IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.57990 of 2017
Arising Out of PS. Case No.-294 Year-2014 Thana- PATNA COMPLAINT CASE District- Patna

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1. Mahindra & Mahindra Financial Services Ltd. A Company incorporated under the Indian Companies Act 1956 having its registered office at Gateway Building, Appollo Bunder, Mumbai - 400021 and having its Regional Office at Plot No. 6 A, Behind CIMAGE, North S.K. Puri, Boring Road, Patna - 800001 through its Authorized Signatory, Vishal Anand.
2. Vishal Anand S/o Late Anand Shanker Sinha Branch Manager, Mahindra @ Mahindra Financial Services Ltd., Patna Sahib Branch, Milan Lane, Milan Complex, above Union Bank of India, Kankarbagh, near Tiwary Bencher, Patna - 800020 presently posted as Area Collection Manager, Sasaram, Mahindra & Mahindra Financial Services Ltd., Mangla Bhawan, 3rd Floor GT Road, Opposite Prakash Petrol Pump, P.S. Town Thana, Sasaram, P.O. Sasaram, District - Rohtas, Pin Code - 821115.
3. Ruchi Raj W/o Sanjeev Kumar R/o J.R. Residency, Flat No. 604, Sunderpada, Jatni Road, Bhubneshwar, Opposite Axis Bank and Hi Tech Plaza, P.S. Bhimtanagai, P.O. Sunderpada, District - Bhubneshwar.
4. Rashmi Kumari D/o Chandra Shekhar Modi Dealer Point Executive, Mahindra & Mahindra Financial Services Ltd., Patna Saheb Branch, Milan Lane, Milan Complex, above Union Bank of India, Kankarbagh, near Tiwary Bencher, P.O. & P.S. - Kankarbagh, Patna - 800020.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. Usha Devi W/o Ravichandra Yadav resident of Nayatola, Madhopur, P.S. - Bakhtiyarpur, District - Patna.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Shivendra Kumar Roy
For the Opposite Party/s : Mr. Smt Renu Kumari

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 05-11-2018 It appears that the serial number of the order dated 13.09.2018 has been wrongly typed as order no. 4, it should be order no. 2. Accordingly, this Court directs that the order dated 13.09.2018 be read as order no. 2.

2. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel representing opposite party no. 2.

3. This application has been preferred for setting aside the order taking cognizance and issuance of summons dated 23.03.2017 passed by learned Judicial Magistrate Ist Class, Barh, Patna in Complaint Case No. 294 (c) of 2014. By the impugned order the learned Magistrate has taken cognizance of the offence under Section 420 of the Indian Penal Code and decided to issue summons to the petitioners calling upon them to appear and face the complaint case.

4. The petitioner no. 1 is a Public Limited Company engaged in providing financial assistance to the purchasers of vehicle. It is incorporated under the provisions of the Companies Act, 1956. Petitioner no. 2 is the Branch Manager posted as Area Collection Manager, Sasaram. Petitioner no. 3 is the Executive (HR) and petitioner no. 4 is the agent known as Dealer point Executive of petitioner no. 1 company.

5. The complainant-opposite party no. 2 lodged a complaint case in the court of learned Additional Chief Judicial Magistrate, Barh giving rise to the Complaint Case No. 294 (c) of 2014. In the complaint petition apart from the present petitioners, the complainant had also implicated one Sukendu describing as Manager of the petitioner no. 1 company, summons have been issued to all the accused persons named in the complaint petition, however, one of the accused namely, Sukendu has not joined the present petition and therefore, the present order will be in respect of the petitioners of this case.

6. On perusal of the complaint petition shows that according to the complainant, she wanted to purchase a vehicle and when she was talking in this regard from her neighbor, all of a sudden the accused no. 5- petitioner no. 4 came to the house of the complainant and represented her and promised to get her available loan on easy installments for purchase of vehicle. According to the complainant, she had got Rs. 4,75,000/- as loan from the petitioner no. 1 company. The vehicle was also delivered to her. In her complaint petition she admits that the monthly installments towards refund of the loan was Rs. 12,000/- per month. She has also admitted to have deposited the said monthly installments for 6-7 months and then, according to her, she was giving the installments some times in the office and some times in the State Bank, Bakthiyarpur through one Vishal Anand. She also states that Vishal Anand has not given any receipt to her. It is also admitted that the complainant was unable to pay the installments towards refund of loan and wanted to sale the vehicle. At this stage, it is alleged that the petitioner no. 4 came to the house of the complainant and told her to return the vehicle to the petitioner no. 1 company and she further promised that 33 % of the total value of the vehicle shall be returned to her and she will also get rid of her loan liability.

It is further alleged that on 30th of August, 2013 the complainant –opposite party no. 2 handed over the vehicle to petitioner no. 4. The complainant got the receipt showing return of the vehicle but she did not receive 33 % of the value of the vehicle. It is then alleged that about 3 months after that the complainant got a notice form the Mumbai office of petitioner no. 1 company through one Sanjay Agrawal who claimed that there is an outstanding of Rs. 2,49,000/- against her and she was asked to approach the Mumbai office of the company. It is also stated that the complainant had given a reply to the notice but when she asked Vishal Anand about the notice, he told her that she should return the amount of loan otherwise she may be sent to jail.

