

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1169 of 2019

Arising Out of PS. Case No.-204 Year-2018 Thana- KAJI MUHAMMADPUR District-
Muzaffarpur

-
1. Anand Mishra Son of Shri Manohar Mishra presently in Chlomandalam Finance having its branch office at 1st Floor, Deo Market, Purab Bazar, Near Shahrsta College Gate, P.S.- Saharsa, Saharsa -852201, Bihar
 2. Abhay Singh @ Abhay Kumar Singh Son of Late Rajeshwar Singh Presently posted as Area Collection Manager in L and T Finance Ltd. having it office at Ram-Lekha Complex, Chhapra-Lodhi Road, Near Circuit House, Kadipur, P.S.- Kazi Mohammadpur, Bhagwanpur, Muzaffarpur, Bihar

... .. Petitioners

Versus

1. State of Bihar through Principal Secretary Home Deptt. Govt. Of Bihar, Patna.
2. State of Bihar, through Director General of Police, Sardar Patel Bhawan, Patna.
3. Superintendent of Police, Muzaffarpur, Bihar
4. Investigating Officer, Kazi Mohammadpur, P.S. Case No. 204/2018 Bihar
5. Babita Kumari Wife of Pravin Kumar, resident of Village and P.O-Thumma, P.S.-Runnisaidpur, District-Sitamarhi, Pin-843328.

... .. Respondents

Appearance :

For the Petitioners : Ms. Somali Acharya, Advocate
For the Respondent-State: Mr.Prabhat Kumar Verma, AAG-3
Mr. Saroj Kumar Sharma, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 07-11-2019

Heard learned counsel for the petitioners and
learned counsel for the State.



2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioners for quashing the first information report (for short 'FIR') of Kazi Mohammadpur P. S. Case No. 204 of 2018 registered for the offences punishable under Sections 323, 420, 406, 467, 468, 504, 506 and 120 B of the Indian Penal Code.

3. Learned counsel appearing for the petitioners submitted that the FIR in question has been registered under the orders of the court in gross violation to the ratio laid down by the Supreme Court in **Priyanka Srivastava and Anr. vs. State of U. P. and Ors.** since reported in **AIR 2015 SC 1758** as there is no affidavit of the complainant stating that steps were taken under Sections 154(1) and 154(3) of the Code of Criminal Procedure (for short 'CrPC') before making an application under Section 156(3) of the CrPC. She has further contended that since L & T Finance Limited (for short 'Company') has not been added as a party, a criminal case against the petitioners, who are employees of the company could not be maintainable in view of the ratio laid down by the Supreme Court in **R. Kalyani vs. Janak C Mehta and Ors.** since reported in **(2009) 1 SCC 516**.

4. Advancing her argument, she has contended that



the informant has illegally given a colour of criminal offence to a civil dispute arising out of a contractual obligation in complete contravention of the rulings of the Supreme Court in **Sardar Trilok Singh & Ors. vs. Satya Deo Tripathi** since reported in **AIR 1979 SC 850**, **K. A. Mathai & Anr. vs. Kora Bibbikutty & Anr.** since reported in **(1996) 7 SCC 212**, **Charanjit Singh Chadha and Ors. vs. Sudhir Mehra** since reported in **AIR 2001 SC 3721**, and **Anup Sarmah vs. Bhola Nath Sharma & Ors.** since reported in **(2013) 1 SCC 400**.

5. She contended that admittedly, the complainant had purchased a Sonalika Tractor upon the financial assistance provided by the Company. The complainant had entered into a hypothecation agreement with the Company and an amount of Rs.4,75,000/- was financed to her for the purchase of the tractor which was to be repaid in 60 installments.

6. Since the complainant made default in payment of loan, a demand notice dated 13.09.2017 was issued calling upon her to make payment and intimating that if the loan amount is not paid, the Company will proceed with the repossession of the vehicle in accordance with the Loan Cum Hypothecation Agreement. Since the complainant neither made any payment nor bothered to reply to the notice, the Company



repossessed the vehicle by exercising its power vested by clause 9.2 of the said Agreement. Despite repossession of the said vehicle, the informant did not pay any heed to make payment and, thus, a pre-sale notice dated 27.02.2018 was issued duly intimating the complainant about the outstanding and consequences of non-payment of loan would be sale of the vehicle. However, she did not make any payment and, thus, the vehicle was sold by the Company.

