

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No.1026 of 2016**

Arising Out of PS.Case No. -406 Year- 2015 Thana -Madhubani District- MADHUBANI

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Indrajeet Kumar s/o Bharat Prasad resident of vilage - Bhelwa Tole, P.O. & P.S. - Jay Nagar, District - Madhubani

.... .... Petitioner/s

Versus

1. The State of Bihar
2. The Superintendent of Police, Madhubani.
3. The Officer in charge, Town Thana- Madhubani
4. M/S R.K. Finance Limited, 19, R.N. Mukherjee Road, Kolkata- 700001.
5. M/S Guinea Motors Pvt. Ltd. Corporate Office at Anandpuri, West Boring Canal Road, Patna-1.
6. The Branch Manager, M/S Guinea Motors Pvt. Ltd. Anandpuri, West Boring Canal Road, Patna-1.
7. Sri Sanjay Jha S/o Not known residing at Baba Parking Chai, Mohalla- Bhikhanpura, P.O. & P.S.- Bhikhanpura, District- Muzaffarpur said to have been an Employee of M/S Zenith Finance Pvt. Ltd., Muzaffarpur, District- Muzaffarpur.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Kameshwar Prasad Gupta, Adv.  
Mr. Binod Kumar, Adv.  
Smt. Deepanjali Gupta, Adv.

For the Respondent no.4 : Mr. Alok Kumar Agrawal, Adv.

For the Respondent no.5 &6 : Mr. Amaresh Kumar Sinha, Adv.

For the State : Mr. Utsav Kumar, AC to GA-4

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**ORAL JUDGMENT**

**Date: 15-01-2018**

Heard learned counsel for the petitioner and learned counsel representing the State as well as learned counsel representing the respondent nos. 4, 5, 6 and 7. The respondent no.7 who is the recovery agent of respondent no.4 has chosen not to file any counter affidavit. Learned counsel representing respondent no.4 has filed vakalatnama on behalf of respondent no.7.



2. Petitioner in the present case is seeking release of his four wheeler motor vehicle namely Safari bearing Reg.No.BR-32 G7733. It is the case of the petitioner that the vehicle in question was purchased from Guinea Motor Pvt. Ltd., Boring Canal Road, Patna through M/S R.K. Finance Ltd. (respondent no.4) for a total price of Rs.7,88,752/- against which the petitioner paid Rs.3,80,265/- on 07.05.2012 in cash and rest of the amount was financed by M/S R.K. Finance Ltd. (respondent no.4). The financial assistance provided to the petitioner was required to be refunded in 32 equal monthly installments of Rs.21,000/-.

3. It is the specific case of the petitioner that initially he was given to understand that there shall be rebate of Rs.40,000/- and interest is payable only at the rate of 9% per annum, therefore believing this assurance petitioner got loan from the Finance Company, but later on the said rebate was not given and interest rate was also enhanced which led to a dispute between the petitioner and the Finance Company. It is alleged that on 22.06.2015 while the petitioner was coming from Jainagar to Patna from his Safari vehicle, as soon as he reached Madhubani near petrol pump, one muscleman namely Sanjay Jha (respondent no.7) along with four unknown young persons stopped the vehicle and forcibly snatched away the same handing over a forgery seizure list introducing themselves as the



employees of Finance Company. It is further alleged that they also threatened the petitioner of dire consequences. This was informed to the local police and S.P., Madhubani, but they did not take any response. The petitioner thereafter filed a complaint case bearing C.R.No.1135 of 2015 in the court of learned C.J.M., Madhubani on 28.8.2015 which was forwarded by the learned court to S.P., Madhubani and the officer in-charge of Town Thana, Madhubani to register an FIR and conduct the investigation. Pursuant to this, Madhubani Town P.S. Case No.406/15 arising out of C.R.No.1135 of 2015 was lodged. It is alleged that the investigating officer is in connivance with the Finance Company (respondent no. 4) and submitted a report dated 19.01.2016 stating therein that since there was dues with the petitioner, the Safari vehicle was snatched and handed over to the company. A copy of the said report dated 19.01.2016 is Annexure-4 to the present application. Petitioner has raised several issues on the conduct of the police in investigation of the present case and has gone to the extent saying that the police are not acting as a public servant rather they are acting as criminals and to save the respondent no.4. Learned counsel further submits that after purchase of the vehicle he has paid 17 installments at the rate of Rs.21,000/- monthly and thus he has already paid Rs.7,37,265/- against the total price of vehicle and still he is willing and ready to



