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Shiv Kumar Jalan and ors. Vs. State of Bihar and anr.

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Court : Patna

Decided On : Sep-08-2004

Judge : M.L. Visa, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 378, 405, 409, 420, 423 and 504

Appeal No. : Cr. Misc. No. 4507 of 2004

Appellant : Shiv Kumar Jalan and ors.

Respondent : State of Bihar and anr.

Advocate for Def. : Mukesh Kumar Singh, Adv. for Respondent 1

Advocate for Pet/Ap. : Anjana Prakash, Adv.

Disposition : Petition allowed

Prior history : M.L. Visa, J. 1. The petitioners have filed this application for quashing the entire proceedings including the order dated 27-1-2004 passed by learned Chief Judicial Magistrate, Muzaffarpur in complaint case No. 2133 of 2003 taking cognizance against the petitioners under Sections 406, 409, 420, 423, 379 and 504 of Indian Penal Code (In short 'IPC'). 2. The case of petitioners is that petitioner No. 1 is proprietor of M/s. Shlv Kumar and Company, petitioner No. 2 is holder power of attorney of

Judgement :

M.L. Visa, J.

1. The petitioners have filed this application for quashing the entire proceedings including the order dated 27-1-2004 passed by learned Chief Judicial Magistrate, Muzaffarpur in complaint case No. 2133 of 2003 taking cognizance against the petitioners under Sections 406, 409, 420, 423, 379 and 504 of Indian Penal Code (In short 'IPC').

2. The case of petitioners is that petitioner No. 1 is proprietor of M/s. Shlv Kumar and Company, petitioner No. 2 is holder power of attorney of M/s. Shiv Kumar and Company, petitioner No. 3 is Manager Ganpati Autofin Services, Muzaffarpur and petitioner No. 4 is receiver agent.

3. According to the petitioners, a Commander Jeep bearing No. BR 05 AP/4454 was let out to opposite party No. 2 under hire-purchase agreement and arbitration agreement by petitioner No. 1 who runs finance company in the name and style of Shiv Kumar and Company (Annexure-1). As per the terms of agreement, opposite party No. 2 was to pay 23 monthly instalments at the rate of Rs. 11,500/- per month except the first month and as per Clause 8 of the agreement, it was bilaterally agreed that contract was liable to be terminated and company was empowered to take possession of the vehicle in case the instalments were not paid within the stipulated time and an agreement of arbitration was also entered into between the parties in which the parties agreed that all disputes be referred to an arbitrator (An-nexure-2). The further case of petitioners is that complainant defaulted in making payment of instalment and the company, instead of invoking Clause 8 of the agreement, referred the matter to arbitrator so that opposite party No. 2 may have an opportunity of making good his default. The arbitrator published the award on 12-7-2002 and after hearing declared the company of petitioner No. 1 as absolute owner of the vehicle and declared amount of Rs. 7,00,000/- (Annexure-3). After the award, the company filed a petition before City Court, Kolkata for declaration of decree in terms of award and the Court was pleased to appoint a receiver by order dated 15-3-2003 who was empowered by Court for taking possession of vehicle and to sell the same by private treaty or by public auction and to hand over the sale proceeds to decree-holder (Annex-ure-4).