7. On the basis of the aforesaid submissions, learned counsel appearing for the petitioner submitted that criminal prosecution launched against the petitioners is an abuse of the process of the court and in order to secure ends of justice, the same is required to be set aside.

8. *Per contra*, learned counsel appearing for the State submitted that the ratio laid down in **Priyanka Srivastava** (Supra) by the Supreme Court is not applicable to the facts of the present case. The complaint filed by the complainant was not under Section 156(3) of the CrPC. The same was filed under Sections 190 and 200 of the CrPC. In **Priyanka Srivastava** (Supra), the Supreme Court has not curtailed the jurisdiction of the court of Magistrate to refer a complaint to the police for investigation in exercise of powers conferred under Section



156(3) of the CrPC. He has further contended that the allegations made in the complaint would certainly attract the ingredients of the offences alleged. According to him, since there is an allegation in the complaint that when the complainant along with her husband and witnesses went to the office of the Company, the accused persons abused and assaulted her and drove her away threatening that her tractor has already been sold on 03.03.2018 and if she would raise any further protest, she would be handed over to the police. The same would certainly be a case for investigation. He has further contended that the complainant has also alleged that when she negotiated for compromise, the accused persons told her that the tractor was already sold and, therefore, the ratio laid down by the Supreme Court in the cases relied upon by the petitioner would not be applicable to the facts of the present case.

9. Respondent no. 5 is appearing through her lawyer Mr. Satya Prakash Parasar. However, he is not present even today.

10. Having heard learned counsel for the petitioner and the State and perused the materials on record, when I look to the FIR, I find that initially, respondent no. 5 had instituted a complaint under Sections 190 and 200 of the CrPC before the



court of Chief Judicial Magistrate, Muzzafarpur vide Complaint Case No. 615 of 2018. The said complaint was filed on 19.03.2018 and the date of alleged occurrence mentioned in complaint is 06.03.2018. The place of occurrence mentioned in the complaint is the office of the Company situated at Chakkar Road near Regional Rural Bank, Kazi Mohammadpur. In the complaint, respondent no. 5 has alleged that she purchased a Tractor Sonalika DI 142 RX for which Rs.4,75,000/- was financed by the Company and the installments towards payment of loan amount was fixed as Rs.13,200/- per month. She paid 23 installments on time, but due to illness of her husband, there was certain delay in payment of further installments. When she approached the Company for payment of due installments, she was told that the Collection Officer was on leave. Thereafter, all of a sudden, without giving any notice, the said vehicle was repossessed by the employees of the Company, namely, Mr. Anand Mishra, Collection Manager, Abhay Singh, Branch Manager, Om Babu and others. When she went to the office of the Company, she was told to deposit the entire due amount. Thereafter, she received a notice dated 06.03.2018 to deposit the entire due amount within 7 days. Date of transmission of said notice was 27.02.2018. After receipt of notice, when she went



together with her husband and witnesses to the office of the Company, she was abused and assaulted and was told that the tractor was already sold on 03.03.2018. The accused persons threatened her that if she would raise any further protest, she would be handed over to the police. Thereafter, she went to the police station and made a complaint, but she was told to approach the court. In the meantime, some persons intervened and tried to amicably settle the matter but accused persons refused to give back the repossessed vehicle.

11. Subsequently, the learned Magistrate referred the complaint to the police in exercise of powers conferred under Section 156(3) of the CrPC for investigation.

12. Accordingly, Kazi Mohammadpur P. S. Case No. 204 of 2018 was registered against the petitioners for the offences punishable under Sections 420, 406, 504, 506, 467, 468, 120 B and 323 of the Indian Penal Code and investigation was taken up.

