IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1781 of 2019

Arising Out of PS. Case No.-507 Year-2016 Thana- BIHTA District- Patna

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PRAFUL KUMAR @ PALPUN MAJUMDAR Son of Late A.K. Majumdar Posted as Manager at the relevant time and presently posted as State Remedial Head in Tata Capital Financial Services Ltd., having its branch office at 1st Floor, East Ram Krishna Nagar, P.S.- Ram Krishna Nagar, Above ICICI Bank, Opp Shivam Convent School, By Pass Road, Patna - 800027, Bihar

... ... Petitioner/s

Versus

1. THE STATE OF BIHAR, THROUGH DIRECTOR GENERAL OF POLICE, BIHAR, PATNA Bihar
2. Superintendent of Police, Patna, Bihar Bihar
3. Investigating Officer, Bihta P.S. Case No. 507/2016 Bihar
4. Vinod Kumar Singh Son of Vishwanath Rai R/o House No. 60, Village - Madhopur, P.O.- Madhopur, Near Block, P.S.- Maner, District - Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dayanand Singh, Advocate
		Mr. Dhananjay Kashyap, Advocate
For the Respondent/s	:	Mr. Manish Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

4 01-05-2023 Heard learned counsel for the parties.

This application has been filed for quashing the F.I.R. of Bihta P.S. Case No. 507 of 2016 pending in the Court of ACJM I, Danapur registered under Sections 386, 406, 420, 120(B) and 34 of the Indian Penal Code 1860.

The prosecution story in brief is given hereinbelow:-

The Informant purchased a fork lane machine bearing equipment model R.220 1c.7, equipment Serial No. N602001224, Boom length 56, Bucket size 105 M'3, Engine Model Hyndai engine No. 76004593, chassis No. N602201224Arme Length upon loan facility of Rs. 36,05,000 *extended by Tata Capital Financial Services Ltd., vide contract no. 700308440 dated 31.08.2015 to be repaid in 33 monthly installments of Rs. 1,32,643.*

The Informant had deposited the margin money of Rs. 1,54,500 and paid timely installment to the Company. The Informant had given 33 blank cheques of Madhya Bihar Gramin Bank to the accused no.2 (Branch Manager of the finance company).

The Informant has alleged that all the accused persons seized the Fork Lane Machine with the help of rowdy persons and took it to the yard of Tata Motors, Bihta Sikandarpur Arrah Road by showing revolver and parked there. On the next day, the Informant saw the Fork lane Machine parked in the yard of Tata Motors, Sikandarpur Arrah Road and gave this information in the Bihta Police Station but the police officer told him that the matter is related to the financier and advised him to lodge a complaint in the Court. Thereafter, the complainant filed a Complaint Case No. 729© of 2016 and the learned ACJM I, Danapur forwarded the said complaint to Bihta Police Station for registration of F.I.R. and the same was registered vide Bihta P.S. Case No. 507 of 2016.

None appears on behalf of the respondent no.4.

Learned counsel for the petitioner submits that the petitioner worked as a Manager at the time of alleged occurrence in TATA Capital Financial Services Ltd. (hereinafter referred to as 'Company') which is a company engaged in the business of vehicle finance throughout the country and the job obligation of the petitioner was to look after the accounts of the Branch Office and he has no connection with the repossession of any machine financed by the Company and he has falsely been implicated in this case to put undue pressure on the Company.

Learned counsel for the petitioner submits that the Informant purchased a Fork Lane Machine on loan extended by Tata Capital Financial Services Ltd. vide agreement no. 7000308440 dated 31.08.2015.

It is submitted by the learned counsel for the petitioner that the informant made serious defaults in repayment of the said loan despite repeated reminders which is also evident from the statement of accounts (Annexure-3) and the informant has filed the instant F.I.R. replete with completely false and fabricated allegations with an ulterior motive to put undue pressure on the Company by falsely implicating its employees to deny its legitimate payment.

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 10.05.2016 seeking the payment and further informed the Borrower/Informant to surrender the possession of the machine, however, the informant neither made any payment nor surrendered the machine and subsequently the machine was repossessed by the company on 25.06.2016 in due compliance of all the direction issued by Reserve Bank of India and guidelines laid down by the Hon'ble Supreme Court.

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

Learned counsel for the petitioner further submitted that the repossession of the said vehicle was done by an authorized repossession agent Santosh Kumar, 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 is submitted by the learned counsel for the petitioner that the Informant made serious defaults in repayment of the said loan despite repeated reminders of the Company and has filed the instant F.I.R. replete with entirely false allegations.

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 in view of the law laid down by the Hon'ble Supreme Court in the case of ***Anup Sarmah 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.***

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 reposssession 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 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 also relied upon the circular of RBI dated 23.03.2012 issued by the RBI to all NBFCs which 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.*
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> **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.*
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> ***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 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 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.*

The petitioner has also submitted that the company has not been made an accused in the present case, and therefore, in view of the law laid down by 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 a person cannot be proceeded vicariously for the acts of the company if the company has not been made accused.

Learned counsel for the petitioner has also submitted that there is no specific allegation against the petitioner and even if the allegations are taken to be true and 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 then the entire prosecution is fit to be quashed.

Learned counsel for the State has submitted that the present application is not a fit case for quashing as the investigation is going on and if the petitioner is involved in the crime he will be exonerated during investigation.

I have gone through the F.I.R also, if the allegations are taken to be true no offence is made out and considering the law laid down by the Supreme Court in the case of ***AnupSarmah vs Bhola Nath Sharma and Ors, (supra)***, ***Charanjit Singh Chadha And Ors. vs Sudhir Mehra, (supra) ,***

M/s Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., (supra) and ***State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors. (supra),*** this application is allowed**.**

The F.I.R. of Bihta P.S. Case No. 507 of 2016 is hereby quashed.

(Sandeep Kumar, J)

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