

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9811 of 2018

Arising Out of PS. Case No.-63 Year-2017 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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Kuldeep Singh, S/o Shri Prayag Raj Singh, aged about 34 Years, Area manager- Soft Bucket, Collection, Sasaram Branch, Mahindra and Mahindra Financial Services Ltd. Mangla Bhawan, Opposite Prakash Petrol Pump, G.T. Road, Sasaram.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sanjay Dubey, S/o Sri Kant Dubey, R/o Village- Durgapur, P.S.- Indrapuri, District- Rohtas Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sheela Sharma, Advocate
		Mr. Shivendra Kumar Roy, Advocate
For the Opposite Party/s :		Mr. Shantanu Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

8 05-05-2026 1. Heard learned counsel for the petitioner as well as
learned APP for the State.

2. The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the order dated 09.11.2017 passed by learned S.D.J.M., Dehri, Rohtas (hereinafter referred to as 'Magistrate') in connection with Complaint Case No.63 of 2017, wherein the learned Magistrate took cognizance of the offence under Section 379 read with Section 34 of the Indian Penal Code, 1860 against the present petitioner and two other accused persons.

3. The prosecution case, as emerging from the



complaint petition, is that the brother of the complainant (O.P. No.2) had obtained a loan from Mahindra & Mahindra Financial Services Limited for purchase of a tractor, which was being repaid in instalments. It is alleged that on 29.01.2017, the accused persons, including the present petitioner, came and took away the said tractor along with a paddy cutter machine attached thereto, without any prior notice or lawful authority. It is further alleged that upon receiving information from the driver, the complainant (O.P. No.2) and his brother reached the spot and objected to such taking of the tractor and the cutter machine, but the accused persons stated that they were acting under the orders of the company and advised them to settle the matter with the company. According to the complainant (O.P. No.2), despite request, the cutter machine was not separated and both the tractor and cutter machine were taken away. It is further the case of the complainant (O.P. No.2) that though the tractor was later released in favour of the complainant's brother after payment of certain dues, the cutter machine was not returned. It is alleged that when the complainant (O.P. No.2) and his brother approached the accused persons on 14.03.2017 demanding return of the cutter machine, the accused persons abused them and informed that the cutter machine had already been sold. On



these allegations, claiming loss of Rs.1,30,500/-, the present complaint case bearing Complaint Case No.63 of 2017 was instituted.

4. Upon perusal of the materials available on record including the complaint petition, solemn affirmation of the complainant (O.P. No.2) and the statement of witness recorded during inquiry, the learned Magistrate found a *prima facie* case and accordingly took cognizance of the offence punishable under Section 379 read with Section 34 of the Indian Penal Code against the three named accused persons including the petitioner herein *vide* the impugned order of cognizance dated 09.11.2017. Aggrieved by the said impugned order of cognizance dated 09.11.2017, the petitioner has preferred this Criminal Miscellaneous Application to quash the same.

5. Learned counsel for the petitioner submits that the impugned order of cognizance is wholly unsustainable in the eyes of law, as the allegations made in the complaint petition, even if taken at their face value, do not constitute the offence of theft under Section 379 of the Indian Penal Code. It is submitted that the subject vehicle (tractor) was admittedly financed by the employer company of the petitioner and, upon default in repayment of instalments by the borrower i.e., the brother of the



O.P. No.2, the vehicle was repossessed strictly in terms of the loan agreement. He further submits that the repossession, being an exercise of a contractual right, cannot be construed as a dishonest taking so as to attract the ingredients of theft. Learned counsel submits that the petitioner, being merely an employee of the finance company, has been falsely implicated for acts done in the discharge of his official duties, and no specific overt act constituting any criminal offence has been attributed to him.

6. Learned counsel for the petitioner further submits that the entire dispute, at best, arises out of a contractual and financial transaction between the borrower and the finance company, and the same is purely civil in nature. He submits that the continuation of the criminal proceeding is nothing but an abuse of the process of the Court, instituted with an ulterior motive to avoid repayment of the outstanding dues. It is also submitted that the vehicle (tractor), along with the cutter machine, was duly released to the borrower upon payment of certain amounts, which is evident from the documents on record, and therefore, the allegation of misappropriation is wholly false and untenable. He lastly submits that the present case falls within the well-settled parameters for quashing of criminal proceedings and the impugned order deserves to be set



aside.

7. Per contra, learned APP for the State submits that the learned Magistrate has rightly taken cognizance after considering the materials available on record, including the complaint petition and the statements recorded during inquiry. He submits that the allegations disclose *prima facie* commission of offence, and at this stage, meticulous examination of defence documents or disputed facts is not warranted.

8. Despite sufficient opportunities having been granted, no one appears on behalf of O.P. No. 2 to contest the present application. Accordingly, this Court proceeds to consider and decide the matter in absence of representation on behalf of O.P. No. 2 on the basis of materials available on record.

9. I have heard learned counsel for the petitioner and learned APP for the State and have carefully perused the materials available on record, including the complaint petition, the impugned order of cognizance, and the documents brought on record by the petitioner.

10. Before advertng to the facts and circumstances of the case, it would be apposite to consider the scope of interference by this Court in exercise of its inherent jurisdiction under Section 482 of the Code of Criminal Procedure. It is well



settled that the power of quashing is to be exercised sparingly and with circumspection, and only in cases where the allegations made in the complaint, even if taken at their face value and accepted in entirety, do not disclose the commission of any offence or where the continuation of the criminal proceeding would amount to an abuse of the process of the Court. At the same time, where the dispute is predominantly civil in nature arising out of contractual obligations and has been given a colour of criminality, the High Court would be justified in exercising its inherent powers to prevent misuse of the judicial process and to secure the ends of justice.