13. The petitioners are admittedly, the officers of the Company. The petitioners have pleaded that the complainant had purchased a tractor in question upon the financial assistance provided by the Company vide Agreement dated 25.08.2015. By virtue of the said Loan Cum Hypothecation Agreement, the



complainant was to repay the financed amount of Rs.4,75,000/- in 60 installments of Rs.13,200/- each. Since the complainant had made serious default in payment of loan, a demand notice dated 13.09.2017 in English as well as Hindi was issued intimating the complainant about the default and calling her to make payment and further duly intimating that if loan was not repaid, the Company would proceed with the repossession of the vehicle in accordance with Loan Cum Hypothecation Agreement. However, the complainant neither made any payment nor sent any reply to the notice, thus, the Company repossessed the vehicle by exercising its powers vested under the Agreement. Despite, repossession of the said vehicle, the informant did not pay any heed to make payment of loan amount and, thus, the Company issued a pre sale notice dated 27.02.2018 duly intimating the informant about the outstanding and consequences of non-payment of loan will be sale of the vehicle. However, the informant did not make any payment and, thus, the vehicle was sold by the Company. The aforesaid pleadings have not been controverted by respondent no. 5 by way of filing any counter-affidavit.

14. It is reiterated that despite valid service of notice, the complainant, who is being represented through her counsel



has failed to appear before the Court and to contest the matter.

15. The fact that the vehicle was financed by the Company is not in dispute. The fact that the financed amount of Rs.4,75,000/- was to be repaid in 60 installments of Rs.13,200/- each is also not in dispute. Similarly, the fact that after 23 installments, the complainant defaulted in payment of monthly installments is also not in dispute.

16. It is true that in the complaint, the complainant has stated that she had gone to the office of the Company to deposit the amount but she has not mentioned the date on which she had visited the office of the Company. The informant has also not mentioned the date on which she was abused, assaulted and threatened by the officers and employees of the Company.

17. Since the facts are admitted, it would be proper to look to the Loan Cum Hypothecation Agreement entered into between the parties, which has been brought on record as Annexure-2 to the present application.

18. Clause 9 of the said Agreement stipulates consequences of default in payment of loan, the same is reproduced hereinunder:-

“9. CONSEQUENCES OF DEFAULT AND
TERMINATION:

(i) It is agreed that in case of occurrence



of any Event of Default as mentioned in Clause 8 hereinabove, the Lender may send to the Borrower a notice of demand at his/her last known address calling upon the Borrower to repay the amounts due and payable under this Agreement within 7 days from the date of receipt of such notice (“Default Notice”).

(ii) In the event of failure of the Borrower to clear the amounts due and payable under this Agreement within 7 days from the date of receipt of the Default Notice, the Lender may take possession of the Asset(s) without intervention of the Courts/courts, either suo motto (sic) or through its agent, duly authorised in this behalf and the Borrower agrees and undertakes to surrender the Asset(s) to the Lender or to its agent, duly authorised.

(iii) However, it is expressly agreed that if the Lender comes to a conclusion that the Borrower is likely to sell or transfer or attempt to sell or transfer or hypothecate, part with possession or create a charge or encumber or create any lien on the Asset(s) or any item of the Asset(s) is endangered in the opinion of the Lender or the interest of Lender is jeopardised. In such circumstances, the Borrower waives service of Default Notice mentioned in sub-clause (i) above and the Lender shall be entitled to take possession



of the Asset(s) without intervention of the Court/courts, either on its own or through its agent, duly authorised in this behalf and the Borrower agrees and undertakes to surrender the Asset to the Lender or its agent. The Borrower hereby waives his right to challenge the conclusion arrived at by the Lender or the Opinion of the Lender.

(iv) After taking possession of the Asset(s), the Lender shall send notice prior to sale of Asset(s) ("Pre-sale Notice") to the Borrower calling upon the Borrower to clear the total amount outstanding under this Agreement ("Loan Outstanding").

