IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10709 of 2020

Arising Out of PS. Case No.-1447 Year-2018 Thana- NALANDA COMPLAINT CASE District- Nalanda

==

1. SANTOSH TIWARI S/o Khara Nand Tiwary Resident of Village- Nirpur, P.O- Sitakund, P.S.- Haldi, Distt- Baliya, Uttar Pradesh, Ex- Business Executive, Mahindra and Mahindra Financial Services Ltd. Having its Office at Gandhi Complex, 2nd Floor, Opposite Big Bazar, Ramchandrapur, P.S.- Laheri, Distt- Nalanda.
2. Pradeep Kumar S/o Lalan Prasad Resident of Village- Badkagaon, P.O. and P.S.- Bhagwanpur, Distt- Siwan, presently posted as Branch Accountant, Mahindra and Mahindra Financial Services Ltd, Having its Office at Mahindra Finance Gandhi Complex, 2nd Floor, Opposite Big Bazar, Ramchandrapur, P.S.- Laheri, Distt- Nalanda.

... ... Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Meena Singh W/o - Sri Shankar Dayal Singh Resident of Village- Sahbajpur, P.S.- Asthawan, Distt- Nalanda.

... ... Opposite Party/s

==

Appearance :

For the Petitioner/s	:	Mr.Shivendra Kumar Roy
For the Opposite Party/s	:	Mr.Dinesh Singh
For the complainant	:	Mr. Rajnish Kumar

==

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

4 01-07-2020 Heard learned Counsel for the petitioners, learned Counsel for the complainant and learned Additional Public Prosecutor representing the State, through Video Conferencing.

This application, for grant of anticipatory bail, arises out of Complaint Case No. 1447 (C) of 2018, in which cognizance has been taken for the offences punishable under Sections 406/323/504/34 of the Indian Penal Code.

The case of the complainant is that the complainant had taken a loan from Mahindra & Mahindra Financial Services Limited (hereinafter referred to as 'the Company') to the tune o Rs. 5,75,000/- for purchasing a bolero vehicle. It has further been alleged that the vehicle, bearing Registration No. BR21GA-6892, was purchased by the complainant and the loan amount was to be returned by the complainant in 59 monthly instalments of Rs. 13,500/-. The complainant further alleged that on 09.09.2017, the complainant paid Rs. 40,500/- to the petitioner no. 1 and one Deepak Kumar and after that both the persons told her that due to failure of link, the receipt could not be generated and the same would be given to the complainant after some time. It has further been alleged that since the receipt was not issued for the amount which was deposited by the complainant, the complainant could not deposit the next instalments and on 16.11.2017, the vehicle in question was repossessed by Deepak Kumar and petitioner no. 1 along with 4-5 persons without giving any notice to the complainant from Ramchandraapur, Biharsharif. It has also been alleged that after one hour of the repossession of the vehicle, a sum of Rs. 15,000/-, out of the deposited amount of Rs. 40,500/-, was deposited in favour of the complainant and the complainant was informed that the receipt for the balance amount would be given later. It has also been alleged that on 12.03.2018, the complainant along with her husband met with petitioner no. 1 and he asked the complainant to deposit Rs. 1,00,000/-, after which the vehicle would be released and thereafter on 17.03.2018 and 19.03.2018, the complainant deposited a sum of Rs. 79,500/- and Rs. 9,000/- respectively, receipts of which were issued in favour of the complainant and the complainant was assured that the process for releasing the vehicle would be initiated. The complainant has further alleged that on 14.05.2018, when the complainant along with her husband met with petitioner no. 1, they were informed that the vehicle had already been auction sold and they should meet with senior officials of the Company. Accordingly, the complainant has alleged that the petitioners, along with other co-accused persons, in conspiracy induced her and has cheated her of Rs. 4,28,500/- and has further abused and dragged the complainant out of the office and threatened her of her life.

Learned Counsel for the petitioners submits that the petitioners have not committed any offence in the manner alleged. He further submits that the petitioner no. 1 is the ex-business executive of the Company and the petitioner no. 2 is the Branch Accountant of the Company. He further submits that the Company is engaged in the business of vehicle financing and other financing. He further submits that the complainant had approached the company for vehicle loan and upon submission of all the necessary documents, a loan of Rs. 5,75,000/- was sanctioned and disbursed on 21.02.2017 in favour of the complainant for purchase of a bolero vehicle and in pursuance thereof, the complainant purchased the vehicle in question. He, referring to Annexure 4, submits that a loan agreement was entered into between the authorized officers of the Company and the complainant, under which the complainant was required to repay the loan amount in 59 monthly instalments of Rs. 13,500/-. He further submits that as per Clause 3 (a) of the loan agreement, the vehicle in question was hypothecated in favour of the Company. He, referring to Clause 14 of the loan agreement, submits that as per the terms of the agreement, the Company was authorized to take repossession of the vehicle in case of default of payment of loan amount by the borrower. Referring to Clause 15 of the loan agreement, he further submits that there is civil dispute between the parties inasmuch as according to the terms of the loan agreement, there is an arbitration clause also, but the complainant, instead of invoking arbitration clause, has lodged the present criminal case against the officials of the Company with oblique motive in abuse of the process of the Court. He, referring to Annexure 8, which is statement of account, submits that the complainant defaulted in payment of instalments and till 09.05.2018, the complainant has paid only a sum of Rs. 1,57,375/-, out of the total outstanding amount of Rs. 7,96,375/-. Learned Counsel further submits that due to default in payment of monthly instalments and huge outstanding against the complainant, the Company decided to repossess the vehicle in question and accordingly in terms of the loan agreement, the Company repossessed the vehicle on 16.11.2017. He, referring to Annexures 7 and 7/A, submits that after repossession of the vehicle in question, the Company issued notices, dated 05.12.2017 and 12.01.2018, calling upon the complainant to pay the entire outstanding amount under the loan agreement within a period of seven days from the date of receipt of the notice towards full and final discharge of the loan amount, failing which the Company would be constrained to sell off the said vehicle under the loan agreement. He submits that the complainant failed to pay the outstanding amount and accordingly the vehicle in question was auction sold in accordance with law and the sale proceeds has been adjusted towards the outstanding loan amount. He also submits that in any event, if the complainant has any grievance, she could take recourse to civil dispute or may invoke the arbitration Clause, as per Clause 15 of the loan agreement.

On the other hand, learned Counsel for the complainant vehemently opposes the prayer for anticipatory bail and submits that the petitioners, along with other officers of the Company, cheated and duped the complainant and a sum of Rs. 4,58,500/- was deposited by the complainant with the Company, but the Company, without taking the same into consideration has forcibly took the possession of the vehicle in question and has auction sold the same to a third party.

Having regard to the submissions made on behalf of the parties and taking into consideration the materials on record, it appears that the complainant had taken a loan from the Company and due to default in payment of monthly instalments/loan amount, the vehicle has been repossessed by the Company under the loan agreement and the same has been auction sold and the petitioners are employees of the Company, I am inclined to grant the petitioners privilege of anticipatory bail.

This application is, accordingly, allowed.

Let the petitioners, above named, in the event of his arrest or surrender before the Court below within six weeks from today, be released on bail on furnishing bail bond of Rs. 25,000/- (twenty five thousand) each with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate, 1st Class, Nalanda, at Biharsharif, in connection with Complaint Case No. 1447 (C) of 2018, subject to the condition laid down under Section 438 (2) of the Code of Criminal Procedure.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

U	√	T	√