

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14818 of 2013

Arising Out of PS.Case No. -915 Year- 2010 Thana -PATNA COMPLAINT CASE District-
 PATNA

=====

1. Naresh Singh S/O Mathura Singh Proprietor Finance Aman Motors,
 N.G. Road, Ward No. 6 House No. 102, Garhpar, Nawadah.
 2. Chunnu Singh S/O Jay Nandan Singh Resident Of Village- Vadaus, P.S-
 Akbarpur, Relative And Partenr Of Aman Motors, Garhpar, Nawada, Bihar-
 805110 Petitioner/s

Versus

1. The State Of Bihar
 2. Vijay Kumar Patel S/O Sri Shivrindan Paswan Resident Of Village &
 P.O- Arari Benipur, P.S- Daniyawan, Distt- Patna. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Satyendra Narayan, Advocate

For the Opposite Party/s : Mr. Nirmala Kumari (APP)

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
 CAV ORDER

10 16-11-2016 Both the petitioners, who have been directed vide
 order dated 30.12.2010 passed by Sri Amit Ranjan Upadhyay,
 Judicial Magistrate, 1st Class, Patnacity to face trial for an offence
 punishable under Sections 323,504,341,379/34 in relation to a
 Complaint Case No. 915/2010, have preferred instant petition with
 a prayer to quash the same.

2. In spite of having been noticed, the O.P. No.
 2/Complainant, Vijay Kumar Patel failed to appear whereupon the
 matter has been heard in absence thereof.

3. As is evident from different annexures, initially
 Daniyava PS Case No. 11/2009 was registered on the basis of the
 written report submitted by O.P. No.2 on 23.03.2009 whereupon
 investigation commenced and concluded and subsequently thereof,



the final report was submitted as mistake of fact which was accepted by the learned lower court. Protest petition was filed during midst thereof, whereupon the same was treated as complaint petition numbered as Complaint Case No. 915/2010 whereunder the O.P. No.2/complainant was examined on S/A, witnesses were also examined during course of enquiry proceeded in terms of Section 202 of the Cr.P.C and by the order impugned, the petitioners have been summoned to face the trial against which the instant petition has been preferred challenging the same.

4. After going through Annexure-1, protest-cum-complaint petition, it is evident that inter se relationship amongst the parties are admitted one. Petitioner no.1 happens to be the financer with whom, O.P. No.2 entered into Hire Purchase Agreement (Annexure-5) through which a tractor with trailer were purchased and it is further submitted that on the date of taking possession over vehicle by the petitioners, instalment was due. The possession of the vehicle was taken on 13.02.2009, it is further apparent that when the O.P. No.2/complainant had gone to the place of petitioners, a demand of Rs. 2, 29,838/- was shown which according to the complainant was wrong, exaggerated one as according to complainant, due amount appertains to Rs. 42,886/- and the same was transmitted vide bank draft no. 293592



dated 07.03.2009. It has not been averred at the end of the O.P. No.2/complainant that the aforesaid draft was received by the petitioners and in likewise manner, whether he had gone to the place of petitioners to take back possession over the tractor and trailer which was refused. So, from the narration of the complaint, it is evident that there happens to be an admission at the end of O.P. No.2/complainant that on the date of taking possession of the tractor and trailer, instalment was due.

5. There happens to be dispute amongst the parties whenever the financier took possession over the vehicle having been financed under Hire Purchase Agreement and on account of stoppage of payment of instalment for which, instead of civil suit to be launched for settling the amount, short-cut methods are being adopted by way of filing criminal cases in order to compel the financier to give up their due amount.

6. Times without number the aforesaid issue has come up before the Hon'ble Apex Court and in ***K.A. Mathai @ Babu v. Kora Bibikutty*** reported in (1996) 7 SCC 212, it has been held as follows:-

3. in case of default to make payment of installments financier had a right to resume possession even if the hire purchase agreement does not contain a clause of resumption of possession for the reason that such a condition is to read in the agreement, In such an eventuality, it

cannot be held that the financier had committed an offence of theft and that too, with the requisite mens rea and requisite dishonest intention. The assertions of rights and obligations accruing to the parties under the hire purchase agreement wipes out any dishonest pretence in that regard from which it cannot be inferred that financier had resumed the possession of the vehicle with a guilty intention.

7. In yet another judgment of the Hon'ble Supreme Court in [Charanjit Singh Chadha & Ors. v. Sudhir Mehra](#), reported in (2001) 7 SCC 417, it has been observed that recovery of possession of the vehicle by financier-owner as per the terms of the hire purchase agreement, does not amount to a criminal offence. Such an agreement is an executory contract of sale conferring no right in rem on the hirer until the transfer of the property to him has been fulfilled and in case the default is committed by the hirer and possession of the vehicle is resumed by the financier, it does not constitute any offence for the reason that such a case / dispute is required to be resolved on the basis of terms incorporated in the agreement.

8. The decisions rendered by the Hon'ble Supreme Court in the judgments referred to above, have been reiterated by the Apex Court in the recent judgment in Anup Sarmah vs. Bhola Nath Sharma & Others, reported in CDJ 2012 SC 792, wherein it has been held thus:

"8. In view of the above, the law can be summarised that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier / financial institution and ownership remains with the latter. Thus, in case vehicle is seized by the financier, no criminal action can be taken against him as he is repossessing the goods owned by him."

9. Because of the fact that status of complainant

relating to the vehicle in question having purchased under Hire

Purchase Agreement till saturation of the loan amount remains merely a trustee or bailee on behalf of financier and further in the aforesaid background the financier happens to be the real owner of the vehicle till saturation of the loan amount, no prosecution would lie on that score.

10. That being so, the order impugned would not survive.

11. Consequent thereupon, the order impugned is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

Patna High Court
November 16th 2016
Perwez/AFR

U		T	
---	--	---	--