(v) On failure of the Borrower to clear the Loan Outstandings on receipt of the Pre-sale Notice, the Lender may sell the Asset(s) by private treaty and adjust the sale proceeds thereof against the Loan Outstandings of the Borrower. Borrower hereby waives his right to challenge the sale of the Asset(s) by the Lender.

(vi) The Borrower agrees and undertakes to clear the Balance Loan Outstanding, if any, after adjusting the sale proceeds of the Asset(s) against Loan Outstandings, on receipt of Post-sale Notice from the Lender.

(vii) The LENDER shall not be bound or become liable for any loss that the BORROWER may suffer due to such action/s



and all such action/s of the LENDER shall be without prejudice to the LENDER's other rights and remedies, as stated herein or otherwise in law entitled to.

(viii) In case the net sale proceeds, after deducting all amounts payable by the Borrower and all costs including legal and/or repossession costs and parking charges, other charges and expenses, including expenses incurred by the LENDER after an event of default has occurred in connection with the preservation of the BORROWER'S assets and properties incurred by the LENDER, are insufficient to meet in full the dues of the LENDER hereunder, the BORROWER shall make good and pay such deficiencies along with interest @ 18 % p.a. till the date of payment to the LENDER forthwith upon demand without any demur or protest.”

19. From perusal of the consequences mentioned in the aforesaid clause 9 of the Loan Cum Hypothecation Agreement, it would be evident that in case of occurrence of any event of default, the lender was required to send the borrower a notice of demand calling the borrower to repay amount due and payable under this Agreement within seven days of receipt of notice. In the event of failure of the borrower to clear amount due and



payable under the Agreement within seven days from the date of receipt of the default notice, the lender was vested with the right to take possession of the asset without intervention of the court either suo motu or through its agent. However, after taking possession of the asset, the lender was required to send notice prior to sell of the asset to the borrower calling upon the borrower to clear total amount outstanding under the Agreement and on failure of the borrower to clear loan outstanding on receipt of pre-sale notice, the lender had a right to sell the asset and adjust the sale proceeds thereof against loan outstanding.

20. It is the contention of the petitioners that all due procedures were followed within the corners of the Agreement before taking possession of the vehicle and putting it on sale.

21. The case in hand is not covered by the ratio laid down by the Supreme Court in **Priyanka Srivastava's** case (Supra).

22. In this regard, learned counsel for the State has rightly contended that in **Priyanka Srivastava's** case (Supra), the Supreme Court has not taken away suo motu jurisdiction of the court of Magistrate to refer a complaint filed under Sections 190 and 200 of the CrPC to the police for investigation in exercise of powers conferred under Sections 156(3) of the



CrPC. In the said case, the Supreme Court has held that in case, an application under Section 156(3) is filed and the complainant makes a request that the complaint be sent to the police for investigation, the court must ensure prior compliance of mandatory requirements of Sections 154(1) and 154(3) of the CrPC.

23. However, in **Sardar Trilok Singh & Ors. vs. Satya Deo Tripathi** (Supra), an almost identical case was examined by the Supreme Court. In that case, a truck had been taken into possession by the financier in terms of hire purchase agreement, as there was a default in making payment of installments. A criminal case had been instituted against the financier *inter alia* under Section 395 of the Indian Penal Code. The High Court had refused to exercise its power under Section 482 of the CrPC and did not quash the criminal proceeding on the ground that the financier had committed offence. Upon challenge, the Supreme Court reversed the said judgment. The Supreme Court held that the proceedings initiated were clearly an abuse of the process of the Court. In paragraph 5 of the judgment, the Supreme Court observed :