repay the balance outstanding dues provided that M/S Guinea Motors Pvt. Ltd furnishing the detailed account charging interest at the rate of 9% per annum against the principal loan amount after deducting a rebate of Rs.40,000/- as assured by them at the time of purchase of the vehicle. It is alleged that the Finance Company is taking services of the recovery agents without adhering to the guidelines issued by R.B.I. in this regard. No mode of recovery/seizure or re-possession has been provided to the agent and the agent is indulging in unlawful act in seizure of financed vehicle. Learned counsel relies upon judgment of the Hon'ble Supreme Court in the case of **ICICI Bank Ltd. Vs. Prakash Kaur and Ors.** reported in (2007) 2 SCC 711. In this connection learned counsel for the petitioner has submitted that Madhubani Town P.S. CaseNo. 406/2015 dated 07.09.2015 for the offence U/S 394 IPC was lodged and application for release filed there remained pending over two years.

4. The Finance Company (respondent no.4) has filed a detail counter affidavit in which it is stated that the petitioner has filed a consumer case bearing Consumer Case No.16 of 2015 before the District Consumer Forum, Madhubani which is still pending. He has relied upon the agreement executed between the respondent no.4 as non-banking company with Sundaram Finance Ltd. under which the respondent no.4 let out the vehicles to the intending hirers after



availing the same from Sundaram Finance. The counter affidavit gives the details of the amount financed to the petitioner and in paragraph 8 of the counter affidavit extract of the hire purchase agreement dated 6.5.2012 (Annexure-A to the counter affidavit) has been referred. It is specifically stated that the agreement contains an arbitration clause (emphasis supplied) in the following terms:- “Any dispute arising out of the said agreement shall be referred to arbitration which would be held at Kolkata only.” Case of respondent no.4 is that the petitioner failed in the payment of monthly installments in spite of repeated demands. A legal notice was also served on the petitioner and when the petitioner failed to repay the said amount the answering respondent through his authorized recovery agent took possession of the vehicle which was hypothecated in favour of the Finance Company. The occurrence as alleged by the petitioner has also been denied stating that the recovery agent of the answering respondent Sri Sanjay Jha was authorized to recover the vehicle from those who have defaulted in repayment of the loan and hire purchase amount. The counter affidavit is however totally silent on the mode of recovery/seizure of the vehicle adopted by the recovery agent. No counter affidavit has been filed on behalf of respondent no.7.

5. Respondents no. 5 and 6 submit that they are primarily a dealer and this is a dispute between the petitioner and the



finance company and therefore, they have no role to play. It is also submitted that the petitioner filed an application in the court below for release of the vehicle which is still pending.

6. Having heard learned counsel for the parties, this Court is of the considered opinion that the petitioner has been able to make out a case fit for interference by a constitutional Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The manner of seizure as alleged by the petitioner and not otherwise explained by the respondent no.4 in his counter affidavit and not controverted by the recovery agent (respondent no. 7) only goes to show that the finance company (respondent no.4) despite their being an agreement containing arbitration clause has been taking help of recovery agent like respondent no.7 in the present case for seizure of the vehicle wherever the borrower has defaulted in repayment of loan. The recovery agent has not controverted the specific allegation made against him of applying force in snatching of vehicle forcefully with the help of muscleman while the petitioner was on his way, therefore, what has been stated in the writ application has to be taken as correct, in so far as it relates to the respondent no.7.

7. The respondent no.4 has in its counter affidavit tried to defend the respondent no.7 even though it is not specifically stated that they have not permitted the respondent no.7 to apply force



or to do any illegal act while taking efforts for recovery of loan and in the process of seizure of the vehicle. It is thus clear that the respondent no.4 has filed the counter affidavit leaving certain aspect of the matter and the half-hearted statements of respondent no.4 only strengthen the case of the petitioner that the vehicle in question was seized by recovery agent with the help of musclemen while he was on his way.

8. This Court put a specific question to Mr. Agrawal, learned counsel representing the respondent no.4, as to how on the face of an arbitration clause contained in the agreement and there being specific provision under Section 9 of the Arbitration and Reconciliation Act, 1996 wherein the respondent no.4 could have applied for an order by the competent court before initiation of the arbitration proceeding to protect the subject matter in issue or dispute, the respondent no.4 has taken the law in its own hand by appointing a recovery agent without laying down a legal and valid procedure for recovery and therefore by maintaining silence they are permitting him to apply force for purpose of seizure of the vehicle. Mr. Agrawal understands the legal aspect of Section 9 of the Arbitration and Conciliation Act, 1996, therefore, could not offer a plausible reason.

