IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13021 of 2018

Arising Out of PS. Case No.-73 Year-2014 Thana- VAISALI COMPLAINT CASE District-Vaishali

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Joydeep Dutta @ Jagdeep Datta Son of Bivas and Dutta, of Village Flat1/C Purbi Apartment 100, Peary Road, P.S.- Chitla District Kolkata, the then Senior Executive Legal of MF Process and Solutions Pvt. Ltd. formely Magma CF Services Pvt. Ltd. and empowered and authorized to file institute, appear, represent, depose withdraw and attend the proceedings on behalf of the Magma Fincorp Limited, 24 Park Street, Kolkata.

... ... Petitioner/s

Versus

1. State Of Bihar
2. Girish Shukla @ Girish Kumar Shukla, Son of Ram Das Shukla, Resident of Village- Jalalpur, P.S. Lalganj, District- Vaishali.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Surendra Kishore Thakur

For the Opposite Party/s : Mr.Sri Akshay Lal Pandit

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 22-06-2023

Heard the parties.

This application has been filed for quashing the order dated 18.02.2015 passed by learned Judicial Magistrate, Vaishali at Hajipur in Complaint Case No. C-73 of 2014/Tr. No. 6181 of 2014 by which learned Magistrate has taken cognizance against the petitioner for the offences under Section 504 of the Indian Penal Code.

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As per the complaint, the complainant had purchased a vehicle and had taken loan facility from Magma Fincorp Limited, for which he paid a sum of Rs. 1,57,000/- in installment. It is alleged that on 18.07.2013 the petitioner forcibly seized the said vehicle from the complainant by saying that upon payment of outstanding installments his vehicle will be returned. Thereafter, the petitioner sent a legal notice to the complainant in order to defame the prestigious of the complainant.

It has been submitted by the learned counsel for the petitioner that the complainant made serious defaults in repayment of the loan amount despite repeated reminders. The complainant has filed the complaint with completely false and fabricated allegations with an ulterior motive to put undue pressure upon the finance Company by falsely implicating its employees to deny its legitimate payment.

He further submits that the Company issued several reminders to the complainant seeking the payment of loan, however, the complainant ignored all the reminders and did not make any payment, resultantly, the Company issued Loan Recall Notice dated 31.08.2013 seeking the payment and informing the invocation of arbitration proceedings in case of

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non-payment of the loan amount.

Learned counsel for the petitioner further submits that the complainant did not pay any heed to any of the notices sent to him.

Learned counsel for the petitioner further submits that the Company outsources the repossession of vehicle to a Repossession Agency which is a different entity engaged in the business of repossession of vehicle and no employee of the Company takes part in the act of repossession of the vehicle.

Learned counsel for the petitioner has further submitted that the repossession of the said vehicle was done by an authorized repossession agency under specific direction of the Company on the basis of legal orders and the petitioner has not participated in the act of repossession and thus no criminal offence can be fastened against him.

It has been further submitted by the learned counsel for the petitioner that even if the entire allegation is assumed to be true, no offence can be made out against the petitioner.

I have gone through the materials available on record including the complaint. From the records it appears that the petitioner is the then Senior Executive Legal of MF Process and Solutions Pvt. Ltd. The complainant has purchased a vehicle

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in question and taken loan from Magma Fincorp Ltd., Kolkata vide agreement dated 27.07.2012. It also appears that since the complainant made defaults in payment of loan, the company issued several reminders to the complainant for repayment of loan. The finance company also issued notice dated 31.08.2013 to the complainant seeking payment of loan amount. If the allegations levelled against the petitioner are taken to be true, no offence is made out against the petitioner in view of the law laid down by the Hon'ble Supreme Court in the case of ***AnupSarmah vs Bhola Nath Sharma and Ors*** reported in ***(2013) 1 SCC 400***, ***Charanjit Singh Chadha and Ors. vs Sudhir Mehra*** reported in ***AIR 2001 SC 3721*** and ***M/s Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors.*** Reported in ***AIR 2006 SC 2780***, wherein it has been held that the repossession of goods as per terms of the agreement not amount to any criminal offence.

Paragraph 17 of the judgment of ***Charanjit Singh Chadha And Ors. vs Sudhir Mehra, (supra)*** reads as follows:-

> *The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence. The*

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> *agreement (Annexure P-1) specifically gave authority to the appellants to repossess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire-purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. We, therefore, allow this appeal ans set aside the impugned judgment. The complaint and any other proceedings initiated pursuant to such complaint are quashed.*

Learned counsel for the petitioner has relied a circular of Reserve Bank of India dated 23.03.2012 wherein the Reserve Bank of India lays down guidelines on fair practice.