“5. We are clearly of the view that it was not a case where any processes ought to have been directed to be issued against any of



the accused. On the well-settled principles of law it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct. Money must have been advanced to him and his partner by the financier on the basis of some terms settled between the parties. Even assuming that the agreement entered on March 29, 1973 was duly filled up and the signature of the complainant was obtained on a blank form, it is to be noticed that the amount of the two monthly instalments admittedly paid by him was to the tune of Rs 3566 exactly at Rs 1783 per month. The complaint does not say as to when these two monthly instalments were paid. In the first information report which he had lodged he had not stated that the third monthly instalment was payable on July 31, 1973. Rather, from the statement in the first information report it appears that the instalment had already become due on July 28, 1973 when the complainant went out of Kanpur according to his case. The question as to what were the terms of the settlement and whether they were duly incorporated in the printed agreement or not were all questions



which could be properly and adequately decided in a civil court. Obtaining signature of a person on blank sheet of papers by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of the Penal Code making it an offence or when such a document is used as a genuine document. Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on July 30, 1973 from the house of the respondent they could and did claim to have done so in exercise of their bona fide right of seizing the truck on the respondent's failure to pay the third monthly instalment in time. It was, therefore, a bona fide civil dispute which led to the seizure of the truck. On the face of the complaint petition itself the highly exaggerated version given by the respondent, the appellants went to his house with a mob armed with deadly weapons and committed the offence of dacoity in taking away the truck was so very unnatural and untrustworthy that it could take the matter out of the realm of civil dispute. Nobody on the side of the respondent was hurt. Even a scratch was not given to anybody.”



24. In **K. A. Mathai & Anr. vs. Kora Bibbikutty & Anr.** (Supra), a bus was purchased by the company on a hire-purchase agreement. The complainant paid only part consideration money and made default in paying installments and the vehicle was taken into possession by the financier. Thereafter, a case was launched by the complainant for the offence punishable under Section 379 read with 114 of the Indian Penal Code. In that case, the Supreme Court took view that in case of default to make payment of installment, the financier had the right to resume possession of the vehicle even if the hire-purchase agreement did not contain a clause of resumption of possession for the reason that such condition has to be read in the agreement. The Supreme Court observed as under :-

“... Though we do not have the advantage of reading the hire-purchase agreement, but as normally drawn it would have contained the clause that in the event of the failure to make payment of instalment/s the financier had the right to resume possession of the vehicle. Since the financier's agreement with A-2 contained that clause of resumption of possession, that has to be read, if not specifically provided in the agreement, as part of the sale agreement



between A-2 and the complainant. It is, in these circumstances, the financier took possession of the bus from the complainant with the aid of the appellants. It cannot thus be said that the appellants, in any way, had committed the offence of theft and that too, with the requisite mens rea and requisite dishonest intention. ...”

25. In **Charanjit Singh Chadha and Ors. vs. Sudhir Mehra** (Supra), the Supreme Court held that repossession of goods as per terms of agreement does not amount to any criminal offence as the agreement specifically gave authority to the appellants to repossess the vehicle and under the hire purchase agreement, the financier continues to be the owner of the vehicle and even if the entire allegations are taken to be true, no criminal case is made out against them.

26. In **Anup Sarmah vs. Bhola Nath Sharma & Ors.** (Supra), the Supreme Court after considering the past precedents 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.



27. In **G. Sagar Suri vs. State of U.P.** since reported in **(2000) 2 SCC 636**, the Supreme Court has taken a serious view of growing tendency to give a dispute of civil nature a cloak of criminal offence. In that case, the Supreme Court observed :

“... It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

28. In **M/s Indian Oil Corpn. vs. M/s NEPC India Ltd. & Ors.**, since reported in **AIR 2006 SC 2780**, the Supreme Court relying on the observations made by the Supreme Court in **G. Sagar Suri v. State of U.P.** (Supra) observed:

“While on this issue, it is necessary to take notice of a growing tendency in business



circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged....”

29. Considering the facts of the case, submissions made on behalf of the parties, and the discussions made hereinabove, this Court is of the considered opinion that allowing the prosecution case to continue in the present case, which is predominantly civil in nature would amount to abuse of the process of the court.

30. In my considered opinion, in order to secure the ends of justice, the FIR needs to be quashed. Accordingly, entire criminal prosecution including the FIR of Kazi Mohammadpur P. S. Case No. 204 of 2018 is hereby quashed.



31. The application stands allowed.

(Ashwani Kumar Singh, J)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.11.2019
Transmission Date	13.11.2019

