complainant was required to make payment of monthly installments to the financing company on regular basis. Learned counsel for the petitioners has argued that after taking loan the complainant became irregular in payment of monthly installments and later -on the complainant became “chronic defaulter”. Despite repeated reminders, requests and personal visits by the field staffs of the company, a huge amount remained outstanding to the tune of Rs. 78,165/- which included outstanding E.M.I. of Rs. 27,858 /- . On this installment late fine charges of Rs. 50,580/- was also charged. Learned counsel for the petitioners has further argued that as per the terms and conditions of the Hire -Purchase Agreement the financer was having every right to re-possess the vehicle if the hirer defaults in payment of monthly installments. Sri Amaresh Kumar Sinha, learned counsel for the petitioners has also highlighted Clause (14) Sub- Clause ii(b) of the Hire- Purchase Agreement. By way of referring to the statement made in paragraph no. 6 of the present petition, learned counsel for the petitioners submits that in view of the Hire -Purchase Agreement since the complainant had defaulted in payment of the installments, at least six remaining installments, the financer i.e. the petitioner no. 1 was legally entitled to take back the possession of the vehicle and in the present case rightly possession of the vehicle in question was taken back by the financer/ petitioners. Learned counsel for the petitioners in support of his submission has placed heavy reliance on **AIR 2001 SUPREME COURT 3721 CHARANJIT SINGH CHADHA AND OTHERS *versus* SUDHIR MEHRA; (2013) 1 SCC 400 ANUP SARMAH *Versus* BHOLA NATH SHARMA** as well as (**1979**) **4 SCC 396 SARDAR TRILOK SINGH *versus* SATYA DEO TRIPATHI.** Taking clue from the aforesaid judgments, learned counsel for the petitioners has argued that the impugned order of cognizance as well as entire criminal proceeding in Complaint Case No. 1897 of 2012 is liable to be set aside.

Sri Damodar Prasad Tiwary , learned Additional Public Prosecutor as well as Sri Raj Kumar Rajesh , learned counsel for the complainant /opposite party no. 2 have vehemently opposed the prayer of the petitioners. Sri Raj Kumar Rajesh , learned counsel for the complainant /opposite party no. 2 submits that it is true that the vehicle in question was purchased after obtaining loan from the petitioner no. 1 , who was the financer under the Hire -Purchase Agreement but fact remains that possession of the vehicle was not taken back by the petitioners in accordance with the procedures established by law. He has argued that in the present case the complainant was to clear total sixty installments. In the present case in terms of agreement the complainant was required to pay Rs. 4,600/- in sixty installments. He submits that out of sixty installments the complainant had already cleared about fifty four installments. He submits that this fact has already been admitted by the petitioners at least before this court in the statement made in paragraph no. 5 of the present petition. Out of loan amount of Rs. 2,00000/- which was to be paid in sixty equal installments the complainant had paid fifty four installments and only for remaining meager amount the petitioners had taken the law into their own hands. By using force , abusing and using undue power the vehicle in question was snatched from the complainant showing commission of offences for which notice was taken by the learned Magistrate that too after conducting thorough enquiry. According to learned counsel for the complainant the allegation against the petitioners are in two parts. First part of the allegation relates to abusing, threatening and taking possession of the vehicle in question through using force and second part of the allegation is that the complainant was asked by the accused persons to come on highway for discussion and near highway the second occurrence had taken place in which the complainant was assaulted, from his pocket forcibly Rs. 10,000/- amount was snatched and even golden chain was forcibly taken away by the accused persons. According to learned counsel for the complainant it is not an isolated case of re-possession of the vehicle in question but in the present case besides re- possession of the vehicle in question in subsequent event other offences were committed by the accused persons and only thereafter complaint was filed. Learned counsel for the complainant /opposite party no. 2 has also placed reliance on **(2007) 2 SCC 711 ICICI BANK LTD.** ***Versus*** **PRAKASH KAUR AND OTHERS** and **(2012) 1 SCC 1 CITICORP MARUTI FINANCE LIMITED** ***Versus*** **S. VIJAYALAXMI.**

Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is true that the complainant had purchased the vehicle in question as per Hire - Purchase Agreement and without clearing entire installment amount the complainant was not having title over the vehicle in question and it was the financer who was to be treated as the real title owner but in the complaint petition certainly allegation is in two parts. In the complaint petition there is allegation in two parts. Even during enquiry the witnesses have mostly emphasized regarding the offences relating to the second part. It was alleged that near the highway the complainant was abused , assaulted and from the complainant the accused persons snatched currency notes as well as golden chain. Whether such allegation is really true or not, same may not be examined by this Court that too , while exercising power under Section 482 of the Code of Criminal Procedure, 1973 . Since there was allegation of committing offences under Sections 379, 385 and 34 of the Indian Penal Code at least in view of the second part of the allegation which has consistently been alleged by the witnesses examined during enquiry conducted by the learned Magistrate, the order of cognizance may not be interfered with at this stage, that too while exercising power under Section 482 of the Code of Criminal Procedure , 1973. Time without number it has been held that power under Section 482 of the Code of Criminal Procedure, 1973 in respect of interference with order of cognizance, interference with the criminal proceeding or quashing of F.I.R. is to be exercised in rarest of rare cases. I do not find any ground to keep the present matter in the category of rarest of rare cases and as such, I am not inclined to interfere with the impugned order, since there is no apparent error , either technical or jurisdictional error, warranting interference with the same. Accordingly, the present petition is dismissed.

In view of dismissal of this petition, interim order of stay dated 3.3.2016 stands vacated.

Office is directed to remit back the Lower Court Record forthwith.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	01-09-2016
Uploading Date	19-12-2016
Transmission Date	19-12-2016