IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22096 of 2014

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

==========

Sanjiv Kumar Khemka @ Sanjiv Khemka S/O Om Prakash Khemka, resident of Khemka Motors, Kanbehari Munshi Bigha, P.S.- Aurangabad (M), District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shyam Narayan Singh, S/o Kapil Deo Singh, resident of Shiv Asthan, Takurbari Road, P.S.- Aurangabad, District- Aurangabad.

.... Opposite Party/s

==========

Appearance :

For the Petitioner/s : Mr. Krishna Prasad Singh, Sr. Advocate.
Mr. Mithilesh Kumar Singh, Advocate.
For the State : Mr. Ajay Kumar No. 1, A.P.P.
For the O.P. No. 2 : Mr. Sanjay Kumar Mannu, ADvcoate.

==========

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 03-08-2017

Heard learned counsel for the petitioner, learned counsel for the State as well as learned counsel appearing on behalf of the O.P. No. 2 on the quashing application filed by the petitioner under Section 482 of the Cr.P.C, 1973 invoking exercise of inherent jurisdiction for setting aside criminal proceeding in the matter.

2. The petitioner challenges order dated 22.02.2013 passed by the Judicial Magistrate, Ist Class, Aurangabad in Complaint Case No. 1006 of 2012 (Tr. No. 1836 of 2014) whereby cognizance has been taken under Sections 323, 420, 468 and 504 of the Indian Penal Code and has issued summons against t he petitioner to stand on trial in this case.

WEB COPY

3. Allegation, in brief, in complaint is that complainant purchased a Tata Ace Magic Vehicle from Ramnandi Auto Mobiles Pvt. Ltd. Commercial Vehicle Dealer. Accused No. 1, Akhouri Gopal, Proprietor of Ramnandi Automobiles used to send for servicing of the vehicle to Service Station of this petitioner. The vehicle was registered in the name of the complainant and used to do the servicing at the Service Station of the petitioner. One day, he contacted the petitioner as the battery of the vehicle was out of order, then, he referred him to the accused no. 4, Proprietor of M/s Janaki Distributor, who deals in battery, who disclosed that warranty period of the battery has expired, as vehicle was sold on 31.01.2011, so expiry of one year warranty lapsed. The complainant had purchased the vehicle only six months back, so he alleges that earlier the vehicle was sold by accused no. 1 to some other person and a second hand vehicle was sold to him as a new vehicle.

4. It is submitted by learned counsel on behalf of the petitioner that even taking the entire allegation in totality, as alleged in the complaint, no *prima facie* case of cheating and forgery against this petitioner is made out as he is not involved in transaction of sale or purchase of the concerned vehicle rather being owner of a Service Station only engaged in servicing of the vehicle.

5. Learned counsel appearing on behalf of the O.P. No. 2

WEB COPY

supports the impugned order. Learned counsel for the State also concedes that no allegation of cheating and forgery is alleged against this petitioner.

6. Having considered rival submissions and on perusal of the record, the Court is of the view that no *prima facie* case of cheating and forgery is made out against the petitioner even taking the allegation of the complaint in entirety against him, so continuation of criminal proceeding against the petitioner would be abuse of process of the court. Hence, order taking cognizance dated 22.02.2013 passed by the Judicial Magistrate, Ist Class, Aurangabad in Complaint Case No. 1006 of 2012 (Tr. No. 1836 of 2014) and subsequent criminal proceeding with respect to the petitioner only is set aside. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.09.2017
Transmission Date	04.09.2017

WEB COPY