

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.1193 of 2019**

Arising Out of PS. Case No.-396 Year-2019 Thana- RAMKRISHNANAGAR District- Patna

---

ANJANI KUMAR SRIVASTAVA Son of Chandra Shekhar Shrivastava  
Resident of Village - Working at a Post of Collection Manager in TATA  
Capital Financial Services Limited having its Office at 1st Floor, East Ram  
Krishna Nagar, Above ICICI Bank, Opp Shivam Convent School, P.S.- Ram  
Krishna Nagar, By Pass Road, Patna- 800027

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR, PRINCIPAL SECRETARY, HOME DEPTT.,  
GOVT. OF BIHAR, PATNA Bihar
2. The State of Bihar, Through Director General of Police, Sadar Patel  
Bhawan, Patna. Bihar
3. Superintendent of Police, Patna, Bihar.
4. Investigating Officer, Ramkrishna Nagar P.S. Case no.396/2019 Bihar
5. Dharmraj Son of Late Narsingh Mahto, Resident of village-Pateh Ganjpur  
(Sabalpur), P.S.-Didarganj, present P.S.-Nadi, District-Patna

... .. Respondent/s

---

**Appearance :**

|                      |   |                                                                 |
|----------------------|---|-----------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Dayanand Singh, Advocate<br>Mr. Dhananjay Kashyap, Advocate |
| For the Respondent/s | : | Mr. Sheo Shankar Prasad. APP                                    |

---

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL JUDGMENT**

**Date : 10-04-2023**

Heard the parties.

This application has been filed for quashing the



F.I.R. vide Ramkrishna Nagar P.S. Case No. 396 of 2019 registered under Sections 406, 420, 379 and 34 of the Indian Penal Code 1860.

As per the F.I.R., the informant had purchased a tractor and had taken loan facility from Tata Capital Financial Services Limited, for which he paid Rs. 16000 monthly installments. It is alleged that on 13.10.2018 the petitioner who is Collection Manager, and other employees of the Tata Capital Financial Services Limited took a key of the tractor from the informant and took away the tractor by saying that upon payment of outstanding installments his tractor will be returned. It is also alleged that the informant made payment of Rs. 8000 on 10.09.2018 and requested the petitioner to return his tractor but the petitioner did not accept his request. Thereafter, the informant issued a legal notice to the petitioner. In reply of the said legal notice, it has been stated that the tractor of the petitioner has been sold.

Despite valid service of notice, no one appears on behalf of opposite party no.5 - informant.

The State has not filed any counter affidavit in this case.

It is submitted by the learned counsel for the



petitioner that the informant made serious defaults in repayment of the loan amount despite repeated reminders of the Company which is evident from the Statement of Accounts. The informant has filed the instant F.I.R. 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 informant seeking the payment of loan, however, the informant ignored all the reminders and did not make any payment, resultantly, the Company issued Loan Recall Notice dated 17.02.2018 seeking the payment and informing the invocation of arbitration proceedings in case of non-payment of the loan amount.

Learned counsel for the petitioner further submits that the informant did not pay any heed to any of the notices sent to him and subsequently, the matter was referred to Arbitration. It is submitted that the informant neither appeared before the learned Arbitrator nor made any written/oral submission and an ex parte award dated 26.06.2018 was passed, whereby the Company was directed to sell the vehicle to realize the debts and further the borrower was directed to hand over the



vehicle. Thereafter, the said vehicle was repossessed in light of the order passed by learned Arbitrator in due compliance of all the direction issued by Reserve Bank of India and guidelines laid down by Hon'ble Supreme Court and the Company duly intimated the local police station about the repossession vide pre repossession and post repossession letter dated 15.10.2018.

Learned counsel for the petitioner further submitted 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 further submitted that the repossession of the said vehicle was done by an authorized repossession agency, i.e., Abhishek Repo 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 the petitioner.

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 heard learned counsel for the parties. I have also gone through the materials available on record including the F.I.R. From the records it appears that the petitioner is the Collection Manager in Tata Capital Financial Services Limited. The informant has purchased a tractor and taken loan from Tata Capital Financial Services Limited vide agreement no. 6626861 dated 28.10.2016. It also appears that since the informant made defaults in payment of loan, the company issued several reminders to the informant for repayment of loan. The finance company also issued notice dated 17.02.2018 to the petitioner seeking payment of loan amount and invocation of arbitration proceeding in case of non-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, (2013) 1 SCC 400, Charanjit Singh Chadha And Ors. vs Sudhir Mehra, AIR 2001 SC 3721* and *M/s Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., 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 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 and 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 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 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' 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 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<sup>2</sup>, 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 summarised 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, (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. 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 Ramkrishna Nagar P.S. Case No. 396 of 2019 pending in the Court of learned ACJM XIII, Patna registered under Sections 406, 420, 379 and 34 of the Indian Penal Code and other consequential proceedings arising out of aforesaid F.I.R. are hereby quashed in the interest of justice.

(Sandeep Kumar, J)

Guddu/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
| CAV DATE          |            |
| Uploading Date    | 22/06/2023 |
| Transmission Date | 22/06/2023 |

