

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.12203 of 2012

Arising Out of PS.Case No. -129 Year- 2007 Thana -null District-
EASTCHAMPARAN(MOTIHARI)

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Bijay Pathak @ Bijay Kumar Pathak S/o Late K.L. Pathak Manager (At Present
General Manager) Ideal Dealers Pvt. Ltd, N.H.28, Bhagwanpur Chowk,
P.S.Sadar(Bhagwanpur), Distt-Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Shiv Shankar Prasad S/o Late Baiju Sah R/o Sironua, P.S.Shikarganj, Distt-East
Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar No.1

For the Opposite Party/s : Mr. Renu Kumar Rai (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date: 14-03-2018

Heard learned counsel for the parties.

2. Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 07.08.2010 and the entire proceeding of Chiraiya (Shikarganj) P.S. Case No. 129 of 2007 arising out of Complaint Case No. C 747 of 2007 by which the learned S.D.J.M., Shikrahana at Motihari has taken cognizance against the petitioner and others for the offence under sections 406, 420, 323, 504, 120(B)/34 of the Indian Penal Code.

3. The facts of the case, in brief, is that the informant with the help of agent and Manager of M/s Ideal Dealers Pvt. Ltd., Muzaffarpur purchased two City Ride Bus, bearing Registration Nos. BR06P-1548 and BR06P-1924, through Tata Motors Finance Pvt.



Ltd. on payment of Rs. 1,50,000/- He kept on making payment of installments regularly. As commission for providing aforesaid vehicles on finance, accused no.4 and 5 of the complaint demanded Rs. 50,000/- from the informant. When informant denied to pay the same, they threatened him to seize the vehicles. Further when the informant paid Rs. 26,000/- as installment of both the vehicles and asked for receipt, he was abused and assaulted by the accused persons and other office staff of said Ideal Dealers. Ultimately, his both the buses were seized by them.

4. The contention of the learned counsel for the petitioner is that the present complaint has been filed on 08.11.2007, whereas the alleged seizure was made on 21.06.2007 and 07.09.2007 respectively, without there being any explanation for the delay. As a matter of fact the petitioner never demanded any money from the informant, rather he helped him in providing finance. Further, the complainant has also filed two cases i.e. Case No. 38 of 2008 and 39 of 2008. In those cases, petitioner has filed his written statement. In order to make out a case for himself, the informant has wrongly alleged that his signatures were taken on blank papers, as a matter of fact, the informant himself signed the Loan-cum-Hypothecation agreement with Tata Motors Ltd.

5. Learned counsel further submits that it is well settled



that in case of any dispute in a Hire Purchase Agreement/Loan-cum-Hypothecation Agreement, no criminal case is made out. In this regard, learned counsel has placed reliance on the judgment of the Hon'ble Apex Court in the case of *Charanjit Singh Chadha and Others Vrs. Sudhir Mehra* reported in (2001) 7 Supreme Court Cases 417 and also the judgment of this Court in the case of *Mohan Singh and Others Vrs. The State of Bihar* reported in 2004 (2) P.L.J.R. 444.

6. From perusal of the materials available on record and looking into the facts of the case at this stage, this Court finds that the allegation against this petitioner is of taking the complainant into confidence for taking the loan from the company in question. Admittedly, the informant had purchased the vehicles on loan from the Company and it was under the 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 petitioner is 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'ble Apex Court in the case *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”.

7. 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)* and *Charanjit Singh Chadha (Supra)* as also the judgment of this court in the case of *Mohan Singh (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 order taking cognizance dated 07.08.2010 passed by the S.D.J.M., Sikrahana at Motihari in Chiraiya (Shikarganj) P.S. Case No. 129 of 2007 arising out of Complaint Case No. C-747 of 2007 is, hereby, quashed.

8. The application, thus, stands allowed.

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	31.10.2017
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