IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No 31630 of 2014

Arising Out of PS.Case No. -1956 Year- 2011 Thana -PURNIA COMPLAINT CASE District- PURNIA

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Shanker Motors Private Limited, Purnea through Mohan Himmat Singka, Managing Director, Shanker Motors Private Limited, NH - 31, near Four Star, P.S. - K. Hat, District - Purnea.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Most Ram Kumari Devi Wife of Late Suresh Singh Resident of village - Teldiha, P.S. - Tikapatti, District - Purnea.

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr Jitendra Pd Singh, Advocate
For the S t a t e : Mr Ram Anurag Singh, APP

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 08-11-2017

The petitioner, along with the Tata Motors Limited and Tata Motors Finance Limited, has been made accused in Complaint Case No 1956 of 2011. The complainant alleges that her husband purchased one Tata Magic Vehicle and that the same was delivered by accused No 1 (petitioner) who is an authorized dealer. The purchase was made by her husband on the basis of an agreement of finance. It further goes to allege that due to certain unavoidable reasons, the complainant could not keep up the repayment schedule and, admittedly, there was some default and delayed payment in the repayment of the monthly installments which started from 02.02.2009.

Further allegation is that, in the meantime, the complainant's husband, who was the original purchaser, passed away and that added to the problems of the complainant and there was further default and delay in repayment of the installments. Some allegations are also made that in the month of March 2010, the vehicle sustained some mechanical trouble and was sent to the show room of the petitioner for repairing. Paragraph 5 specifically states that seizure of the vehicle was made by Tata Motors representatives (accused No 2 & 3).

Even the forcible seizure is not attributed/alleged against the petitioner who is only the dealer and not the financer. The complainant further alleges that some settlement efforts were made in and around August 2010 but could not materialize due to the short period of time granted for the settlement. Thereafter, it is alleged that in view of the aforesaid, the complainant sustained huge loss.

On 27.07.2017, this Court had directed for issuance of notice upon Opposite Parties No 2. On 09.10.2017, the office has reported that notice was served upon Opposite Party No 2 through the learned Advocate representing the complainant in the Court below. Vide order dated 11.10.2017, notice was treated to be validly served. In spite of valid service of notice as above, Opposite Party No 2 has chosen not to appear in the instant case.

Counsel for the petitioner submits that from perusal of the entire allegations made in the complaint petition, no allegation constituting any criminal offence appears to be made out against the petitioner who is only an authorized dealer and has, as per the allegations made in paragraph 1 of the complaint, duly delivered the vehicle purchased by the complainant's husband. All the allegations made in the complaint pertains to accused No 2 and 3 who are the financers. As far as the mechanical defects alleged to have occurred in the vehicle in the month of March 2010 that is more than a year after the same was purchased on 09.01.2009, the same cannot, by any stretch of imagination, be said to constitute any criminal offence. Being a local entity, he submits that his name has been added as an accused mala fide and with the object of coercing the petitioner.

Counsel for the petitioner relies upon the judgment in the case of *State of Haryana & Others –Versus- Bhajan Lal & Others* reported in *1992 Supp (1) Supreme Court Cases 335* wherein the circumstances under which the Court may exercise jurisdiction under Section 482 of Criminal Procedure for quashing of the criminal case has been enumerated which are being reproduced for easy reference:

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Section 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by*

way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the

concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

He submits that the case in hand is covered by Guidelines No (1), (5) and (7) of the aforesaid judgment.

On the basis of the allegations noted above which do not disclose the ingredients of any criminal offence against the instant petitioner (authorized dealer), the Court of Judicial Magistrate, I Class, Purnea vide order dated 01.02.2014 has taken cognizance of the offence under Sections 406, 420 of Indian Penal Code. Prima facie, the uncontroverted allegations made in the complaint case do not disclose any offence against the instant petitioner, who is the dealer and not the financer.

Having considered the aforesaid position, continuance of the proceedings in the Court below would be an abuse of the process of the Court. The petitioner cannot be made to suffer the rigors of a criminal trial on the basis of a complaint wherein the uncontroverted allegations do not disclose ingredients of any criminal offence, much less Sections 406 and 420 of the Indian Penal Code, for which the Court has taken cognizance.

For the aforesaid reasons, this application is allowed and the order dated 01.02.2014 passed by Judicial Magistrate, I Class, Purnea in Complaint Case No 1956 of 2011 is quashed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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