7. The complainant alleged that the cash price of the vehicle was Rs. 6 lakhs and she was not aware of the period within which she was liable to refund the loan. In answer to courts query she has admitted that she had deposited monthly installment for 7months at the rate of Rs. 7,000/- and had given Rs. 1,21,062/- as cash down at the time of purchase of the vehicle.

8. In course of her statement on solemn affirmation she has reiterated her case. She has admitted that because she was not in a position to refund the loan amount so she returned the vehicle and then she has claimed that while returning the vehicle she was given to understand that she will get back 33 % of the total value of the vehicle and the loan shall also be fully paid.

9. In course of inquiry she produced her son Rajeev Kumar as complaint witness no. 1. This witness has supported the case of the complainant. In answer to a court's query he informed that he had no paper with regard to the transactions in connection with the said vehicle as those documents were handed over to the finance company. The complaint witness no. 2 Saurav Kumar has also supported the case of the complainant to the extent that the complainant had purchased the vehicle on the representation of the petitioner no. 4 and had deposited Rs. 12,000/- per month as loan installment. In answer to the court's query this witness has stated that he was not aware of any document having been prepared. Complaint witness no. 3

Ranjeet Kumar is a neighbor of the complainant who has also supported the case of the complainant. This witness has stated that papers were prepared when the vehicle was returned to the company and in the said document it was written that 33 % will be returned and 68 % will be towards the refund of the loan. This witness has stated that on behalf of the company Vishal Anand had done this agreement.

10. On the basis of the aforementioned complaint, statement of complainant and statement of the inquiry witnesses, the learned Magistrate has taken cognizance and decided to issue summons to these petitioners.

11. Learned counsel for the petitioners submits that it is a case which may at best be in the nature of a purely commercial dispute and by no stretch of imagination this case may be brought in the category of a criminal proceeding. Learned counsel submits that there are some admitted facts and documents which are available on the record. It is submitted that the complainant-opposite party no. 2 has not controverted those statements and the documents which are enclosed with the present petition as annexures. Learned counsel, therefore, submits that if the documents enclosed with the present application are not controverted and those are the documents prepared in course of business, this Court can look into those documents for the purpose of this case. Reliance in this connection has been placed on a judgment of the Hon'ble Supreme Court in the case of **Prashant Bharti Vs. State of NCT of Delhi** reported in **(2013) 9 SCC 293** and in the case of **M/s Indian Oil Corporation vs. NEPC Ltd. and Others** reported in **AIR 2006 SC 2780** to submit that there is a tendency to convert purely civil dispute into a criminal case and such tendency should be deprecated.

12. Learned counsel for the petitioners has taken this Court through the contents of the loan agreement dated 22.01.2013 (Annexure-2) which has been signed by the complainant-opposite party no. 2 and her son as borrower and co-borrower respectively. The loan agreement shows that the petitioner no. 1 company had agreed to lend the opposite party no. 2 a sum of Rs. 4,75,000/- for purchase of the vehicle subject to the terms and conditions contained therein. Clause 6 of the agreement reads as under:

> "6) Event of default- An event of default shall occur hereunder if the borrower fails to pay the Periodical Installments, the Delayed Payment charges, effect insurance cover/renew covering the interest of the lender and if he breaches any of the Terms and Conditions of this Loan

agreement.

The event of default shall also occur when the Borrower becomes insolvent, is wound up by any court of Law, is subject to any criminal prosecution on account of any illegal activities or violation of any rules or regulations, on the Death of the Borrower, if the Financial condition of the Borrower in the opinion of the Lender has deteriorated or in the event of the Borrower not providing additional security on demand by the Lender".

13. Clause 7 and 8 of the agreement deals with the power of the borrowers to sale or transfer of the product to any other person with the prior consent of the Lender and subject to such terms and conditions as may be stipulated by the Lender. The consequence upon event of default are also mentioned under Clause 8 of the loan agreement. Clause 15 deals with the Arbitration and it provides for a forum to decide all disputes, differences and/or claims arising out of the agreement. Such arbitration has to take place under the provisions of the Arbitration and Conciliation Act, 1996.

14. Learned counsel has then shown from Annexure- '3' to the present application which is the statement of account dated 21.12.2013 that the complainant-opposite party no. 2 had deposited Rs. 11,630/- from February, 2013 to December, 2013 but with delay and then some of the cheques which were deposited by the complainant-opposite party no. 2 had also stood dishonoured on presentation which resulted in imposition of cheque return charges against the complainant-opposite party no. 2. As a result of this a demand and pre-sale notice dated 01.2.2013 (Annexure-4) was issued under the signature of Vishal Anand for petitioner no. 1 company to the complainant-opposite party no. 2. The complainant-opposite party no. 2 has not disputed the fact that she was served with this notice.