9. In the case of **ICICI Bank Ltd. Vs. Prakash Kaur and Ors.** reported in **(2007) 2 SCC 711** the Hon'ble Apex Court had



been dealing with almost similar kind of situation where the recovery agent of ICICI Bank had forcibly taken possession of the truck owned by a borrower. Having taken note of the fact and circumstances of the case the Hon'ble Apex Court heavily deprecated the procedure adopted by the bank in removing the vehicle from the writ petitioner. In the said case, the relevant part of the observations of the Hon'ble Apex Court made in paragraph 16 of the judgment are quoted for a ready reference:-

*“Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the installments instead of taking resort to strong-arm tactics.”*

10. Supplementing the judgment one of the Hon'ble Judges on the Bench placed certain additional inputs and suggestions in paragraph 24 of the judgment, which are quoted herein below for a ready reference:-

*“If the agency system is inescapable, then the*



*agency must be coupled with a licence issued after conducting examination. Appropriate training should be given to the agents who should have requisite qualification and maturity to handle delicate and sensitive situation. Merely because the agency system is convenient to the banks, and has been approved by RBI, it should not lead to lawlessness and conduct resulting in challenge to the rule of law.”*

11. In the present case, this Court having gone through the pleadings of the parties has no doubt that the vehicle in question was seized by the respondent no.7 by applying force and in that process he had transgressed the law and has taken the law in his own hand, the respondent no.4 has not even whispered in his counter affidavit that he had asked the recovery agent not to apply force or to act illegally in the matter of recovery of loan therefore this Court has reasons to believe that the respondent no.4 as well as the respondent no.7 are acting in complete violation of law and decision of the Hon'ble Apex Court which have been rendered 11 years back. It is, thus, a matter of concern for this Court.

12. In the facts and circumstances of the case since both the respondent nos. 4 and 7 have been found acting illegally in snatching away the vehicle in question from the petitioner by applying



force, this Court would not only direct for release of the vehicle in favour of the petitioner but would also consider imposition of some compensation to be paid by the respondent no. 4 for the unlawful step taken by him through it's recovery agent in the matter of recovery of loan.

13. This Court directs that the vehicle in question shall be released in favour of the petitioner by respondent no. 4 on submission of document of ownership and registration with surety bond of Rs. 6,00,000/- (six lakhs) (not in form of cash or bank guarantee) to the satisfaction of court below. After release of the vehicle in favour of the petitioner within 15 days the respondent no.4 shall furnish an account up-to-date to the petitioner and thereupon the petitioner will take a stand, shall pay the admitted amount and in case any dispute arises, as has been contended on behalf of the respondent no.4 the dispute has to be resolved in terms of arbitration clause in accordance with law up to date.

14. In case of dispute the respondent no.4 will have a liberty to proceed in accordance with the provisions of the Arbitration and Reconciliation Act, 1996 (as amended up to date) and seeks it's remedy in accordance with law. The vehicle in question shall not be disposed of or otherwise encumbered by the petitioner for the present without permission of the court and he would undertake to produce



the same as and when required.

15. Having said that an unlawful act and wrong has been committed by the respondent no.4 with the help of respondent no.7, this Court directs the respondent no. 4 to pay a sum of Rs. 25,000/- (twenty five thousand) in cash to the petitioner by way of compensation for the wrong committed by the respondent no.7 acting on behalf of respondent no. 4. This should be paid within a period of fifteen days from the date of receipt/production of a copy of this order.

16. The respondent no.7 is restrained from acting as a recovery agent because he has been acting illegally and without following a procedure sanctioned by law or the Reserve Bank of India and henceforth if any complaint comes to this Court or to the court below of snatching the vehicle from the registered owner by respondent no.7, the same shall be viewed seriously. It is the responsibility of respondent no.4 as well to ensure that this recovery agent does not violate any law and acts in similar manner as has been acted in the present case. In cases of default, the respondent no.4 has to find out it's remedy in terms of agreement and in accordance with law.

17. Since the petitioner complains that the vehicle in question is lying in the custody of respondent no.4 for about two and



half years, while releasing the vehicle, the respondent no. 4 shall take appropriate steps to get prepared a photograph of the vehicle showing present condition and it is the responsibility of respondent no.4 to hand over the vehicle to the petitioner in same condition in which it was seized.

18. The writ application stands disposed of.

**(Rajeev Ranjan Prasad, J)**

Arvind/-

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