IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50999 of 2022

Arising Out of PS. Case No.-865 Year-2017 Thana- MUZFFARPUR COMPLAINT CASE District- Muzaffarpur

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Tata Motors Finance Ltd. , Through Authorized Representative Mr. Rajnish Kant Posted As Zonal Legal Head, Having Its Head Office At Building - A, 2nd Floor Lodha Think Techno Campus, Off Pokhran Road-2 Thane (West)-400607, And Branch Office At 601, 6th Floor, Kashi Place, Near Dak Bunglow Chowk, Patna 800001 and Represented Through.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Syed Arshad Raza S/O Syed Ahmad Raza Gram And P.O. Bhikhanpur, P.S.- Ahiyapur, Dist.- Muzaffarpur, Bihar.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Dayanand Singh, Advocate
For the Opposite Party/s : Mr. Ram Anurag Singh, APP
For the O.P. No. 02 : Mr. Pramod Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 03-04-2025 Seen the office notes.

2. It has been submitted by the learned counsel for the petitioner that the O.P. No. 02 has died as has been reported by the process server.

3. No counter affidavit has been filed by the State.

4. This is an application for quashing of the cognizance order dated 09.03.2018 passed by the learned ACJM-XIII, Muzaffarpur in Complaint Case No. 865 of 2017 by which the Court below took the cognizance for the offences punishable under Sections 406, 417, 385 of the Indian Penal

Code.

5. The brief facts of the case are that the complainant went to Ideal Dealers Private Limited to buy a Hyva. The employee and manager took advantage of his limited education and influenced him to get a loan from Tata Motors Finance Ltd. instead of a bank, highlighting its benefits. The complainant left the showroom saying he needed two to three days to think. Later, employees from both Ideal Dealers Pvt. Ltd. and Tata Motors Finance visited his home, pressuring him to take the loan. He received a loan of Rs. 14,40,000 and was asked to sign four blank cheques and multiple documents without explanation of their details. The complainant used his earnings from driving the vehicle to pay off the loan. However, in July, heavy rain prevented him from using the vehicle, leading to missed payments. On August 10, 2016, employees Dinesh Tiwari and Kumar Anand seized the vehicle, claiming he owed a fine of Rs. 60,000 for non-payment. The complainant paid this fine and got the vehicle back after 22 days. Tiwari and Anand also demanded Rs. 10,000 from him. Due to delays in making payments during demonetization, the vehicle was repossessed again and returned only after 62 days, with the complainant forced to pay Rs. 1,00,000 as ransom. During this time, he lost Rs. 3,50,000 and was threatened to pay Rs. 3,00,000 more or face seizure and auction of the vehicle.

6. The learned counsel for the petitioner has submitted that the Tata Motors Finance Ltd is a company incorporated under the provisions of the Indian Companies Act, 1956, having its head office at Building-A, 2nd Floor Lodha Think Techno Campus, Off Pokhran road-2 Thane (West) 400607 (hereinafter referred to as "Company"). The Company has carved a niche for themselves in the sector of vehicle finance across the country. The Petitioner has filed the instant petition through its authorized signatory, namely, Mr. Rajnish Kant as the Learned Court below has been pleased to take cognizance against the Managing Director with the designation of the Petitioner Company *vide* impugned order. However no employee has been specifically named and as such therefore the Petitioner Company has filed the instant application to save its company officials from gross injustice.

7. It is next submitted by the learned counsel for the petitioner that the Managing Director of the petitioner-company holds his office at Mumbai and he has nothing to do and is not responsible for day to day functioning and affairs of the Company across the country and the day to day business is managed by employees of the Company and the Managing Director or any of the higher officials is no way involved in the alleged offence. Moreover in the complaint petition the complaint has not mentioned the name of the accused no.1.

8. It is further submitted that the Managing Director and Chief Executive Officer's role is to design, develop and implement the strategic plan for the Company in the most effective and time efficient manner and does not have any role in the repossession of vehicle and that there are separate verticals in the Company and a person of such a designation i.e., CEO and MD has no relation to the process of repossession of vehicle and they do not interact directly with the customers. There is no whisper of an allegation against the Managing Director in the entire complaint case and only because the petitioner is the Managing Director and Chief Executive Officer of Tata Motors Finance Ltd., therefore he has been arrayed as the Accused No.1 in the present Complaint Case with mala-fide intention to wreak vengeance upon the officials of the Company, put undue pressure and harass the Company and its officials so that the Complainant could make unsubstantiated and unlawful gains against the Company.

9. From the plain reading of the entire averment made in the complaint petition, solemn affirmation of complainant, deposition of witnesses and documentary evidences submitted, it is clear that all the allegations are false and the petitioner has been wrongfully and intentionally dragged into the matter with the sole intention to extract unlawful gain from the company. It is submitted that, the Complainant himself and other prosecution witnesses have never stated anything in their respective depositions against the Petitioner about his involvement in the alleged offence. The order of cognizance dated 09.03.2018 passed by Learned SJ XIV cum ACJM XIII, Muzaffarpur is mechanical one and the learned Magistrate has not applied his judicial mind upon the materials available on the records of the case. He further submits that there is nothing on record of this case to fasten the offence punishable under 406, 417 & 385 of Indian Penal Code against the Managing Director, therefore, the Impugned Order dated 09.03.2018 passed by Sub Judge XIV cum ACJM XIII in Complaint Case No. 865 of 2017 is arbitrary and bad in the eyes of law and liable to be quashed.