15. Learned counsel submits that in these circumstances since the complainant-opposite party no. 2 fallen in the category of a defaulter, she surrendered the vehicle on 30.08.2013 and thereafter, the petitioner had proceeded to sale the vehicle in order to realize the amount and satisfy the loan amount outstanding after serving the pre sale notice dated 01.12.2013 (Annexure-4). The petitioners have placed on record the copy of pre-sale notice dated 01.2.2013 and the disposal Asset as Annexure-4 and 4/A respectively to show that the vehicle was sold for a sum of Rs. 2,51,000/- whereas the dues was in excess of Rs. 5,50,000/- at the time when the vehicle was sold. Thus, according to the petitioners, there was a contractual loss of Rs. 2,44,744/- which was indicated in the disposal Asset.

16. Learned counsel thereafter, placed before this Court a copy of award dated 05.04.2014 showing that in the present case the petitioner no. 1 company had initiated a arbitration proceeding as per the terms of the arbitration clause contained in the loan agreement and after following the due process and procedures the Arbitrator had awarded a sum of Rs. 2,49,062/- with future interest at the rate of 18 % per annum from 06.02.2014 on the said amount. The petitioner company was also held entitled to recover from borrower a sum of Rs. 10,000/- towards costs and expenses of the arbitration proceedings.

17. It is the case of the petitioners that the said award was served upon the complainant-opposite party no. 2 and after receipt of the said award the complainant-opposite party no. 2 filed the present complaint case. It is, thus, submitted that the present case has been lodged only to avoid the liability which the complainant-opposite party no. 2 has suffered under the arbitration award. It is also submitted that by no stretch of imagination the allegations of the complainant that she was assured to get back 33 % of the value of the vehicle may be believed on the face of the written terms and conditions of the loan agreement. It is submitted that no document showing that any such promise was made to the complainant-opposite party no. 2 could be produced before the court below.

18. Learned counsel for the petitioners therefore, submits that no offence under Section 420 IPC even prima facie is made out against the petitioners and this case is covered under one of the exceptions carved out by the Hon'ble Supreme Court in the case of **The state of Haryana and Ors. Vs. Ch. Bhajan Lal and ors.** reported in 1992 Suppl. (1) SCC 335.

19. On the other hand learned counsel representing the complainant-opposite party no. 2 has opposed the prayer of the petitioners to quash the order taking cognizance and issuance of summons. Learned counsel submits that at this stage when the learned Judicial Magistrate has found it a case prima face to issue summons, this Court need not go into the submissions of the learned counsel for the petitioners and on such grounds order taking cognizance and issuance of summons need not be quashed.

20. Learned counsel for the State is present.

21. In the given facts and circumstance of the case, after hearing learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that the complaint filed by the opposite party no. 2 is nothing but an abuse of the process of the court. In her complaint petition she has herself admitted that after making payment of installment for few months she was unable to pay the loan amount and therefore, she had returned/surrendered the vehicle to the petitioner no. 1 company. The allegation made in the complaint that at the time of such surrender she was assured to be given 33 % of the value of the vehicle is contrary to the terms and conditions of the loan agreement (Annexure-2). The written terms and agreement nowhere talks of any such stipulation that in case of default, the borrower after surrender of vehicle will get back 33 % of the value of the vehicle. The complainant claims that some paper was prepared at the time of surrender of the vehicle. Her son has not supported this fact in his deposition in course of inquiry. One of her neighbors has supported this fact but no document whatsoever could be brought to the notice of the learned Judicial Magistrate to show that the petitioner no. 1 company had promised to give back 33 % of the value of the vehicle of the complainant-opposite party no. 2. An arbitration proceeding was initiated in the matter and an award was also passed vide Annexure -5 to the present application is an admitted position. It is also an admitted position that only after service of copy of the award, the complainant –opposite party no. 2 came to file the present complaint petition.

22. A total reading of the complaint petition, the statement of the complainant and inquiry witnesses clearly give an impression to this Court that there is no criminality involved in the present transactions and in fact what is a case of purely commercial dispute has been tried to be given a colour of criminal proceeding. This Court has looked into the terms and conditions of the loan agreement and relied upon the same in view of the judgment of the Hon'ble Supreme Court in the case of **Prashant Bharti** (supra) and also follow in the views of the Hon'ble Apex Court in the case of **M/s Indian Oil Corporation** (Supra) because these are the admitted and unimpeachable documents. At the same time, this Court also found that the case is covered under one of the exceptions laid down by the Hon'ble Supreme Court in the case of Bhajan Lal (Supra) wherein it is categorically held that on a bare reading of the complaint petition if no offence at all is made out, the complaint would be liable to be quashed.

23. In the present case, in my view, by no stretch of imagination it can be allowed to argue that these petitioners had acted with any intention to cheat the complainant-opposite party no. 2. This being the position the order taking cognizance and issuance of summons is bad in law, seems to have been passed in a routine and in a mechanical manner and therefore, it is liable to be set aside. The impugned order is therefore, set aside and this application is hereby allowed.

(Rajeev Ranjan Prasad, J)

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