11. Upon careful consideration of the materials on record, it emerges that the subject vehicle (tractor) was financed by the company of which the petitioner is an employee, and the borrower (brother of O.P. No.2/complainant) had admittedly defaulted in repayment of instalments. The repossession of the tractor was carried out in pursuance of the terms of the loan agreement, which authorized the financier to take possession of the hypothecated asset in case of default. It further appears from the documents brought on record that prior information regarding the repossession was duly given to the concerned police station, which lends support to the contention that the act



was not clandestine or illegal, but undertaken in a structured and lawful manner. In such circumstances, the element of “dishonest intention,” which is *sine qua non* for constituting an offence under Section 379 of the Indian Penal Code, is conspicuously absent.

12. It is also significant to note that the materials on record, including the release documents, indicate that upon payment of certain dues, the tractor as well as the cutter machine were released in favour of the borrower, and an acknowledgment to that effect was obtained. This clearly belies the allegation of misappropriation or wrongful retention of the cutter machine. Furthermore, the complaint itself has been instituted not by the borrower, who is the principal party to the loan transaction, but by his brother, thereby raising a serious doubt regarding the locus and veracity of the allegations. The cumulative effect of these facts indicates that the dispute essentially arises out of enforcement of contractual obligations, devoid of any criminal intent on the part of the petitioner, and has been given a colour of criminality for oblique reasons.

13. The Hon’ble Supreme Court has time and again reiterated that where a financier exercises its rights under a hire-purchase or loan agreement to repossess the financed asset upon



default, such act, being traceable to a contractual right and obligation between the parties, does not give rise to any presumption of dishonest intention so as to attract criminal liability. In such circumstances, the resumption of possession by the financier or its agents, in accordance with the terms of the agreement, cannot be construed as an act done with a guilty mind so as to constitute an offence of theft. The Hon'ble Apex Court in ***K.A. Mathai @ Babu and Anr. v. Kora Bibbikutty and Anr.***, reported in (1996) 7 SCC 212 has observed as under:

“3. It is more than clear that the hire-purchase agreement with the financier was entered into much prior in time, whereafter the agreement of sale between A-2 and the complainant took place, and which was subject to the rights of the financier. It is even otherwise understandable that A-2 could not have passed a better title of the bus to the complainant than that she had acquired for herself under the hire-purchase agreement. Though we do not have the advantage of reading the hire-purchase agreement, but as normally drawn it would have contained the clause that in the event of the failure to make payment of instalment/s the financier had the right to resume possession of the vehicle. Since the financier's agreement with A-2 contained that clause of resumption of possession, that has to be read, if not specifically provided in the agreement, as part of the sale agreement between A-2 and the complainant. It is, in these circumstances, the financier took possession of the bus from the complainant with the aid of the appellants. It cannot thus be said that the appellants, in any way, had



committed the offence of theft and that too, with the requisite mens rea and requisite dishonest intention. The assertion of rights and obligations, accruing to the appellants under the aforesaid two agreements, wiped out any dishonest pretence in that regard from which it could be inferred that they had done so with a guilty intention.....”

14. Moreover, the Hon’ble Apex Court in ***Charanjit Singh Chadha and Ors. v. Sudhir Mehra***, reported in (2001) 7 SCC 417, has observed as herein under:

“13. But in the instant case, the owner repossessing the vehicle delivered to the hirer under the hire-purchase agreement will not amount to theft as the vital element of “dishonest intention” is lacking. The element of “dishonest intention” which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer. It is appropriate to note that the term “dishonestly” is defined under Section 24 IPC as follows:

“24. ‘Dishonestly’.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing ‘dishonestly’.”

15. At this juncture, it would be apposite to refer to the principles laid down by the Hon’ble Apex Court in ***State of Haryana and Ors. v. Bhajan Lal and Ors.***, reported in 1992 Supp (1) SCC 335, wherein illustrative categories were carved



out for exercise of inherent powers for quashing of criminal proceedings. In the facts of the present case, this Court finds that the case of the petitioner squarely falls within the categories where the allegations made in the complaint, even if taken at their face value, do not constitute any offence, and further where the criminal proceeding appears to have been instituted with an ulterior motive to exert pressure arising out of a purely civil dispute. The materials on record clearly indicate that the act complained of was done in pursuance of a contractual right, with prior intimation to the police, and without any dishonest intention, and that the alleged property has already been released to the borrower. Thus, applying the ratio of the aforesaid judgment to the present case, this Court is of the considered view that continuation of the criminal proceeding against the petitioner would amount to abuse of the process of the Court and, therefore, the impugned order of cognizance is fit to be quashed.

16. Accordingly, the impugned order dated 09.11.2017 passed by the learned S.D.J.M., Dehri, Rohtas in connection with Complaint Case No.63 of 2017, wherein the cognizance of the offence under Section 379 read with Section 34 of the Indian Penal Code, 1860 has been taken, *qua* the



petitioner is hereby set aside.

17. Resultantly, the entire criminal proceeding arising out of the aforesaid Complaint Case No.63 of 2017, so far as it relates to the present petitioner, is quashed.

18. The present Criminal Miscellaneous Application, accordingly, stands allowed.

19. Let a copy of this order be transmitted forthwith to the Court concerned for information and necessary compliance.

(Sunil Dutta Mishra, J)

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