

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51523 of 2013

Arising Out of PS.Case No. -6 Year- 2011 Thana -VAISHALI District- VAISHALI(HAJIPUR)

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1. Rajesh Kumar @ Rajesh Kumar Mishra S/O Shri R.C. Mishra R/O Flat No. 306, Purnima Apartment, Salimpur Ahra, Lane No. 1 P.S. Kadam Kuan, District- Patna, The Then Branch Manager, M/S Shriram Transport Finance Co. Ltd., Luv Kush Tower, Exhibition Road, District- Patna, Presently Posted As The Regional Head Indus Ind Finance, Bihar And Jharkhan 6th Floor Luv Kush Tower, Patna
 2. Chandan Kumar @ Chandan Kumar Singh S/O Shri Nawal Kishore Singh R/O C/O Sri Amarjit Kumar Sheo Nagar, P.O. + P.S.- Beur, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Rekha Devi W/O Chandrakant Singh R/O Chakbarwa Braanti Thana- Raja Pakar (Braanti), District- Vaishali

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Patanjali Rishi

For the Opposite Party/s : Mr. S. Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date: 20-06-2017

Heard learned counsel for the parties.

Petitioners, by means of this application under section 482 of the Code of Criminal Procedure, have invoked the inherent jurisdiction of this Court with prayer to quash the Case No. 6 of 2011 arising out of Complaint Case No. 3522 of 2010 registered for the offence punishable under sections 420, 406, 120, 379 and 34 of the Indian Penal Code.

The allegations levelled, in short, in the complaint is to the effect that complainant, on being taken into confidence by the petitioners who were employees of the Shriram Transport Finance



Company Limited, showed interest for taking vehicle loan. She was made to sign on several blank papers. She took loan of Rs. 2,50,000/- which was to be returned in 48 installments with interest at the rate of 8 percent. She purchased a second hand truck bearing registration No. BR 33A 6324. She was regularly making payment of the installments in time, but all of a sudden her vehicle was seized. On enquiry, these petitioners told they could not do anything as the order of seizure has been received from the Managing Director of the Company. They neither gave copy of the agreement nor the vehicle was released. She received notice from the head office at Mumbai indicating that Rs. 3,35,000/- was due upon her which amount if not paid would result in repossession and selling of the vehicle. Finally it has been alleged that these petitioners acted with common intention and cheated her.

The contention of the learned counsel for the petitioners is that the opposite party no. 2 had in fact entered into an agreement with the company with regard to loan and hypothecation (Annexure-2). As per the agreement, complainant was required to pay Rs. 4,32,519/-. It has been alleged that petitioner no. 2 approached her in November, 2007 whereas at that time petitioner no. 2 was not working in the Company in question, rather he was employed in Mahindra Finance which would be evident from



Annexure-3. Petitioner no. 2 resigned from Mahindra Finance which was accepted on 14th January, 2009 (Annexure-4). Meanwhile he got employed in Company in question vide Annexure-5. It is further submitted that the entire allegations are false and baseless. Moreover, the dispute is purely civil in nature and therefore no criminal prosecution is warranted.

From perusal of the material on record and looking into the facts of the case at this stage, this Court finds that the allegation against these petitioners is of only taking the complainant into confidence for taking the loan from the company in question. Admittedly the complainant had purchased the vehicle on loan from the company and it was under hire and purchase and under the hypothecation of the company. Under hire and purchase agreement, the ownership of the vehicle remains with the company, in which petitioners were employed, and therefore, no offence under section 406 of the Indian Penal Code is made out. Allegations under other sections of the Penal Code are ornamental. The Hon'le Apex Court in the case of *Anup Sarmah Vs. Bhola Nath Sharma and Others*, reported in (2013) 1 S.C.C. 400, while dealing with a case of similar nature, held as under :-

“.....the law can be summarized that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/



financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is repossessing the goods owned by him.

Having regard to the facts and circumstances of the case and in view of the judgment of Hon'ble Apex Court in the case of Anup Sarmah (supra), this Court is of the opinion that allowing the present prosecution to continue would only be an abuse of the process of the Court. Accordingly the first information report bearing Hajipur Sadar P.S. Case No. 6 of 2011 arising out of Complaint Case No. 3522 of 2010 is here quashed.

The application stands allowed.

(Arvind Srivastava, J)

Manish/-

AFR/NAFR	AFR
CAV DATE	18.04.2017
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