

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44634 of 2017

Arising Out of PS. Case No.-2478 Year-2010 Thana- PATNA COMPLAINT CASE District-
Patna

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Devashish Karr @ Debashish Kar Son of Late M.L. Kar, at present Business Head-Auto Loans, Mahindra and Mahindra Financial Services Limited, 4th Floor, Mahindra Tower, G.M. Bhosle Marg, Worli, Mumbai, P.S.- Worli, District- Mumbai.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Deepak Kumar Murarka, Son of Late Pawan Murarka, resident of House No.2 Nandanpuri, Khajpura, P.S.- Shastrinagar, District- Patna, Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Rai, Advocate
For the Opposite Party/s : Mr. Pranav Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL ORDER

15 24-07-2026 Heard learned counsel for the petitioner and learned counsel for the State. Although, Opposite Party No.2 was noticed and even the petitioner had taken steps for substituted service of notice, the Opposite Party No.2 has chosen not to represent himself.

2. The petitioner has filed this application for quashing the order dated 21.04.2017 passed by the learned Sessions Judge, Patna in connection with Cri. Rev. No.436 of 2016, whereby and whereunder, the learned Sessions Judge, Patna was pleased to reject the Criminal Revision Application preferred against the order dated 16.11.2012/06.12.2013 passed



by the Judicial Magistrate-1st Class, Patna in Complaint Case No.2478(C) of 2010 whereby the cognizance against the petitioner under Sections 323/385/34 of the IPC was taken, and was further pleased to issue bailable warrant against the petitioner and simultaneously for quashing the order taking cognizance dated 16.11.2012 against the petitioner in connection with Complaint Case No.2478 (C) of 2010, instituted at the instance of the Opposite Party No.2.

3. As per the allegation, the complainant obtained a loan of Rs.90,000/- from the finance company vide Loan Agreement No. 794646 dated 06.05.2008 which was to be repaid in 23 monthly installments to the tune of 12 equal installments of Rs.5400/- each and 11 monthly equal installments, to the tune of Rs.3928/- each along with interest for the purchase of Mahindra & Mahindra Alfa bearing registration number BR-01AK 0493 (hereinafter referred to as the 'said vehicle'). The total agreement value was Rs.1,08,008/- and the entire loan amount along with interest was to be repaid. The complainant/opposite party no.2 handed over four post dated cheques of Rs. 3928/- each dated 07.10.2009, 07.11.2009, 07.12.2009 and 07.01.2010 drawn on the Bank of India securing installments upto January, 2010. It is further alleged that the



vehicle was going to Nawada, when it was seized by the co-accused Nos. 8 and 9 on the instruction of the petitioner and co-accused no.6 without giving any prior notice to the complainant and was kept under the co-accused no.10. The driver Chhote Kumar informed the complainant who contacted the co-accused, Animesh Narayan, Ex-Branch Manager, who refused to release the vehicle. It is further alleged that even after informing that the installments had already been secured by postdated cheques, the vehicle was not released, after which he gave legal notice. It is further alleged that he suffered a loss of Rs. 30,000/- per month and even after visiting the office of the accused persons, the same was not released. It is further alleged that the vehicle is lying at the Traffic Police Station, Patna, seized by the traffic police. It is further alleged that he came to know that the vehicle was seized by the police on 28.12.2009. The complainant went and contacted the office, but was threatened and further alleged that the petitioner demanded Rs. 50,000/- as ransom to release the vehicle.

4. Learned counsel for the petitioner has submitted that the allegation against the petitioner is palpably false and the same has been leveled only to blackmail and force the petitioner and the co-accused persons, who are officials of the Finance