10. He further submitted that From the plain reading of the complaint, it is evident that no offence under sections 406, 417 & 385 of Indian Penal Code has been committed by the Petitioner. The necessary ingredient for fastening the offence under section 406, 417 & 385 of Indian Penal Code against the Managing Director is lacking and further there is no averment in the complaint to the affect that there is any inducement or dishonest intention on the part of Petitioner. In the entire complaint case there is no specific allegation against the Managing Director and hence arraying higher official in present complaint case is done only with an intention to put undue pressure on the Petitioner company and its officials. It is therefore relevant to mention that the order of cognizance dated 09.03.2018 passed by Learned Sub Judge XIV cum ACJM XIII, Muzaffarpur in Complaint Case No. 865 of 2017 is against various pronouncements made by Hon'ble Apex Courts to the Learned Magistrate to take precautions while taking cognizance in a criminal case against the accused persons. It has been held that the test before the Learned Magistrate is that in an enquiry and after taking into account the oral and documentary evidences brought by Complainant a prima facie case is made out against the accused persons only then cognizance should be taken but in the present case though there has been no material whatsoever against the Petitioner, still illegally cognizance for offence of cheating, extortion and criminal breach of trust have been taken against the Petitioner, though there is no jota of evidence whatsoever to that effect on the face of record.

11. The learned counsel for the petitioner has further submitted that the petitioner has never visited the house of the Complainant and works and stays at Mumbai. The petitioner being the Managing Director of the Company has no role to play in the collection of outstanding loan through re-possession of the vehicle as the same is done through the authorized re-possessing agent of the Company. The Petitioner holds his office at Mumbai and he has nothing to do and is not responsible for day to day functioning and affairs of the Company across the country and the day to day business is managed by employees of the Company and the Petitioner is no way involved in the alleged offence.

12. He further submits that the Complainant purchased the vehicle upon the financial assistance provided by the Company vide Contract no. 5001801482 dated 25.05.2015. By virtue of aforementioned agreement the Complainant was financed an amount of Rs. 1,440,000/- which was to be repaid in 47 installments in monthly installment wherein 1st installment was of Rs. 47,236 and subsequent installments was of Rs. 45,500.00. He further submits that timely payment of installments was the essence of the said agreement entered between Complainant and Company and the Complainant used to make made serious defaults in timely payment of loan since inception of the Agreement and the same is clearly evident from the Statement of Account. Owing to continuous defaults in timely payment of installment and complete non-response to Company's various reminders for payment of outstanding amount; the Company served a Loan Recall Notice dated 11-08-2017 to the Complainant. However, the Complainant did not pay any heed to it. Thereafter the Company referred the matter of arbitration *vide* Reference Letter dated 17.11.2017 in consonance of the Agreement to the Learned Arbitrator. The Complainant was provided with ample opportunity to present his stand *vide* notices issued by the Learned Arbitrator, however, the Complainant failed to avail any of the opportunity and filed the instant case in complete disregard of thearbitration proceedings. The Learned Arbitrator held 1st and 2nd meeting respectively on 23.12.2017 and 27.01.2018 after serving notices for 1st and 2nd meetings dated 17.11.2017 and 26.12.2017 respectively. Neither the Complainant appeared nor did he bothered to make any written submissions or any reply to the notices issues by the Learned Arbitrator and thereafter the Learned Arbitrator after taking into consideration the evidences and statement of claim filed by the Company passed an award on 30.01.2018 against the Complainant directing him to pay the entire outstanding amount along with interest to the Company, thereby entitling the Company to enforce and realize the amounts due and payable by the Complainant by recovering/taking possession/repossession of the said vehicle and sell the same by public auction or private treaty and appropriate the net sale proceeds thereof towards the outstanding amounts due and payable by the Complainant.

13. It is further submitted that the Complainant has filed the instant complaint with an ulterior motive to deny the payment to the Company and make unsubstantiated and unscrupulous gains against the Company. He further submits that subsequently all the outstanding dues were settled by the Complainant owing to which the Contract was settled and terminated and No Objection Certificate was issued by the Company and the same was duly received by customer on 09.08.2018

14. Learned APP for the State has supported the case of the prosecution and the order taking cognizance but no submission could be made to the N.O.C. issued by the company to the informant.

15. Considering the fact that the parties have settled their dispute and N.O.C. has been issued by the Tata Motors Finance Limited, no purpose will be served by keeping the prosecution pending against the Company and its officials.

16. In view of the above, this application is allowed. Accordingly, the entire criminal proceedings arising out of the Complaint Case No. 865 of 2017 including the order taking cognizance dated 09.03.2018 is hereby quashed.

(Sandeep Kumar, J)

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