

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.33689 of 2011**

Arising Out of Complaint Case No. -1593 Year- 2003 District- EASTCHAMPARAN(MOTIHARI)

- =====
1. Sanjeev Agrawal, son of Late Sheo Prasad Bhoj Nagarwal, at present- the Director, M/s Magma Fincorp Ltd., Magma House, 24, Park Street, Kolkata - 700016.
  2. Ranvir Thakur, son of Late Kamal Nath Thakur, resident of Dudhpura, P.S- Mufassil, District -Samastipur
  3. Umashankar Singh, son of Shri Mathrua Prasad Singh, Mohalla--Anandpuri, P.S.-Brahmapura, District Muzaffarpur
  4. Rajan Kumar, son of Late Jagdeo Prasad, resident of Mushahari, P.S. Mushahari, Samastipur
  5. Satish Kumar Mishra, son of Late Kapileshwar Mishra, resident of Mohalla - Chhata Chowk, P.S.-Chata Chawk, District Muzaffarpur
  6. Santosh Kumar, son of Shri Rama Shankar Singh, resident of Dudhpura, P.S.- Mufassil, District Samastipur

.... .... Petitioners

Versus

1. The State of Bihar
2. Mantosh Kumar, S/o Raja Ram Singh, resident of Village +Post - Mathalihiyar, P.S.- Harsidhi, District -East Champaran

.... .... Opposite Parties

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**Appearance:**

|                     |   |                                                             |
|---------------------|---|-------------------------------------------------------------|
| For the Petitioners | : | Mr. Amaresh Kumar Sinha,<br>Mr. Nagadeo Chaubey, Advocates. |
| For the OP No. 2    | : | Mr. Sunil Kumar No. III, Advocate.                          |
| For the State       | : | Mr. J.K. Singh, APP                                         |

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

**ORAL JUDGMENT**

**Date: 25-04-2017**

Heard learned counsel for the petitioners, learned counsel  
for the opposite party no. 2 and learned APP for the State.

2. The present petition has been filed for quashing the order dated 27.09.2007 passed by the learned Chief Judicial Magistrate, Motihari taking cognizance against the petitioners in Complaint Case No. 1593 of 2003 for the offences under Sections 341, 323, and 504/34 of the Indian Penal Code.

3. The short facts according to the prosecution are that the



complainant had taken a truck on hire purchase basis for which he took a loan of Rs. 3,50,000/- from+ Muzaffarpur Branch of M/s Shrachi Securities Ltd. Despite the entire payment for the truck having been made, the officials of the Company started demanding *rangdari* for issuing the no objection certificate, and finally the accused persons carried away the petitioner's truck after assaulting the complainant.

4. Learned counsel for the petitioners submits that the criminal prosecution is completely misconceived as the petitioners have acted in discharge of their duties to the Company M/s Shrachi Securities Ltd. of which they are the officials. In terms of Clause-26.0 of the Lease Agreement dated 2<sup>nd</sup> January, 2001, the lessor namely M/s Sharachi Securities Ltd. was entitled upon failure of the lessee to pay its debt, to terminate the agreement and re-possess the vehicle and to dispose of the same as it thought fit.

5. Learned counsel for the petitioners submits that in view of the outstanding dues against the complainant towards the loan amount, the truck in question was re-possessed and the petitioners have acted in pursuance of contractual right. This could not have given rise to criminal proceedings as instituted at the instance of the complainant, which is vengeful and malicious. Learned counsel for the petitioners further submits that the Company had filed a proceeding under the Arbitration & Conciliation Act, 1996 in terms of which an award dated 15.05.2004 was passed for a sum of Rs. 4,47,667/- in favour of M/s Shrachi Securities Ltd and against the complainant. Such



award was not challenged by the complainant and has hence attained finality. It is further pointed out that the learned Court below by its order dated 18/19.07.2004, while considering the petition filed by the petitioner no. 2 for release of truck, has taken note of the arbitration award in favour of the Company and has directed release of the truck.

6. It is also submitted by learned counsel for the petitioners that even otherwise, the prosecution of the petitioners without making the Company an accused is also unsustainable in law.

7. Learned counsel for the opposite party no. 2 on the other hand opposes the application, submitting that the order of cognizance has been passed after finding a prima facie case against the petitioners and hence the same calls for no interference.

8. Having heard learned counsel for the parties and on consideration of the materials on record, this Court finds considerable merit in the petition. Primarily, the fact that the loan had been taken for purchase of the truck by the complainant from the Company M/s Shrachi Securities Ltd. in terms of a lease agreement dated 2<sup>nd</sup> January, 2001 is not in dispute. It is also not in dispute that the re-possession of the truck was made in respect of alleged default of payment of the loan by the accused persons and hence the accused persons were acting on behalf of the Company. In such circumstances, the Company was a necessary party which has however not been made accused. The further fact that an Arbitration Award dated 15.05.2004 was passed against the complainant for an amount of Rs. 4,47,667/- has also not



been disputed. All these facts go to show that the nature of the dispute raised by the complainant is merely a contractual one relating to a lease agreement under which the Company acting through its officials and employees has effected re-possession of the truck for default in payment of the loan. The claim of the complainant that payment of the entire dues had been made would make little difference and the matter would still remain within the realm of a contractual dispute.

9. In such circumstances, this Court is of the view that continuance of the criminal prosecution against the petitioners would amount to abuse of process of court and accordingly the impugned order dated 27.09.2007 passed by the learned Chief Judicial Magistrate, Motihari taking cognizance in Complaint Case No. 1593 of 2003 is hereby quashed and the petition stands allowed.

10. Registry is directed to send back the lower court records without any delay.

**(Vikash Jain, J)**

Md. Ibrarul/BT

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