Company to succumb to the illegal demands of the complainant. It has further been submitted that for the same grievance, a consumer case came to be filed before the appropriate District Consumer Forum simultaneously along with the complaint case. It has further been submitted that in the present matter, cognizance was taken against the petitioner by order dated 16.11.2012 and after the taking of cognizance, the complainant left the pairvi in the consumer case resulting in the dismissal of the complaint case due to want of prosecution. Learned counsel for the petitioner has also submitted that in fact the vehicle was never in the custody of the finance company rather it was seized by the traffic police and it was in their custody. Learned counsel for the petitioner has referred to Annexure-6, wherein by letter dated 28.06.2016, the Superintendent of Police, Traffic, was informed by his Deputy that the vehicle was seized by the traffic police and it was kept at the traffic police station and station diary to this effect was also made. Learned counsel for the petitioner has further submitted that there are serious contradictions in the solemn affirmation of the complainant and the inquiry witnesses and hence the same do not inspire confidence. It has further been submitted, referring to the solemn affirmation of the complainant in which he has stated



that this petitioner, who happens to be the Zonal Manager of the Finance Company, demanded Rs. 50,000/- before the vehicle would be released. Learned counsel for the petitioner thus referring to the letter of the Deputy Superintendent of Police, Traffic and the statement of the complainant on solemn affirmation submits that these two things are quite contradictory and the letter by the Deputy Superintendent of Police, Traffic which is an official document should be relied upon and hence has submitted that the vehicle, in question, was never in the custody of the Finance Company, least to say that it was taken away from the custody of the complainant. Learned counsel for the petitioner has further submitted that no offence under Section 323 or under Section 385 of the IPC is made out against the petitioner, submitting that there is no allegation that the petitioner has voluntarily caused hurt to the complainant while with respect to the allegation of an offence under Section 385 IPC, It has not been alleged that the complainant was put in fear of injury in order to commit extortion.

5. Learned counsel for the petitioner has further placed reliance upon a judgment of **Hon'ble Supreme Court in the case of Anup Sarmah vs. Bhola Nath Sarmah & Others** reported in **(2013) 1 Supreme Court Cases 400** and has



referred to paragraph 5 and 6 of the said judgment which are reproduced hereunder:-

“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 Mehra³ 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.

"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 case³, 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."

6. Learned counsel for the petitioner has submitted, while referring to this judgment that when there is a higher purchase agreement and there is a default in making the payment of installments no offence would be made out against the Finance Company.

7. Learned counsel for the petitioner has further



placed reliance on another judgment of **Hon'ble Supreme Court in the case of Harsendra Kumar D vs. Rebatilata Koley and Ors.** reported in **MANU/SC/0100/2011** and has placed reliance upon paragraph 20 and 21 which is reproduced hereunder:-

“20. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents – which are beyond suspicion or doubt – placed by accused, the accusations against him cannot stand, it would be travesty of justice if accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may



look into the materials which have significant bearing on the matter at prima facie stage.

21. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company. As noticed above, the appellant resigned from the post of Director on March 2, 2004. The dishonoured cheques were issued by the Company on April 30, 2004, i.e., much after the appellant had resigned from the post of Director of the Company. The acceptance of appellant's resignation is duly reflected in the resolution dated March 2, 2004. Then in the prescribed form (Form No. 32), the Company informed to the Registrar of Companies on March 4, 2004 about appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of



process of the court. These appeals are, accordingly, allowed. The judgment of the Calcutta High Court dated September 6, 2007 and the summons issued by the Metropolitan Magistrate, Calcutta to the appellant are set aside. The complaints as against the appellant stand quashed.”

8. Learned counsel for the petitioner has also referred to the judgment of the **Hon’ble Supreme Court in the case of State of Haryana versus Bhajanlal**, reported in **1992 Supplementary (1) SCC Page 335** and has submitted that the present case is characterized by malice and a personal vendetta to spite personal score and on the very face of it, the allegations are vexatious and malicious in nature. It has further been submitted that the continuation of the proceeding against the petitioner would be an abuse of the process of the Court.

9. Learned counsel for the State has opposed the prayer of the petitioner.

10. Heard the learned counsel for the parties and perused the records.

11. Considering the facts and circumstances of the case as well as its totality, this Court finds from perusal of records and from the submissions advanced on behalf of the petitioner that the present case is vexatious in nature, in view of



the official records of the seizure of the vehicle by the traffic police and the pronouncements of the Hon'ble Supreme Court. No ingredients of the offence are made out, the order taking cognizance dated 16.11.2012 passed by the Judicial Magistrate-1st Class, Patna is hereby quashed with respect to the petitioner only.

12. This application is allowed.

(Praveen Kumar, J)

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