
(2020) 01 PAT CK 0381

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1010 Of 2017

M/S. Daimler Financial Services India Private Ltd And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 28-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 406, 420, 463, 465, 467, 468, 504, 506
Code Of Criminal Procedure, 1973 — Section 154(3), 155(2), 156(1), 156(3), 482
Arbitration And Conciliation Act 1996 — Section 9
Negotiable Instruments Act, 1881 — Section 138
Constitution Of India, 1950 — Article 226

Citation : (2020) 01 PAT CK 0381

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Anshuman Sinha, Dhananjay Kumar Upadhyay, R.S. Pradhan,
Dheeraj Kumar Roy

Final Decision : Allowed

Judgement

At the outset, learned counsel for both the parties have submitted before this Court that although the order dated 14.01.2010 states that the matter was to be listed for further consideration but in fact the matter has not been heard earlier and so they have no issue if the matter is heard before this Court and disposed off.

In the aforesaid view of the matter, this Case has been taken up for consideration.

Petitioners in the present case are the private limited company namely M/s Daimler Financial Services India Private Ltd (Petitioner No. 1) and its Managing Director, Whole Time Director, Manager, Vice-President and Managing Director of Daimler India Commercial Vehicles Pvt. Ltd. They have moved this Court in its extraordinary writ jurisdiction to quash the First Information Report dated 04.06.2017 arising out of Amas P.S. Case No. 110 of 2017 registered for the

offences alleged under Sections 406/420/463/465/467/468 / 504/506/120(B)/34 of the Indian Penal Code.

Petitioner Nos. 1, 3 to 5 are citizens of India whereas petitioner nos. 2 and 6 are residents of France and Germany respectively. All of them have been named in the FIR in their capacities as Managing Director, Whole Time Director and other executives of the company. Petitioner no. 1 is a private limited company incorporated under the Companies Act, 1956 and is said to be registered as a Non-Banking Financial Company. Petitioner no. 1 is involved in the business of providing term loans and advances to its customers for purchasing and leasing Mercedes Benz and Bharat Benz vehicles. It is a 100% subsidiary of Daimler AG, a Company incorporated under the laws of Germany.

Allegations :

The Respondent No. 5 Menahaj Khan is dealing in purchase and sale of the vehicles. He lodged a complaint case in the court of learned Additional Chief Judicial Magistrate, Sherghati giving rise to Complaint Case No. 134 of 2017. The learned Magistrate exercised his power under Section 156(3) of the Code of Criminal Procedure and forwarded the complaint petition to the Station House Officer, Amas PS for institution and investigation. The order passed by learned A.C.J.M., Sherghati on 25.07.2017 forwarded a copy to S.H.O., Amas PS is written at the top of the complaint petition.

In his complaint, the respondent no. 5 alleged that he along with his brother in course of his business purchased altogether 11 vehicles, the registration numbers of the vehicles are stated in Paragraph '2' of the complaint petition. He admits that the financial assistance for purchase of vehicles were provided by accused no. 1-petitioner no. 1 Company. According to him accused nos. 2 and 3 who are the Managing Director and Whole Time Director respectively of petitioner no. 1 and are posted at Chennai whereas accused no. 4 is the Local Manager of petitioner no. 1 posted at Jamshedpur who is looking after the business in the State of Bihar and Jharkhand. It is alleged that accused no. 4 is involved in alluring the customers at the instance of accused nos. 1 and 2. Respondent no. 5 has further alleged that accused no. 5 also works for the company from Chennai and over telephone he used to threaten and frightened the customers at the instance of accused no. 2 and 3 which the respondent gets confirmed because on his complaint against the officers of the Company the accused nos. 2 and 3 did not take action. Regarding accused no. 6 it is stated that the said Company is engaged in production of cars and through accused no. 1-petitioner no. 1 company accused no. 6 allures the customers in the name of loan at cheap rates but thereafter the said accused takes a plea that it has no concern with the accused no. 1.

It is further alleged that on the allurement and false promises made by the accused persons such as that the vehicle consumes less oil, a free complete maintenance of five years is provided and repairing will be done at the

breakdown point and if not possible to do so the vehicle will be brought to the service center and the same will be repaired within 36 hours and for that period no interest will be charged on the loan amount, the respondent no. 5 had purchased the vehicle but the accused persons could not fulfill those promises. The respondent no. 5 claimed that he had served a legal notice on the accused persons and demanded compensation against the wrongful act and omissions of the accused persons which had caused huge loss to the complainant as the vehicles were standing in the campus of the respondent no. 5 after breakdown but no action was taken to repair them despite service of legal notice.

It is further alleged that the Company sent some anti-social person and accused no. 4 to the house of the complainant and threatened him as also he was beaten and pressurized not to demand compensation from the Company. For this occurrence the complainant-respondent no. 5 has lodged a complaint case being Case No. 611 of 2016 in the court of learned Magistrate at Sherghati. It is further stated that the complainant has filed a complaint case in the State Consumer Dispute Redressal Commission, Patna vide Complaint Case No. 08 of 2017 and had demanded a sum of Rs. 80,00,000/- as compensation with interest. It is stated that there is a dispute between the parties which are related to defects in the goods and deficiency in service and those are pending in the respective courts, in the meantime on 08.02.2017 the complainant received a message on his mobile from the State Bank, Sherghati Branch saying that a cheque of Rs.1,14,49,804/- being Cheque No. 456214 issued by him stood dishonored due to insufficient fund. The complainant claims that he had never issued a cheque of the said amount. He came to know that the said cheque was lodged by the accused no. 1. The complainant alleged when he had not issued a cheque for the said amount there was no question of bouncing the cheque for insufficient fund. He further alleges that at the time of purchase of vehicles he had signed on many blank cheques and blank papers and the cheque lodged by accused no. 1 was one of those cheques which were lodged by the accused persons without any information and without consent of the complainant.

