

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19653 of 2014

Arising Out of Complaint Case No. -1063 Year- 2013 Thana –Ara Nawada District- BHOJPUR

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1. Chhote Lal Ajad S/o Ram Lal Prasad
 2. Ram Lal Prasad S/o Late Gopi Ram, Both are resident of village- Dharhara, P.S- Paliganj, Distt- Patna, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar
2. Kaushlesh Kr. Singh @ Umesh Singh S/o Sri Ram Pravesh Singh, resident of village- Mahatma Gandhi Nagar, Katira Station Road, Ara, P.S- Ara Nawada, Distt.- Bhojpur (Bihar).

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr Ajit Kumar, Advocate
For the Opposite Party/s : Mr. Pramod Kumar, Advocate
For the State Mr. Dilip Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 31-08-2017

Heard Mr. Ajit Kumar, learned counsel for the petitioners and Mr. Pramod Kumar, learned counsel as well as Mr. Dilip Kumar, learned Additional Public Prosecutor representing the State and perused the record.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 30.08.2013 passed by Sri Ashutosh Kumar, Judicial Magistrate 1st Class, Ara in Bihia Police Station Case No. 112 of 2012 arising out of Complaint Case No. 1063(c)/2013 (Tr. No. 5157/2012) whereby and whereunder the learned Magistrate finding



prima facie case for the offences under sections 420 and 406 of the Indian Penal Code, summoned the petitioners.

3. The facts, in brief, is that the opposite party no. 2 filed a complaint case on the file of learned Chief Judicial Magistrate Bhojpur, Ara alleging *inter alia* that the petitioners being owner of a 'City Ride Bus' vehicle bearing Registration No. BR1AP/8324 contracted to sell the same to the opposite party no.2.

4. As per the agreement, the complainant paid an amount of Rs.2,01,000/- and agreed to pay the balance amount in 23 installments each for an amount of Rs.18,450/-. The vehicle was financed by a Financial Company. The complainant defaulted in making payment in instalment and therefore, petitioners got the possession of said vehicle through the process and with the help of financial Institution. The complainant has alleged that the petitioners have also committed breach of trust by retaining the money which was given to them towards cost of vehicle.

5. The learned counsel for the petitioners submits that on account of default of the complainant, a notice was served on him for payment of remaining installment. The possession of vehicle was taken by the petitioners, as the complainant did not perform condition of the agreement. The allegation of committing breach of trust and cheating is vague and so, no offence is made out against these



petitioners. The learned Magistrate without applying judicial mind, has passed the impugned order in mechanical manner and so, the cognizance order is fit to be quashed.

6. The learned Additional Public Prosecutor opposed the submission.

7. On perusal of complaint petition and annexures of application, I find that the vehicle, which was actually financed by the Financer, was sold to the complainant. The vehicle was actually under the control of the Financer. The petitioners without any knowledge and notice to the Financer, entered into an agreement with the complainant and sold the vehicle to him and took an amount of Rs.2,01,000/- and also got 13 installments. The act of the petitioner itself appears to be against the agreement which was with the Financer. The petitioner without any knowledge and notice to the Financier, sold the vehicle. The matter was investigated and the Final Form was submitted by the Police as mistake of fact but the learned Magistrate differing with the report has rightly taken cognizance against the petitioners on the basis of protest petition.

8. In view of the discussion made above, I do not find any illegality in the impugned order requiring any interference under inherent jurisdiction of this Court under section 482 of the Code of Criminal Procedure.



9. Accordingly, this criminal miscellaneous application is dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.09.2017
Transmission Date	10.09.2017

