IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36556 of 2014

Arising Out of PS.Case No. -64 Year- 2013 Thana -LALIT NARAYAN UNIVERSITY District- DARBHANGA

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1. Deepak Kumar S/o Deokharan Singh, resident of village- Masoomganj, P.O. & P.S.- Bhagwan Budur, Chapra, District- Saran
2. Neeraj Kumar Singh @ Neeraj Singh S/o Umesh Kumar Singh, resident of village- Ashyani Colony, District- Lucknow
3. Raghuwendra Kumar S/o Tej Narayan Singh, R/o Mohalla- West Lohanipur, P.O. & P.S.- Kadamkuan, District- Patna
4. Irshad Alam, S/o Md. Haroon Rashid, R/o C/o- Hindustan Madeco, Mohalla- Sabzibagh, District- Darbhagan PIN- 800001

.... Petitioner/s

Versus

1. The State of Bihar
2. Chandan Kumar Das, S/o Shatrughan Das, resident of Mohalla- Alinagar, P.S.- L.N.M.U., District- Darbhanga

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shivendra Kumar Roy, Adv.
For the O.P. No. 2	:	Mr. V. Ranjan, Adv.
For the State	:	Mr. Sanjay Kumar Singh (App)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date: 01-11-2017

Heard learned counsel for the petitioner, learned counsel for the opposite party no. 2 and learned counsel for the State.

2. The present petition has been filed under Section 482 of the Cr.P.C for quashing the order dated 08.07.2013, passed by the learned C.J.M., Darbhanga in connection with L.N.M.U P.S. Case No. 64 of 2013, by which learned C.J.M. has taken cognizance under Sections 341, 342, 323, 384, 504 & 34 of the Indian Penal Code.

3. Petitioners are employees of Mahindra & Mahindra Financial Services Ltd., which is a recognized non-banking Financial company incorporated under the Indian Companies Act, 1956 having its registered office at Gateway Building, Apollo Bunder, Mumbai-400001 and involved in the business of providing credit facilities of different nature.

4. The informant-Opposite Party No. 2 had approached the Darbhanga Branch Office of Mahindra & Mahindra Financial Services Ltd. for availing loan facility of Rs. 2,25,000/- for purchase of Swaraj Tractor 724, and after considering the loan application of the informant-Opposite Party No. 2, the loan amount of Rs. 2,25,000/- was sanctioned and granted to the informant-Opposite Party No. 2 on the terms and conditions as mentioned in the loan agreement dated 18.03.2011 which was executed between the parties.

5. As per the aforesaid loan agreement dated 18.03.2011, the loan amount along with finance charges were repayable in 22 monthly installments commencing from 18.03.2011 and ending on 18.12.2012. The aforesaid vehicle was financed by the employer company of petitioners was hypothecated in its favour as security for the repayment of the loan amount. Clause 12 of the loan agreement provides that in the

event of default, the informant-Opposite Party No. 2 is obliged to surrender vehicle and if he fails to surrender, the employer company shall be entitled to take possession of the vehicle to sell the vehicle in order to recover the amount standing due towards the loan amount of the informant-Opposite Party No. 2. The informant-Opposite Party No. 2 initially deposited some installments but soon the informant-Opposite Party No. 2 started neglecting repayment of the scheduled installments and therefore reminder letters and demand notice was issued to the informant-Opposite Party No. 2 for regularizing the loan account. The informant-Opposite Party No. 2 neither made any efforts to make repayment of the outstanding loan amount nor had surrendered the hypothecated vehicle as per clause-12 of the loan agreement.

