IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10528 of 2014

Arising Out of P.S.Case No. -94 Year- 2013 Thana -PATRAKARNAGAR District- PATNA

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Mahindra & Mahindra Financial Services Limited, A Company Incorporated Under The Indian Companies Act., 1956 Having Its Registered Office At Geteway Building Apollo Bunder, Mumbai- 400001 and having one of its Regional Office At Plot No. 6A. North S.K. Puri, Besides Cimage, Boring Road, Patna- 800013 Through Its Manager (Legal), Sri Adarsh Jayaswal S/O Sri Anil Jayaswal.

.... Petitioner

Versus

1. The State Of Bihar
2. Sushma Singh W/O Yaswant Singh R/O K-67, Hanuman Nagar, P.O- Lohiya Nagar, Patna- 20

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Sheela Sharma, Advocate

For the Opposite Parties : Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-07-2017

Heard.

2. This is an application under Section 482 of the Cr.P.C. to quash the FIR bearing Patrakarnagar P.S.Case No.94 of 2013 registered for an offence under Section 379 of the IPC.

3. A police case vide Patrakarnagar P.S.Case No.94 of 2013 was registered against unknown for the offence under Section 379 of the IPC on the allegation that the vehicle bearing registration no.BR-01-BD-6074 was stolen from the residence of the informant.

4. Learned counsel for the petitioner submits that the petitioner is a financial company known as Mahendra and Mahendra Financial Services Limited. This company has filed this quashing application through its manager (legal) on the ground that this is not a case of theft as alleged in the FIR. The informant had entered into a loan agreement baring no.1647164 with the company for grant of vehicle loan to the tune of Rs.5,40,000/- for purchasing the vehicle in question. The aforesaid loan amount along with finance charges accumulated to Rs.7,25,670/- which was payable by the informant in 47 instalments besides late fine which would accrue due to delay in payment/non-payment by the informant. The said loan amount was sanctioned and paid by the petitioner under the hypothecation as per clause 12 of the loan agreement. As per agreement, it was agreed upon by both the parties that in the event of failure of the Opposite Party No.2 to repay the instalment, the petitioner and its employees could be entitled to take custody of the hypothecated vehicle and realize the loan amount. The Opposite Party No.2 defaulted in payment of loan for which the petitioner gave several notices to the informant (Opposite Party No.2) requesting her to liquidate the outstanding dues towards loan amount. In this regard, notices and reminder notices dated 11.10.2012 to 24.07.2013 were given to the informant as she failed to liquidate the dues. The petitioner was left with no option but to repossess the hypothecated vehicle. Accordingly, the company as per clause 12 of the loan agreement took custody of the said hypothecated vehicle and gave information to the concerned police station on 02.05.2013. The informant Opposite Party No.2 maliciously and suppressing all these facts having full knowledge about repossessing of the vehicle by company, has lodged the present case only to harass the company in order to escape the liability of payment of loan amount. The continuance of criminal prosecution of the petitioner amounts to abuse of the process of the Court and so the criminal prosecution is fit to be quashed.

5. Learned APP opposed the submission.

6. The Opposite Party No.2 was noticed by this Court on several occasion but she did not appear to oppose the petition.

7. On perusal of FIR annexed with this application, it appears that there is no dispute or doubt that the Opposite Party No.2 had taken loan from the petitioner to the tune of Rs.5,40,000/-. The petitioner company gave notice to the informant requesting therein to liquidate the loan amount along with all the accrued interest/development in payment of amount. In spite of repeated notice and reminder, the Opposite Party No.2 did not deposit the amount as per clause 12 of loan agreement and so the petitioner took possession of the vehicle and informed the police. The petitioner further auctioned/sold the said vehicle to the highest bidder and the amount obtained from the sale has been adjusted against the outstanding loan. The learned counsel relief a ruling reported in 2001(7) SCC 417.

8. In Charanjeet Singh v. Sudhir Mehra reported in 2001 (7) SCC 417, the Hon'ble Apex Court has held that recovery of possession of the vehicle by the financier owner as per terms of the hire purchase agreement does not amount to a criminal offence. Such an agreement is an executory contract of sale conferring no right in range of the higher until the transfer of the property to him has been fulfilled and in case the default is committed by the higher and the possession of the vehicle is resumed by the financer, it does not constitute an offence for the reason that such a case/dispute is required or resolved on the basis of terms incorporated in the agreement.

9. The Hon'ble Apex Court has reiterated the said fact in 2013(1) Supreme Court cases page 400 observing that an agreement of higher purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the financier. So in case vehicle is seized by the financier, no criminal action can be taken against him as he is repossessing goods owned by him.

10. In K.A.Mathai vs. Kora Biffikutty (1996) 7 SCC 212, the Apex Court has held that in case of default to make payment of instalments, the financier has a right to resume possession even if the hire-purchase agreement does not obtain a clause of resumption of possession for the reason that such a condition is to be reads in the agreement. In such an eventuality, it cannot be held that the financier had committed an offence of theft and that too, with the requisite mens rea and requisite dishonest intention. The assertion of right and obligation occurring to the parties under the hire-purchase agreement wipes out any dishonest pretence in that regard from which it cannot be inferred that the financier had resumed the possession of the vehicle with a guilty intention.

11. On careful examination of the agreement enclosed with this application, I find that this case of this petitioner is squarely covered by the aforesaid settled legal preposition and so the criminal prosecution of the petitioner (financial company) is an abuse of the process of the Court.

12. For the reasons aforesaid, the FIR of Patrakar Nagar P.S.Case No.94 of 2013 pending before the learned court and all the proceedings arising therefrom is hereby quashed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	27.07.2017
Transmission Date	27.07.2017