Pursuant to order dated 15-3-2003 passed by Chief Judge in title execution case No. 61 of 2003, receiver Saikat Kumar appointed petitioner No. 4 as his agent and executed a power of attorney to petitioner No. 4 for performing above acts as were ordered by Court's order dated 15-3-2003 (An-nexure-5). Petitioner No. 4. in compliance of order dated 15-3-2003 passed in title execution case No. 61 of 2003, came to Bettiah for taking the possession of vehicle for selling the same and there he came to know that vehicle was in Bettiah and he went to mufassil Police Station and gave a written information and prayed to provide help for taking possession of the vehicle and with the aid of Mufassil Police Station, Bettiah, vehicle was taken in possession (Annexure 6). After seizure of vehicle, petitioner No. 4 handed over the vehicle to Mufassil Police Station, Bettiah for safe custody (Annex-ure-7) and again on 4-5-2003, he came to Bettiah and took the possession of the vehicle from Mufassil Police Station (Annex-ure-8). The vehicle was, thereafter, sold to one Rajeshwar Prasad on 19-7-2003 (An-nexure-9). On 3-9-2003, opposite party No. 2 filed a case against the petitioners alleging that he was cheated by the petitioners who had hired the vehicle to him and the Court took cognizance against the petitioners for offences punishable under Sections 406, 420, 409, 423, 329, 504 of IPC (Annexure-10). According to petitioners, they have committed no offence and petitioner No. 1 is the decree-holder of title execution case No. 61 of 2003, petitioner No. 2 is the constituted attorney of M/s. Shiv Kumar and Company, petitioner No. 4 was appointed as the agent of the receiver and petitioner No. 3 has left Muzaffarpur since last seven months and is presently living at Kolkata. According to petitioners, taking possession of a vehicle by a financier on default in making the payment of vehicle which was subject to hire-purchase agreement is not a criminal offence. Petitioners have prayed for quashing the entire proceedings including the order dated 27-1-2004 passed by Chief Judicial Magistrate, Muzaffarpur in complaint case No. 2133 of 2003 filed against the petitioners by opposite party No. 2.

4. Opposite party No. 2 has appeared and filed counter-affidavit stating therein that petitioner No. 1 is proprietor of M/s. Shiv Kumar and Company, petitioner No. 2 is the Manager of M/s. Shiv Kumar and Company petitioner No. 3 is receiver of M/s. Shiv Kumar and Company and petitioner No. 4 is Branch Manager of M/s. Shiv Kumar and Company, Muzffarpur. He has admitted the averments of

petitioners made in para 5 of their application that as per the terms of agreement, payment of vehicle was to be made in 23 monthly instalments and each instalment was of Rs. 11,500/-. In para 7 of his counter-affidavit, opposite party No. 2 has admitted that he took the vehicle by giving an advance of Rs. 1,33,311 /- and rest amount of Rs. 2,00,000/- was to be deposited in 23 instalments out of which he regularly deposited 16 instalments but on account of some mechanical defect in the vehicle, he could not deposit the rest 7 instalments (Annexure-A). His further case is that he had no knowledge of the award and he was not informed about the arbitration proceeding and he never appeared in the arbitration proceeding and, therefore, the award dated 12-7-2002 is not according to the principles of natural justice. According to him, any subsequent order affecting his right is not binding upon him and the order dated 15-3-2003 passed in title execution case No. 61 of 2003 is passed on the violation of principles of natural justice which is not acceptable. His further case is that the vehicle was seized by the petitioners without giving him any opportunity to deposit the rest amount and after the seizure of vehicle, petitioners told him that they would return the vehicle to him if he deposits rest amount of Rs. 85,500/- and he, after selling ornaments of his wife on 28-7-2003, gave a sum of Rs. 85,500/- to petitioners at the company's branch office at Muzaffarpur where he was called after lunch and was assured the return of vehicle but after lunch, he found that only petitioner No. 4 was there and rest of petitioners left for Patna and neither the vehicle nor the amount of Rs. 85,500/- was returned to him. According to opposite party No. 2, he tried his best but he was harassed, humiliated, abused and assaulted by petitioner No. 4 and he tried to lodge a case before the police but police declined to register the case and then he finally lodged the complaint case before the Court of Chief Judicial Magistrate, Muzaffarpur on 3-9-2003 and the learned Chief Judicial Magistrate found his case prima facie true and cognizance has been taken. According to opposite party No. 2, after holding enquiry, the Court passed order dated 27-1 -2004 and this order taking cognizance against the petitioners is just, correct and within jurisdiction and is not at all fit to be set aside. The further case of opposite party No. 2 is that petitioners have concealed the fact that they appeared through lawyer and filed their written reply before the Magistrate in the enquiry.

