

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56095 of 2019

Arising Out of PS. Case No.-326 Year-2018 Thana- LAHERIMUHALLA District- Nalanda

Mahindra and Mahindra Financial Services Ltd., a company incorporated under the Indian Companies Act, 1956 having its registered office at Gateway Building, Appollo Bunder, P.S.-Appollo Bunder, Mumbai-400001 and having one of its branch office at having its branch office at Plot No.6A, North S.K. Puri, besides CIMAGE, Boring Road, P.S.-S.K.Puri Patna-800013 through its Deputy Manager (Legal). Aditaya Nand S/o Shri Jai Ram Dubey

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Santosh Kumar Son of Sri Awadhesh Prasad Resident of Village-Khaje Etwarsarai, P.S.-Sohsarai, District-Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Shivendra Kumar Roy, Adv
For the State	:	Mr.Ram Bilash Roy Raman, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 13-12-2019

Heard learned counsel for the parties.

2. Petitioner-Mahindra & Mahindra Finance Services Ltd. has been arrayed as accused in Laheri P.S.Case No.326 of 2018 registered under Sections 341,323 and 420 of the Indian Penal Code.

3. The petitioner, in this application under Section 482 Cr.P.C., has challenged the FIR itself on the ground that it does not disclose ingredients of any criminal offence alleged rather just to resolve the civil dispute, maliciously criminal prosecution has been launched.



4. Notice was already served on opposite party No.2 but no one appears on behalf of opposite party No.2.

5. According to FIR, opposite party No.2-Santosh Kumar had purchased a tractor from New Shyamali Showroom. The proprietor of the New Shyamali Showroom and the petitioner-financier had entered into an agreement. The terms of the agreement stipulated that if the loan amount is returned in different installments within a period of one year, no interest would be charged. However, the petitioner charged interests for the aforesaid period though installment was regularly paid. When the informant registered protest, he was thrashed out of the Company-showroom.

6. Submission is that offence under Sections 341 and 323 cannot be alleged against a Company. For commission of these offences, an individual (living person) must be there. No living person is accused in this case. So far commission of offence under Section 420 I.P.C. is concerned, there is no averment of dishonest and fraudulent intention on the part of the petitioner at the time of entering into agreement. Further submission is that since prima facie allegation is of non-compliance of the agreement, it may give rise to a civil dispute or a remedy before the consumer forum. However, in no circumstance, criminal prosecution would be maintainable. Learned counsel for the



petitioner further contends that the FIR was lodged in the year 2018. Assuming that the investigation has progressed or it might have concluded which is not known to the petitioner, the interference in exercise of jurisdiction under Section 482 Cr.P.C. is permissible as held by Hon'ble Supreme Court in **Anand Kumar Mohatta and Another versus State (Govt. of NCT of Delhi) Department of Home and Another** , reported in **AIR 2019 SC 210**. The Hon'ble Supreme Court considered the power of this Court under Section 482 of the Code of Criminal Procedure and held in para 17 of the judgment, as follows :-

“There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the F.I.R. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 of the Code of Criminal Procedure even when the discharge application is pending with the trial court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of F.I.R. but not if it has advanced, and the allegations have materIALIZED



into a charge sheet. On the contrary it could be said that the abuse of process caused by F.I.R. stands aggravated if the F.I.R. has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court”.

7. Since no offence is made out against the petitioner rather a prima facie case of only civil dispute is there, the continuance of criminal proceeding in pursuance of the impugned FIR would amount to abuse of the process of the Court. Hence, the FIR and entire criminal proceeding is hereby quashed and this application is allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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