

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28904 of 2011

Arising Out of PS. Case No. 2282 Year- 2010 Complaint District- SIWAN

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Nikhil Priyadarshi, son of Sri Krishna Bihari Prasad Sinha of Priyadarshi Motor Private Limited, Saguna More, Bailey Road, P.S. Danapur, Patna

.... Petitioner

Versus

1. The State of Bihar
2. Digvijay Nath Singh son of Late Vishwanath Singh, Resident of village Karhi Khurd, P.S. Basantpur, District Siwan

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Dhanendra Chaubey, Advocate
For the State : Mr. Jitendra Kumar Singh, APP
For Opposite Party No.1: Mr. Rajiv Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 18-04-2017

Heard learned counsel for the petitioner, learned APP for the State as well as learned counsel for the opposite party no. 2.

2. This petition has been filed for quashing the order dated 30.09.2010 passed by the Chief Judicial Magistrate, Siwan in Complaint Case No. 2282 (C) of 2010 by which the Chief Judicial Magistrate, Siwan has taken cognizance of the offence under Sections 323, 406, 409, 504 and 506/34 of the Indian Penal Code.

3. The short facts of the case, according to the complainant, are that he booked a Scorpio VLX vehicle in the name of his wife Maya Singh and for this purpose, deposited Rs. 50,000/- with



the petitioner, receipt of which was acknowledged on 26.06.2010. The balance amount of Rs. 9,52,207- was also paid by the complainant by taking loan in the name of his wife from Allahabad Bank. Despite such payments, however, the petitioner kept deferring delivery of the vehicle on one pretext or the other. The petitioner again requested the complainant for delivery of the said vehicle on 24.08.2010. Once again delivery was not given to the complainant leading him to file the present complaint. He was also not refunded the money paid, nor the sum of Rs. 25,000/- by way of the bank interest already incurred.

4. Learned counsel for the petitioner submits that continuance of criminal prosecution against the petitioner amounts to an abuse of process of the court and is liable to be quashed. It is stated that delay in delivery of the vehicle was bona fide. On 24.08.2010 the vehicle was not accepted by the complainant, stating that the vehicle offered was not of the colour of his choice. In any event, the petitioner duly refunded the amount of Rs.10,02,207/- to the complainant and this was credited to the account of his wife in the State Bank of India on 08.09.2010. This fact has throughout been suppressed by the complainant. Subsequently, the petitioner, while seeking anticipatory bail, took the stand that total repayment had been made. Learned counsel for the complainant submitted that an amount of Rs. 25,000/- had been spent in processing of bank loan to which he was also entitled. Even in the complaint the Opposite Party No. 2 has essentially



raised a claim of refund of the said amount with interest.

5. Learned counsel for the complainant-opposite party no. 2 submits that the petitioner had intentionally avoided delivery of the vehicle even after being paid the full price. It is, therefore, submitted that the petitioner has committed criminal breach of trust and the order taking cognizance does not require any interference.

6. Having heard learned counsel for the parties and on careful consideration of the materials on record, this Court finds merit in the petition. It is clear from the nature of transaction entered into between the parties that it was a case of purely civil nature involving delivery of vehicle by way of purchase and sale. Delay in delivery of the said vehicle automatically could not result in criminal liability. The entire cost of the vehicle was duly refunded to the complainant which shows that the petitioner had not acted with any criminal intent. On the other hand, it was the complainant who had suppressed the fact of having received the entire repayment and did not inform the learned court below at any stage. This Court, therefore, is of the view that continuance of criminal prosecution against the petitioner, in the facts and circumstances of the case, would amount to abuse of process of the court.

7. Accordingly, the impugned order taking cognizance against the petitioner dated 30.09.2010 passed by the Chief Judicial Magistrate, Siwan in Complaint Case No. 2282 (C) of 2010 is hereby



quashed. The petition stands allowed.

8. Registry is directed to send back the lower court records without any delay.

(Vikash Jain, J)

B.T/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.04.2017
Transmission Date	24.04.2017