5. The fact that the vehicle was the subject of an agreement of hire-purchase between company of petitioner Nos. 1, 2 and 3 and opposite party No. 2 is admitted. It is also admitted that opposite party No. 2 was making payment in monthly instalments. Opposite party No. 2 has himself admitted that he made payment of 16 instalments and could not pay remaining 7 instalments. Opposite party No. 2 has not denied the fact that the matter was referred to arbitrator who gave award and, thereafter, award was filed before the City Civil Judge in title execution case No. 61 of 2003 and the Court appointed a receiver for taking possession of the vehicle. It is also not denied that petitioner No. 4 was appointed receiver agent. On the point of taking possession of the vehicle by the help of police and, thereafter, taking the vehicle to police station for safe custody by petitioner No. 4, the case of opposite party No. 2 is that after taking possession of the vehicle, petitioners might have gone to the police station. So from this statement of opposite party No. 2 made in para 12 of his counter-affidavit, the case of petitioners that vehicle was kept with police in safe custody is almost admitted. In complaint petition, no doubt, opposite party No. 2 has alleged that he paid remaining amount of Rs. 85,500/- to petitioner Nos. 1, 2 and 3 at Muzaffarpur at the branch office of petitioners who called him after lunch and when after lunch, he went, he found only petitioner No. 4 there and petitioner Nos. 1 to 3 were not there and petitioner No. 4 asked him to go back and assured that his vehicle would be returned and after 2 to 3 days when opposite party No. 2 went to the branch office of petitioners' company, from the neighbouring persons, he came to know that the petitioners, after cheating a number of persons and after taking their money, fled away and as petitioner No. 4 belongs to the same town of opposite party No. 2, so he went to his house where opposite party No. 2 and his wife were assaulted by petitioner No. 4. The case of petitioners is that they do not have any branch office at Muzaffarpur. After taking possession of the vehicle and, thereafter, receiving the money of opposite party No. 2, opposite party No. 4, who was acting as receiver agent on that date, would assault and abuse the opposite party No. 2 and his wife, does not seem probable. The case of opposite party No. 2 that he made payment of Rs. 85,500/- in cash to petitioners also does (not) seem to be probable because it is his own case that earlier 16 instalments were paid by him through bank drafts (Annexure-A of counter affidavit). Besides this, in the entire

complaint petition, so far petitioner Nos. 1, 2 and 3 are concerned, there is no allegation against them of any assault or abusing opposite party No. 2 and his wife. Allegation against them is that they got the vehicle of opposite party No. 2 seized and sold, it is only petitioner No. 4 against whom, it is alleged that he abused and assaulted opposite party No. 2 and his wife that too much after taking possession of the vehicle and taking a sum of Rs. 85,500/- from complainant whereas, admittedly, he was appointed agent of receiver, Mrs. Anjana Prakash, the learned counsel appearing on behalf of petitioners, by relying upon a decision of Supreme Court in the case of Charanjit Singh Chadha v. Sudhir Mehra, (AIR 2001 SC 3721) has argued that in case of hire-purchase agreement in respect of the vehicle if the terms of the agreement states that financier would continue to be owner of the vehicle till all instalments are paid and if there is default in payment of instalments, the financier can take possession of the vehicle and it is not a case of criminal breach of trust, cheating or theft of vehicle. According to her, as per the terms and conditions of agreement of hire-purchase (Annexure-1), petitioners were owners of the vehicle till the entire payment and option to opposite party No. 2 to purchase the vehicle was given only after payment of all instalments by him.

6. Considering the facts, as discussed above, I find that no offence as alleged in the complaint petition of opposite party No. 2 is made out against the petitioners.

7. In the result, this application is allowed and the entire proceedings including the order dated 27-1 -2004 passed by learned Chief Judicial Magistrate in corn plaint case No. 2133 of 2003 is hereby quashed.

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