

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50782 of 2013

Arising Out of COMPLAINT CASE No. -1006 Year- 2012 District- AURANGABAD

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Akhouri Gopal (Managing Director) S/O Late Akhouri Bansidhar, resident of M/S Ramnandi Automobile Pvt. Ltd. Gaya 'Bansi Sadar' Chandchoura, P.S. Civil Line, District Gaya.

.... Petitioner

Versus

1. The State of Bihar.
2. Shyam Narayan Singh S/O Kapildeo Singh Resident of Mohalla Shiv Asthan Thakurbari Road, P.S. Aurangabad, District Aurangabad.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Satyaveer, Advocate
Mr. Sanjay Kumar Jha, Advocate
Mr. Rana Pratap Singh, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 23-06-2017

Heard learned counsel for the petitioner.

2. Despite valid service of notice, neither the complainant opposite party no. 2 has appeared in person nor he is being represented through any counsel.

3. In the present case filed under Section 482 of the Code of Criminal Procedure, the petitioner has challenged the summoning order dated 22.02.2013 passed by the learned Judicial Magistrate, 1st Class, Aurangabad in Complaint Case No. 1006 of



2012.

4. The prosecution case, according to the complainant, is that he purchased one Tata Ace Magic from the Ramnandi Automobiles Private Limited, Commercial Vehicles Dealer of Tata Motors. The complainant has stated that the vehicle was financed by Tata Motors Finance Limited. In the complaint, the petitioner is alleged to be the Proprietor of Ramnandi Automobiles Private Limited. It has been alleged that within the warranty period, the battery of the vehicle went out of order and when the petitioner was approached, he refused to attend the complaint of the complainant on the pretext that the period of warranty had expired. It is also alleged that when the complainant protested against the illegal act of the petitioner, he was manhandled by the staff of the petitioner and they also pushed him out of the showroom of the petitioner. On the basis of such allegations, the complaint has been made against the petitioner, proprietor of service centre where service of the vehicle was done and the proprietor of one Janaki distributors who also refused to attend the complaint of the complainant in respect of battery of the vehicle.

5. The complainant was examined on solemn affirmation and in course of inquiry, some witnesses were also



examined whereafter the learned Magistrate summoned the petitioner and others for the offence punishable under Sections 323, 420, 468 and 504 of the Indian Penal Code.

6. Learned counsel for the petitioner submitted that summoning order passed by the learned Magistrate is an abuse of the process of the court. He submitted that allegations made in the complaint are malicious in nature. The main grievance of the complainant is that during warranty period, the battery of the vehicle went out of order and the petitioner failed to redress his grievance. He submitted that for redressal of such grievance the proper remedy is before the consumer court and launching a criminal case would be impermissible. He submitted that even otherwise, the allegation made in the complaint is bad. The petitioner is not the Proprietor of Ramnandi Automobiles Private Limited rather he is one of the Directors of the Company. He is an authorized dealer of the vehicles manufactured by Tata Motors Limited. He submitted that the petitioner had purchased the vehicle from the company and the company has not been made accused, hence, he cannot be vicariously liable for any act of commission or omission by the company.

7. I find substance in the argument of learned counsel for the petitioner. Launching of the criminal case in the



present case is patently an abuse of the process of the court. Learned counsel for the petitioner is also correct in his submission that there is no concept of vicarious liability under the Indian Penal Code. The complainant has himself admitted that he had purchased the vehicle from Ramnandi Automobiles Private Limited which is a company and the company has not been made accused. Even otherwise, the nature of the complaint would not attract the ingredients of the offences alleged. The allegation of manhandling by the staff of the company seems to be an afterthought and super addition.

8. In view of the discussions made above, the impugned order dated 22.02.2013 passed by the learned Judicial Magistrate, 1st Class, Aurangabad in Complaint Case No. 1006 of 2012 is quashed as also the entire proceedings of Complaint Case No. 1006 of 2012 are quashed.

9. The application stands allowed.

(Ashwani Kumar Singh, J.)

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