

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.48879 of 2013**

Arising Out of PS.Case No. -3676 Year- 2010 Thana -VAISALI COMPLAINT CASE District-  
VAISHALI(HAJIPUR)

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1. Rajesh Kumar @ Rajesh Kumar Mishra S/O Shri R.C. Mishra R/O Flat No.306, Purnima Apartment, Salimpur Ahra, Lane No. 1 P.S. Kadam Kuan, Dist.- Patna, The Then Branch Manager, M/S Shriram Transport Fiance Co. Ltd., Luv Kush Tower, Exhibition Road, Dist.- Patna, Presently Posted As The Regional Head Indus Ind Finance, Bihar And Jharkhan 6th Floor Luv Kush Tower, Patna

2. Amarjit Kumar @ Mukesh Singh S/O Late Arvind Kumar R/O Shrivnagar, P.O.+P.S. Beur, Dist.- Patna. Currently Field Officer Shriram Transport Finance Company Limited Luv Kush Tower, Exhibition Road, District- Patna

.... .... Petitioner/s

Versus

1. The State Of Bihar  
2. Samprabhunath Jha S/O Late Derweshwar Jha R/O Village- Rahimapur, P.S.- Bidupur, District- Vaishali

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Patanjali Rishi

For the Opposite Party/s : Mr. Mayanand Jha(App)

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**  
**ORAL ORDER**

4      18-01-2017      Heard the parties.

The petitioners have filed the present application under Section 482 of the Cr. P.C. for quashing of the order, dated 02.07.2012, passed in Complaint Case No.3676 of 2010 by Sri Ravi Kumar, Judicial Magistrate, First Class, Hajipur (Vaishali), whereby and whereunder he has taken cognizance against the petitioners under Sections 323, 406 and 34 of the Indian Penal Code.

Prosecution case in brief is that the complainant one



Samprabhunath Jha had purchased a carrier truck by taking loan from the M/s Shriram Transport Finance Company Ltd. (hereinafter referred to as the Company) where the petitioner is the Branch Manager. The said loan was to be repaid in equal monthly installments of Rs. 13, 634/- (Rupees Thirteen Thousand Six Hundred and Thirty Four only). Allegedly the complainant kept on repaying the loan amount at certain intervals. The further case of the complainant is that the petitioners along with the other accused persons named in complaint petition forcibly took away the original papers of the vehicle of the complainant on 24.10.2009 and thereafter the petitioner did not give a single farthing towards repayment of the loan. It is also the case of the complainant that on 09.01.2010 about 13 personnel of the company took away the vehicle of the complainant by use of force and also after assaulting the complainant and his son with fists and butt of pistol.

On the basis of the aforesaid petition, Complaint Case No. 3676 of 2010 was registered and the same was sent to the file of Sri Ravi Kumar, Judicial Magistrate-1<sup>st</sup> Class, Hajipur (Vaishali), who after enquiry under Section 202 of the Cr.P.C. found *prima facie*, the case against the petitioners under Section 323, 406 and 34 of the Indian Penal Code and accordingly ordered for issuance of processes against the petitioners vide order, dated



02.07.2012 passed in Complaint Case No. 3676 of 2010, which is under challenge in the present application.

It has been submitted on behalf of the petitioner that from perusal of complaint petition itself it will appear that complainant is the lender, who had taken loan from the petitioner's firm or company for purchase of truck and admittedly it was under hire purchase agreement. The petitioners had taken possession over the vehicle as he is they are the owner of vehicle till entire payment is made as per agreement. It has also been submitted that in the present case, the complainant has not paid the installments of loan, as such vehicle was taken by the petitioners, however, in order to pressurize the petitioners and their company, allegation of assault and other allegations have been made, which is only ornamental in nature. It has further been submitted that the case of the petitioner is squarely covered by the decision of Hon'ble Apex Court in **Anup Sarmah Vs. Bhola Nath Sharma and Others** reported in **2013 (1)SCC 400** and, therefore, the order passed by Sri Ravi Kumar, learned Judicial Magistrate -1<sup>st</sup> Class, Hajipur (Vaishali) in Complaint Case No. 3676 of 2010, has no merit and is fit to be quashed.

Learned counsel appearing on behalf of opposite party no. 2 has submitted that the learned Magistrate has taken



cognizance on the basis of the materials available on record and there is allegation against the petitioners of forcibly snatching the original papers of the truck as well as forcibly lifting the truck and assaulting the complainant that shows offence under Sections 323 and 406 of I.P.C, which cannot be brushed aside, on the ground of agreement, hence there is no merit in this application.

Having heard both sides, I find that in the present case, the allegation against the petitioners is that they have forcibly taken the original papers of the truck and thereafter also forcibly lifted the truck purchased by the complainant on the loan provided by the petitioners' company and the allegation is also there that the accused persons assaulted the complainant by fists, slaps and with the butt of the pistol. Admittedly the complainant had purchased the vehicle on loan from the company and it was under hire and purchase and under the hyphetication of the company and under hire and purchase agreement, ownership of the vehicle remains with the company, in which the petitioner no. 1, is the Branch Manager and petitioner no. 2 is the field officer and, therefore no offence is made out under Section 406 of the Indian Penal Code and so far as allegation under Section 323 is concerned, it appears to be ornamental. The Hon'ble Apex Court in the case of **Anup Sarmah Vs. Bhola Nath Sharma and Others** reported in **2013**



(1)SCC 400, while dealing with a case of similar nature, held as under:-

*“ In view of the above, the law can be summarized 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 the vehicle is seized by the financier, no criminal action can be taken against him as he is repossessing the goods owned by him”.*

On perusal of the above decision, it further appears that Hon’ble Apex Court, while dealing with the case of **Anup Sarmah Vs. Bhola Nath Sharma and Others** reported in **2013 (1)SCC 400** has also taken note of decisions reported in **(1979) 4 SCC 396 Sardar Trilok Singh And Ors. vs Satya Deo Tripathi**, and held as under:-

*“In Trilok Singh and Ors. v. Satya Deo Tripathi MANU/SC/0231/1979 : AIR 1979 SC 850, this Court examined the 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, 12B/34, Indian Penal Code. The Court refused to exercise its power under Section 482, Code of*



*Criminal Procedure 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 what was the meaning of those terms and conditions.”*

Having regard to the facts and circumstances of the case and in view of the Judgment of Hon’ble Supreme Court referred above, order dated 02.07.2012 passed by Sri Ravi Kumar, Judicial Magistrate -1<sup>st</sup> Class, Hajipur (Vaishali) in Complaint Case No. 3676 of 2010 is not sustainable in the eye of law and allowing the proceeding to continue, will only be an abuse of the Court, hence, the same is hereby quashed.

Present application is, accordingly, allowed.

**(Vinod Kumar Sinha, J)**

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