Paragraph 9 of the RBI circular dated 23.03.2012 reads as follows:-

> "*Clarification regarding repossession of vehicles financed by NBFCs (issued vide CC No. 139 dated April 24, 2009).*
>
> *NBFCs must have a built in re-possession clause in the contract/loan agreement with the borrower which must be legally enforceable. To ensure transparency, the terms and conditions of the contract/loan agreement should also contain provisions*

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regarding: (a) notice period before taking possession; (b) circumstances under which the notice period can be waived; (c) the procedure for taking possession of the security: (d) a provision regarding final chance to be given to the borrower for repayment of loan before the sale / auction of the property; (e) the procedure for giving repossession to the borrower and (f) the procedure for sale / auction of the property. A copy of such terms and conditions must be made available to the borrowers in terms of circular wherein it was stated that NBFCS may invariably furnish a copy of the loan agreement along with a copy each of all enclosures quoted in the loan agreement to all the borrowers at the time of sanction / disbursement of loans, which may form a key component of such contracts/loan agreements."

Paragraph 4, 5, 6 and 7 of the judgment of the Hon'ble Supreme Court in the case of **AnupSarmah vs Bhola Nath Sharma and Ors, (supra)** reads as follows:-

"*4. In Sardar Trilok Singh v. Satya Deo Tripathil this Court examined a similar case wherein the truck had been taken in possession by the financier in terms of hire-purchase agreement, as there was a default in making the payment of instalments. A criminal case had been lodged against the financier under Sections 395, 468, 465, 471, 120-B/34 IPC. The Court refused to exercise its power under Section 482 CrPC and did not quash the criminal proceedings on the ground that the financier had committed an offence. However, reversing the said*

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judgment, this Court held that proceedings initiated were clearly an abuse of process of the court. The dispute involved was purely of civil nature, even if the allegations made by the complainant were substantially correct. Under the hire-purchase agreement, the financier had made the payment of huge money and he was in fact the owner of the vehicle. The terms and conditions incorporated in the agreement gave rise in case of dispute only to civil rights and in such a case, the civil court must decide as to what was the meaning of those terms and conditions.

5. In K.A. Mathai v. Kora Bibbikutty this Court had taken a similar view holding that in case of default to make payment of instalments the financier had a right to resume possession even if the hire-purchase agreement does not contain a clause of resumption of possession for the reason that such a condition is to be read in the agreement. In such an eventuality, it cannot be held that the financier had committed an offence of theft and that too, with the requisite mens rea and requisite dishonest intention. The assertion of rights and obligations accruing to the parties under the hire-purchase agreement wipes out any dishonest pretence in that regard from which it cannot be inferred that the financier had resumed the possession of the vehicle with a guilty intention.

6.In Charanjit Singh Chadha v. Sudhir Mehra[1] 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

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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 Isale are involved in the sense that it contemplates an eventual sale.

"8.... 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." (Charanjit Singh Chadha case[2], SCC p. 422, para 8) While deciding the said case, this Court placed reliance upon its earlier judgments in Damodar Valley Corpn. v. State of Bihar, Instalment Supply (P) Ltd. v. Union of India (SCC p. 744, para 8), K.L. Johar & Co. v. CTO, (AIR p. 1090, para 17) and Sundaram Finance Ltd. v. State of Kerala.

7. In view of the above, the law can be

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> *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."*

Further in view of decision of the Hon'ble Supreme Court in the case of ***R. Kalyani vs. Janak C Mehta*** reported in ***(2009) 1 SCC 516***, the prosecution of the petitioner is bad in law as in the aforesaid decision it has been held that a person cannot be proceeded vicariously. Moreover, there is no specific allegation against the petitioner.

Even if the allegations are taken to be true, no offence is made out against the petitioner.

In view of the aforesaid reasons and also in view of the law laid down by the Supreme Court in the case of ***State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors*** reported in ***AIR 1993 SC 1348***, no offence is made out against the petitioner and therefore, the entire prosecution is fit to be quashed.

Accordingly, this application is allowed. The order dated 18.02.2015 passed by learned Judicial Magistrate, Vaishali at Hajipur in Complaint Case No. C-73 of 2014/Tr. No. 6181 of 2014 is hereby quashed in the interest of justice.

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(Sandeep Kumar, J)

Harsh/-

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