IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2929 of 2018

Arising Out of PS. Case No.-1608 Year-2016 Thana- GAYA COMPLAINT CASE District-Gaya

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1. Rahul Kumar and Anr S/o Jeebach Prasad Roy, aged about 30 Years, Presently Works at Tata Motors Finance Limited 2nd Floor Narang Road, Civil Lines, Nagapur-440001, Maharashtra working as State Head - SLCV area, Covering Vidharbha and Chattisgarh, and Residing /Permanent Add.- Ashok Nagar Pokhariya, Ward No. -36, Begeusrai- 851101, Bihar.
2. Vikash Gaurav S/o Hari Madhow Singh, aged about 32 Years, Territory Collection Manager, Tata Motors Finance Limited, Holding No.- 82/104, 2nd Floor Balaji Gharance, A.P. Colony, Gaya.- 823001.

... ... Petitioner/s

Versus

1. State Of Bihar
2. Ajay Kumar Singh aged about 50 Years S/o Ambika Singh, Add. Kendui, P.S.- MMCH, Gaya.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Dayanand Singh, Advocate
For the Opposite Party/s : Mr.Sri Ram Sumiran Roy, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

7 04-05-2023 Heard learned counsel for the petitioners, learned APP for the State. None appears for complainant despite valid service of notice.

This application has been filed for quashing of the order dated 29.05.2017 passed by learned Chief Judicial Magistrate, Gaya in Complaint Case No. 1608 of 2016 by which learned Magistrate has taken cognizance against the petitioner for the offences under Sections 323, 504 and 417 of the Indian Penal Code.

Prosecution story in short is that the complainant namely Nikhil Kumar Singh had purchased an Indigo Car through Tata Motors Finance Limited, Anugrahpuri Colony in year 2014 in which the said Finance company financed a loan amounting to Rs. 5,32,658/- to the complainant, out of which Rs. 3,49, 672/- was paid by the son of complainant. On 28.07.2015, son of the complainant was driving the vehicle which was financed by the said company met with an accident and in the said accident he died. After death of the complainant's son, the said company threatened and pressurized the complainant to repay the rest amount. It is further alleged by complainant that amount of insurance of the said car has been grabbed by the petitioners who have been compelling the complainant for making payment of rest amount and not showing the adjustment amount.

It has been submitted by learned counsel for the petitioners that the present malicious prosecution has been initiated by a loanee against Tata Motors Finance Limited, Anugrahpuri Colony after the attempt was made by the said company for repossessing vehicle in question. He further submits that these kinds of malicious prosecution cannot be allowed.

The Hon'ble Supreme Court in the case of ***Charanjit Singh Chada and Others Vs. Sudhir Mehra*** reported in ***2001 SCC OnLine SC 1031*** has held as under***:-***

> *"(6.)In Charanjit Singh Chadha v. Sudhir Mehra this Court held that recovery of possession of the vehicle by the financier owner as per terms of the hire-purchase agreement, does not amount to a criminal offence. Such an agreement is an executory contract of sale conferring no right in rem on the hirer until the transfer of the property to him has been fulfilled and in case the default is committed by the hirer and possession of the vehicle is resumed by the financier, it does not constitute any offence for the reason that such a case/dispute is required to be resolved on the basis of terms incorporated in the agreement. The Court elaborately dealt with the nature of the hire-purchase agreement observing that in a case of mere contract of hiring, it is a contract of bailment which does not create a title in the bailee. However, there may be variations in the terms and conditions of the agreement as created between the parties and the rights of the parties have to be determined on the basis of the said agreement. The Court further held that in such a contract, element of bailment and element of sale are involved in the sense that it contemplates an eventual sale."*

Furthr, the Hon'ble Supreme Court in the case of ***Anup Sarmah Vs. Bhola Nath Sharma & Others*** *reported in* ***2012 SCC OnLine SC 905 has*** held as under:-

> "(*8.) In K.L. Johar & Co. v. CTO this Court took the view that a hire-purchase agreement has two elements: (1) element of bailment; and (2)*

element of sale, in the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then had been hired."

In view of the above, this malicious prosecution case against the finance company or its officials should be nipped in the bud. In view of the law laid down by the Hon'ble Supreme Court in cases of ***Charanjit Singh Chada and Others Vs. Sudhir Mehra*** (Supra) and ***Anup Sarmah Vs. Bhola Nath Sharma & Others*** (supra)**,** this application is allowed.

The order dated 29.05.2017 passed by learned Chief Judicial Magistrate, Gaya in Complaint Case No. 1608 of 2016 is hereby quashed in the interest of justice.

(Sandeep Kumar, J)

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