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22.06.2022
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WPA No.10611 of 2022

Swapan Kumar Ghosh
Vs.
The Union of India and others

Mr. Swattwik Bhattacharyya,
Mr. Aashutosh Bhattacharyya
.... for the petitioner

Mr. Amal Kumar Datta
.... for the Union of India

Mr. Pantu Deb Roy,
Mr. Subrata Guha Biswas
.... for the State

Learned counsel for the petitioner vociferously argues that the matter pertains to illegal seizure of a vehicle from the petitioner by the respondent-Bank without disclosing any reason whatsoever.

Learned counsel places reliance on Section 197 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the 1988 Act"), which deals with taking vehicles without authority. Sub-Section (1) of Section 197 provides that whoever takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be punishable with imprisonment which may extend to three months, or with fine of rupees five hundred, or with both.

Skipping the proviso to Sub-Section (1), Sub-Section (2) provides that whoever, unlawfully by force or threat of force or by any other form of intimidation, seizes or exercises control of a motor vehicle, shall be punishable with imprisonment which may extend to three months, or with fine of rupees five hundred, or with both.

In the present case, the petitioner alleges that the petitioner's vehicle, which the Bank authorities, through miscreants, unlawfully seized from the petitioner, was not released despite the petitioner having specifically written to the Branch Manager of the respondent-Bank, that is, the Union Bank of India in that regard.

Such communication is annexed as Annexure – P5 at page – 62 of the writ petition. It is seen from the said communication that the petitioner has written that, with reference to the petitioner's vehicle loan vide Account No.546006120000007 held with Baguihati Branch, the loan was "slipped to NPA" on April 2019 and further the petitioner was not able to repay the loan amount, hence the bank has seized the petitioner's vehicle. The petitioner, thereafter, requested the bank to release the vehicle (Bus) as that is the only source of income for the petitioner's family.

It is further admitted in the said communication by the petitioner that the total upgradation amount was Rs.5,55,000/- but the petitioner had paid only Rs.1,75,000/- towards the upgradation of loan account and the remaining amount would be paid along with further interest at the contractual rate of the bank within three months, starting from the month of October. The petitioner went on to say that the remaining amount of Rs.3,80,000/- along with contractual rate of interest of the bank would be paid back within three months, by paying monthly instalments of Rs.1,26,667/- each.

In the second paragraph of the said letter, the petitioner wrote that the petitioner has clear intention to clear the entire dues towards the Bank and hence once again requested the Bank to release the vehicle on the above assurance given by the petitioner. If the petitioner failed to pay above committed amount, it was admitted that the bank had full right to take further recovery action and otherwise.

Hence, it is clear from the letter of the petitioner that, admittedly, a substantial portion of the loan taken by the petitioner from the bank-in-question was not returned in time by the petitioner. The said nonpayment and the consequential marking of the petitioner's bank account as NPA (Non-Performing Asset) have been admitted in clear terms by the petitioner in every sentence used in the communication.

Hence, it is apparent from the petitioner's own admission that Section 197 of the 1988 Act is not applicable at all. The Bank, upon the account of the petitioner having turned NPA, had a right and authority under the SARFAESI Act to seize the vehicle of the petitioner, which is apparent from the tenor of the petitioner's own communication, annexed to the writ petition. Thus, the provisions of Sub-Sections (1) and (2) are not satisfied inasmuch as the respondent-bank did not take or drive away the petitioner's motor vehicle without having any lawful authority and/or unlawfully or by force or threat of force or of any other form of intimidation seized or exercised control over the motor vehicle.

Hence, the writ petition fails.

Accordingly, WPA No.10611 of 2022 is dismissed, however, without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)