

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31120 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SARAN

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1. Mr. Maruti Mathur, General Manager, Marketing (East), Mahindra & Mahindra Limited, Mahindra Towers, Worli Road No.13 Mumbai- 400018, State Of Maharashtra.

.... Petitioner/s

Versus

1. The State of Bihar
2. Harinarayan Sharma, S/O Late Bacchu Sharma, R/O Mohalla- Salempur, P.O- Chapra, P.S- Town, P.S, Distt- Saran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Jha, Advocate
For the Opposite Party/s : Mr. Pramod Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 09-01-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 14.02.2008 passed by the Judicial Magistrate, 1st class, Chapra, in Complaint Case No.2691 of 2007 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner and others for the offence under Section(s) 406 and 420 Indian Penal Code.

2. Heard counsel for the petitioner and the learned APP for the State. None appears on behalf of the Opposite Party No.2, although name of the counsel for the Opposite Party No.2 is appearing in the daily Cause List.

3. It has been submitted that petitioner is the General



Manager, Marketing (East), Mahindra & Mahindra Ltd., Mahindra Towers, Mumbai.

4. A complaint has been filed by the Complainant alleging therein that he has purchased BOLERO vehicle from the dealer Sonali Auto Agency on 03.02.2007 after making full payment. Later on, defect was found in the BOLERO vehicle. The accused persons told the Complainant that defect(s) will be removed after servicing of the vehicle. The Complainant came with the purchased vehicle to his house at Chapra, but the defect(s) was not removed even after five servicing. The Complainant contacted the accused persons on phone from his village at Chapra. The accused persons sent Engineer for removing the defect(s). Accused nos. 1 and 2 came to the residence of the Complainant and made effort to remove the alleged defect(s), but in vain. The Complainant asked to replace the vehicle but the accused persons refused for the same. It is further alleged that the Complainant also telephoned the Chief General Manager, Mahindra & Mahindra, but they did not take any action and even did not talk on telephone and said to take appropriate action in the matter.

5. Learned Court below after holding enquiry has found *prima facie* case against the petitioner and others for the offence under Section(s) 406, 409 Indian Penal Code.



6. This Court after looking into the entire allegation in the Complaint Petition finds that the vehicle was delivered to the Complainant after purchase. The agency made all efforts to remove the defect(s). As per the statement made by the Complainant himself in the Complaint Petition, total five servicing was done by the Company. Accused nos.1 and 2 even came to house of Complainant to remove the defects. The Complainant has alleged that the defect has still remained.

7. In such view of the matter, this Court is of the view that there was no motive of accused persons from beginning to commit cheating with the Complainant. It will be utmost a deficiency in service and not a criminal offence even if the defect(s) continues in the vehicle after taking all proper steps by the accused persons to remove them.

8. From the own averments made in the Complaint Petition, the petitioner took all steps for removal of the defect(s). As such, they have no motive from very beginning to commit cheating with the Complainant by giving defective vehicle.

9. Therefore, the Court below was not justified in summoning the petitioner for the offence under Section(s) 406, 420 Indian Penal Code after holding enquiry under Section 202 Cr. P. C.

10. Accordingly, the impugned order dated 14.02.2008



passed by the Judicial Magistrate, 1st class, Chapra, in Complaint Case No.2691 of 2007 along with entire criminal proceeding against the petitioner is hereby quashed.

11. This application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	19-01-2018
Transmission Date	19-01-2018