6. After repossession of the vehicle in terms of the loan agreement a notice was sent to informant-Opposite Party No. 2 asking him to visit the Branch Office and make payment of the outstanding loan amount so as to claim possession of the hypothecated vehicle, but instead of making payment of due towards the loan amount the informant-Opposite Party No. 2 had filed a false case to implicate the petitioners in L.N.M.U. P.S. Case No. 64 of 2013 on frivolous and baseless allegation of theft of the said vehicle. On written complaint filed by informant-

Opposite Party No. 2 FIR bearing L.N.M.U. P.S. Case No. 64 of 2013 dated 02.04.2013 was registered under Sections 341, 342, 323, 384 and 504/34 of the Indian Penal Code against the petitioners and learned C.J.M. Darbhanga by its order dated 08.07.2013 took cognizance under Sections 341, 342, 323, 384 and 504/34 of the Indian Penal Code, against the petitioners.

7. Learned counsel for the petitioners has submitted that no criminal offence is made out against the petitioners and the dispute, if any, is of civil nature and petitioners are employees of Mahindra & Mahindra Financial Services Limited and has been wrongly implicated in this case for conducting their official duties as employees of the said company. The hypothecated vehicle was repossessed by the company in terms of agreement executed between the parties and informant-Opposite Party No. 2 has been given notice to take possession of the vehicle after payment of outstanding dues against him, but instead of making payment of the dues he has filed false and frivolous case on the basis of manufactured and concocted allegations.

8. The counsel appearing for the petitioner relies upon Judgment of Apex Court reported in (***2013) 1 SCC 400 (Anup Sarmah Vs. Bhola Nath Sharma and ors****)*. Paragraph nos. 4, 5 and 6 of said judgment are quoted below:-

4. In *Sardar Trilok Singh v. Satya Deo Tripathi* this Court examined a similar case wherein the truck had been taken in possession by the financier in terms of hire-purchase agreement, as there was a default in making the payment of installments. A criminal case had been lodged against the financier under sections 395, 468, 465, 471, 120-b/34 IPC. The Court refused to exercise its power under Section 482 CrPC and did not quash the criminal proceedings on the ground that the financier had committed an offence. However, reversing the said judgment, this Court held that proceedings initiated were clearly an abuse of process of the court. The dispute involved was purely of civil nature, even if the allegations made by the complainant were substantially correct. Under the hire-purchase agreement, the financier had made the payment of huge money and he was in fact the owner of the vehicle. The terms and conditions incorporated in the agreement gave rise in case of dispute only to civil rights and in such a case, the civil court must decide as to what was the meaning of those terms and conditions.

5. In K.A. Mathai V. Kora Bibbikutty this Court had taken a similar view holding that in case of default to make payment of instalments the *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 be 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 assertion 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 the financier had resumed the possession of the vehicle with a guilty intention.

6. In Charanjit Singh Chadha V Sudhir Mehra this Court held that recovery of possession of the vehicle by the financier owner as per 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. The Court elaborately dealt with the nature of the hire-purchase agreement observing that in a case of mere contract of hiring, it is a contract of bailment which does not create a title in the bailee. However, there may be variations in the terms and conditions of the agreement as created between the parties and the rights of the parties have to be determined on the basis of the said agreement. The Court further held that in such a contract, element of bailment and element of sale are involved in the sense that it contemplates an eventual sale.

"8. … The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then had been hired." (*Charanjit Singh Chadha case,* ***SCC p. 422****, para 8*)

While deciding the said case, this Court placed reliance upon its earlier judgments in *Damodar Valley Corpn. v. State of Bihar*, *Instalment supply (P) Ltd. V. Union of India (SCC p. 744, para 8), K.L. Johar & Co. CTO, (AIR p. 1090, para 17) and Sundaram Finance Ltd. V. State of Kerala*.

9. Considering the facts and circumstances of the case, continuance of present proceeding will amount to an abuse of process of the Court and as such to secure the ends of justice, order dated 08.07.2013 passed by the learned Chief Judicial Magistrate, Darbhanga in connection with L.N.M.U. P.S. Case No. 64 of 2013 by which cognizance has been taken under Sections 341, 342, 323, 384, 504/34 of the Indian Penal Code as well as the entire proceeding arising therefrom is hereby quashed.

10. The application stands allowed.

(S. Kumar, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	