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Court : Patna

Decided On : Sep-21-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 323, 392, 409, 420, 120B, 395

Appeal No. : CRIMINAL MISCELLANEOUS No.32072 OF 2003

Appellant : Deepankar Ghose, and anr.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mrs. Indu Bala Pandey, Adv.

Advocate for Pet/Ap. : M/s Akhileshwar Pd.Singh; Partha Sarthy, Adv.

Judgement :

1. Two petitioners, while invoking inherent jurisdiction of this court under section 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 19.9.2003 passed by Sri S.K.Singh, Judicial Magistrate, Patna in Complaint Case No.1377C of 1999. By the said order, the learned Magistrate has rejected discharge petition filed on behalf of the petitioners.

2. Short fact of the case is that opposite party no.2 filed a complaint in the court of Chief Judicial Magistrate, Patna, which was numbered as Complaint Case No.1377C of 1999, against both petitioners, who are Branch Manager and

Regional Manager of Ashok Leyland Finance Ltd. Besides the two petitioners, M/s Ashok Leyland Finance Ltd. has also been made accused no.1 in the complaint case. It has been disclosed in the complaint Case that the complainant had purchased a truck bearing registration no.UP-65H5349 having Engine No.CZE 277120 Chesis No.DZE 389439 on hire purchase basis by way of getting loan amount financed from M/s Ashok Leyland Finance Ltd. It has been alleged in the complaint petition that on 15.12.1998 his truck was illegally intercepted at Khagaul Road near Police Colony, Anisabad, and Patna by accused nos. 2, 3 and their men. It has been alleged that on rigorous persuasion the accused persons have not returned the vehicle in question to the complainant. The complaint was filed on 22.9.1999 for an occurrence which had taken place on 15.12.1998. The complaint was filed for the offences under sections 323, 392, 409, 420 and 120B of the Indian Penal Code. After conducting enquiry, the learned Magistrate took cognizance of the offence under sections 323 and 392 of the Indian Penal Code and when the case reached at the stage of charge, a petition was filed on behalf of the petitioners for their discharge. However, the learned Magistrate by its order dated 19.9.2003 has rejected the discharge petition.

3. Aggrieved with the order of rejection of discharge petition, the petitioner approached this court by filing the present petition. While issuing notice to opposite party no.2 on 20.5.2004 it was directed that in the meantime further proceeding in Complaint Case No.1377C of 1999 pending before Sri S.K.Singh, Judicial Magistrate, Patna shall remain stayed. The case was admitted on 4.10.2004. While admitting the case, it was directed that the interim order passed earlier shall remain operative during the pendency of this case.

4. Mr.Akhilshwar Prasad Singh, learned counsel appearing on behalf of the petitioners while challenging the order of rejection of discharge petition as well as the entire proceeding submits that it was a case of hire purchase. Even the complainant has not denied this fact. It has been argued that since the required instalments as per the hire purchase agreement was not cleared by opposite party no.2; repeatedly he was requested to clear the amount. Even legal notice was issued to opposite party no.2. When all the efforts went in vain as per condition contained in Clause 9(i) of the Hire purchase agreement which was duly executed

by opposite party no.2, steps were taken to get the possession of the vehicle back. Learned counsel for the petitioner has referred to annexure-7 to the petition i.e. copy of the original Agreement of Hire Purchase. Learned counsel has further referred to clause 13 of the said agreement, according to which, it was made clear that hirer will remain bailee of the owner of the vehicle. As per the agreement the financier was to remain owner of the vehicle till the clearance of the entire financed amount. It would be appropriate to quote Clause 9(i) and 13 of the Agreement of Hire Purchase which are as follows: - Clause 9(i) :break or fail to perform or observe any of the conditions on his part herein contained then and on the occurrence of any such event, the rights of the hirer under this agreement shall forthwith stand determined if so facto, without any notice to the hirer and all the instalments previously paid by the hirer shall be absolutely forfeited to the owner who shall there upon be entitled to enter any house or place where the said vehicle may then be, removed and retake possession of the same and to use for all the instalments due and for damages for breach of the agreement and for all the costs of retaking possession of the said vehicle and additional costs occasioned by the hirer's default."

"Clause 13: The Hirer acknowledges that he holds the vehicle as a mere bailee of the Owner and shall not have any proprietary right, title or interest, as purchaser therein until he having exercised in writing his option to purchase as herein before provided by payment of the whole amount due under this agreement or under any term thereof, the Owner makes over to him all their right, title and interest in the vehicle."

5. On the strength of the aforesaid conditions, it has been argued that while taking possession of the vehicle in question the petitioners had committed no offence. It has further been submitted that at the stage of charge relevant documents along with discharge petition were filed before the court below. However, the learned Magistrate in a mechanical manner has rejected the discharge petition without assigning any reason. Learned counsel has also that on the date of seizure of the vehicle rupees two lacs was outstanding against opposite party no.2. On the aforesaid ground it has been prayed to quash the impugned order as well as entire proceeding against the petitioners.

6. Mrs. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State even in absence of any representation on behalf of opposite party no.2, has opposed the prayer of the petitioners.

7. Besides hearing learned counsel for the petitioners and the State, I have also perused the materials available on record. From the contents of the complaint petition itself it is evident that the complainant had purchased the truck in question under the hire purchase agreement. Law is settled on the point that under the agreement of hire purchase, the purchaser remains bailee till the entire loan amount is cleared. In case of hire purchase, the Supreme Court has also clarified the position in the case reported in 1979 SC 850 (Sardar Trilok Singh and others Vrs. Satya Deo Tripathi). In the said case the hirer had alleged that financier had committed an offence under Section 395 and other allied Sections of the Indian Penal Code. The Hon'ble Supreme Court virtually deprecated the prosecution of financier in such a situation. In view of conditions mentioned in the hire purchase agreement which has been brought on record as annexure-6 to the petition, the Court is of the opinion that it is a fit case for interference with the order of rejection of discharge petition. It is true that for the purpose of rejecting the discharge petition there was no requirement for assigning a detailed reason but keeping in view the fact that it was a case of hire purchase agreement, it was expected that the learned Magistrate would have examined or indicated in brief the stand taken by the petitioners while passing the impugned order.

8. In view of facts and circumstances of the case, the order of rejection of discharge petition dated 19.9.2003 passed by Sri S.K.Singh, Judicial Magistrate, 1st Class, Patna in Complaint Case No.1377C of 1999 as well as entire criminal proceeding in Complaint Case No. 1377 C of 1999 so far as the petitioners are concerned, is hereby set aside and the petition stands allowed.

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