

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33508 of 2013

Arising Out of PS.Case No. -462 Year- 2008 Thana -PURNEA SADAR District- PURNIA

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1. Nishant Sinha S/O Surendra Kumar Sinha Assistant Manager, M/S L & T Finance Limited, Office At,3004, 3rd Floor, Grand Plaza, Fraser Road, Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Mr. Indrajit Ghosal 4/1, Jessore Road, Dakhinpara, Barasat, Kolkata-700 124

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dayanand Singh

For the Opposite Party/s : Mr. T.N.Thakur(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

6 10-01-2017 The petitioner has preferred this application under Section 482 of the Code of Criminal Procedure for setting aside/quashing order dated 01.08.2012 passed by the Chief Judicial Magistrate, Purnea in Sadar (Dagaura) P.S.Case No.462 of 2008, whereby the learned Chief Judicial Magistrate, Purnea has been pleased to dismiss the application filed by the petitioners for sale of the vehicle.

The prosecution case in short is that on Indrajit Ghoshal entered into agreement with the petitioner's Company i.e. L & T Finance Limited, of which the petitioner no.1 is Assistant Manager for a loan upon the vehicle bearing Registration No.WB



40 C 4894 Engine No.TFH416241, Chesis No.SFE600317 on Rs.11,70,000/- to be repaid in 59 monthly installments each commencing from 20.4.2007 and becoming payable on 20th day of every month, in which first installment was of Rs.11,560/- and 2nd to 59th installment of Rs.27,800/-. As per the loan cum hypothecation agreement No.OCVF/TLA/15617 dated 13.3.2007 in connection with AL-2516/H3T E-II as on 8.1.2010, a sum of Rs.14,14,817 has become due and payable by the borrower towards settlement of the contract against the said vehicle and loanee Indrajeet Ghoshal.

Further case of the petitioner as per this application is that as the loan amount was due as such an Arbitration Petition was filed before the Calcutta High Court and a Receiver was appointed in this case. It is also a case of the petitioner that Receiver came to know that the aforesaid vehicle bearing No.WE40C 4894 was seized by Sadar (Dagaura) Police Station on written complaint of the District Transport Officer, Purnea and Sadar (Dagaura) P.S.Case No.462 of 2008 was instituted for the offence under Sections 177, 180, 181, 190, 192, 192A, 194, 196 and 197 of the Motor Vehicle Act read with Sections 20, 22 and 23 of the Bihar Taxations Act, which is pending, as such the receiver has



reported the matter before Calcutta High Court with a copy to the petitioner.

It is also a case of the petitioner that the Calcutta High Court, vide order dated 13.05.2010 passed in Arbitration Petition No.53 of 2010 directed the petitioners to ascertain from the appropriate police authority as to whether the vehicle may be released upon payment of any fine or penalty, if however, the vehicle is required for the purpose of any criminal investigation, this order will not permit release of the vehicle to the receiver. If any application is necessary for the purpose of release of the vehicle before any forum, the receiver may make such application subject to the petitioners first indemnifying the receiver harmless against any consequence of such application.

It is also a case of the petitioners that on the basis of the aforesaid order, the receiver filed application for custody of the vehicle before the learned Chief Judicial Magistrate, Purnea, who passed order dated 21.08.2010 rejecting the application, against which the receiver preferred Criminal Revision no.476/2010 before the Sessions Court, Purnea and the Sessions Court, vide order dated 4.1.2011 allowed the revision application. It is also their case that in view of the order of the learned Sessions Judge,



the Hon'ble Calcutta High Court vide order dated 11.1.2011 was pleased to issue direction to the Sadar (Dagaura) Police Station, Purnea to release the vehicle to the receiver and in compliance of direction of the Hon'ble Calcutta High Court, the receiver took custody of the said vehicle.

Further, the case of the petitioners is that the vehicle in custody of the petitioners-company is lying idle and the loanee is not taking any step for taking the vehicle and not paying loan amount, therefore, the petitioners-company wanted to sell the same to recover the money. As such the petitioners have filed the application for sale of the said vehicle and the learned Chief Judicial Magistrate, Purnea, vide order dated 1.8.2012 has been pleased to dismiss the same as infructuous.

Against the aforesaid order dated 1.8.2012 passed by the learned Chief Judicial Magistrate, Purnea, the present quashing application has been filed.

It is submitted on behalf of the petitioners that the order refusing permission to sale the vehicle has been passed by the learned Chief Judicial Magistrate, Purnea, without appreciating the fact that by keeping the vehicle parked in the Police Station, it will cause damage to the vehicle as well as irreparable loss to



the Company. As such impugned order is not sustainable in the eye of law and fit to be quashed.

On the other hand, it has been submitted by the learned A.P.P. that from perusal of the impugned order itself, it appears that earlier the vehicle was released in favour of the company of the petitioners, vide order dated 4.1.2011 passed in Criminal Revision No.476 of 2010 subject to condition that the vehicle will not be sold or mortgaged during the pendency of the case, accordingly, the indemnifying bond was filed by the State Company through his receiver with an undertaking that he will not sell or mortgage the vehicle during the pendency of the case and on the same day, the vehicle was released on 11.2.2011, as such when there is undertaking by the receiver before the Revisional Court itself not to sell or mortgage the vehicle and they have even submitted indemnifying bond, hence there is nothing illegal in the order of the learned Chief Judicial Magistrate, Purnea and dismissing the petition is not maintainable in the eye of law. It is further submitted on behalf of the A.P.P. that when an undertaking has been given before the revisional court by the receiver appointed by the Hon'ble Calcutta High Court and an undertaking has been filed, then they ought to have moved



before the Sessions Judge for making modification in the condition but instead learned Sessions Judge, filing of a petition and filing a petition before the Chief Judicial Magistrate, Purnea is not proper, hence the Chief Judicial Magistrate, Purnea has rightly dismissed the petition as infructuous.

Having heard both sides. From perusal of the impugned order, I also find that at the time of the release of the vehicle an undertaking was given by the receiver appointed by the Hon'ble Calcutta High Court, who has given an undertaking not to sell or mortgage the vehicle and an indemnifying bond has also been filed, in such situation, without approaching the learned Sessions Judge or without making any modification in the order dated 4.1.2011 of the revisional court, filing a petition before the Chief Judicial Magistrate, Purnea by the petitioner for release of the vehicle is not proper and hence he has rightly dismissed the same. To my opinion, if the petitioners have any grievances, they first move before the Sessions Judge, Purnea to get the conditional order modify before seeking permissions for sale of the vehicle.

In view of the discussions made above, I am not inclined to interfere with the impugned order.



Accordingly, this application is disposed of with above direction.

(Vinod Kumar Sinha, J)

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