It is alleged that the complainant had sent a legal notice against the attempt taken by the accused persons to illegally withdraw the money and has demanded compensation.

The complainant claims that when the disputes between the parties are pending before the different courts, it looks highly suspicious that the complainant would issue cheque in favour of the accused persons. It is further alleged that the complainant had approached the Amas Police Station for lodging the FIR but the officer present at the police station refused to receive the information saying that it relates to a Company, thereupon the present case has been lodged.

Submission on behalf of the petitioners Learned counsel for the petitioners submits that on a bare reading of the allegations made in the complaint petition giving rise to the present FIR it would appear that a pure and simple commercial dispute between the parties is being set up as a cause to launch prosecution of

the petitioners by giving colour from criminal angle and the whole effort of the informant-respondent no. 5 is to defend himself in the cheque dishonoured case lodged by the petitioners. It is submitted that the financial assistance was provided to the respondent no. 5 and his brother on execution of loan agreement and deed of hypothecation under various contract documents and they were under obligation to pay the equated monthly installments regularly under the terms and conditions of the loan agreement.

Learned counsel for the petitioners further submits that the respondent no. 5 committed default in paying the monthly installments in terms of the loan agreement, therefore, a loan recall notice dated 30.06.2016 was issued to respondent no. 5 and his brother with respect to the loan agreements duly demanding to pay the entire outstanding amount of Rs.1,14,58,146.60/- within the seven days from the date of receipt of the said notice. Another loan recall notice dated 31.08.2016 was issued to respondent no. 5 with respect to the two other agreements demanding to pay the entire outstanding amount of Rs. 47,85,321.14/-. Yet another recall notice dated 31.08.2016 was issued to the brother of respondent no. 5 with respect to the four agreements demanding the entire outstanding amount of Rs. 1,10,76,711.52/- but despite the notices when the respondent no. 5 and his brother failed to clear the outstanding amount, the petitioner no. 1 filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the learned District Court, Gaya bearing Arbitration No. 01 of 2017 seeking appointment of receiver with respect to the hypothecated vehicles. Thereafter, the brother of respondent no. 5 filed a complaint case before the State Consumer Dispute Redressal Commission and a Complaint Case No. 611 of 2016 as mentioned above.

Learned counsel further submits that in Complaint Case No. 611 of 2016 the learned Magistrate has taken cognizance but while issuing summons did not think it just and proper to issue summons against the Managing Director of the petitioner no. 1 Company. It is submitted that now the respondent no. 5 has lodged the FIR raising in fact his grievance arising out of the lodgement of the blank cheque which has been dishonored. The respondent no. 5 has, however, admitted in his complaint petition/FIR that at the time of taking loan he had signed certain blank cheques and it had given to the Company.

Learned counsel has relied upon various judgments of the Hon'ble Supreme Court on the subject involving the offence under Section 138 of the Negotiable Instruments Act, 1881 learned counsel submits that in the case of *Loonkaran Sethia v. Ivan E. John* reported in AIR 1977 SC 366, *Subba Reddy v. Neelapareddi* reported in AIR 1966 SC 267, *Rattan Lal & Co. v. Assessing Authority Patiala* (MANU/SC/0289/1968) and *Jayanitlal Goel v. Zubeda Khanun* (MANU/AP/0099/1986) it has been held that a material alteration is different from filling up a blank cheque by the payee. It is, thus, submitted that in the present case if the admitted position is that the respondent no. 5 had issued the cheques at the time of availing of the financial assistance and after recall notice

when the respondent no. 5 failed to pay the outstanding amount, the lodgement of the cheque by filling up the same cannot be said to be an act of cheating or criminal breach of trust.

It is his further submission that in the case of State of Haryana and Ors. Vs. Bhajanlal reported in AIR 1992 SC 604, the Hon'ble Supreme Court has held as under :-

"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. "

It is submitted that on a bare reading of the entire complaint petition without adding or subtracting anything out of it, it can be held that the FIR does not disclose any cognizable offence and the criminal law has been set in motion by respondent no. 5 only with a malafide intention to harass the officers of the Company. In his submission learned counsel submits that there is no allegation at all against the officers of the Company and a purely and civil commercial dispute has been given colour of a criminal nature. He has also relied upon the judgment of the Hon'ble Supreme Court in the case of Inder Mohan Goswami and Ors. v. State of Uttranchal and Ors. reported in 2007 (12) SCC Pg. 1 and has placed before this Court the judgment of the Hon'ble Supreme Court in the case of Sunil Kumar v. Escorts Yamaha Motors Ltd. and Ors. (MANU/SC/0682/1999) and the judgment of the Hon'ble Jharkhand High Court in the case of Chandra Kant Gopalka v. The State of Jharkhand and Ors (MANU/JH/0727/2010). Submission on behalf of the Respondent No. 5

Mr. Rama Shankar Pradhan, learned Senior Counsel who appears for the respondent no. 5 has taken this Court through the various paragraphs of the complaint petition particularly from Paragraph '9' onwards and submitted that the lodgement of the cheque without consent of respondent no. 5 was only an attempt to unlawfully secure the amount which was otherwise in dispute when the parties were contesting cases before the State Consumer Dispute Redressal Commission. Learned Senior Counsel, however, does not dispute that this case has arisen mainly raising the grievance of the respondent no. 5 with respect to the lodgement of the cheque which was admittedly issued by respondent no. 5. Learned Senior Counsel has also submitted that the case is still under investigation and hence no interference is called for at this stage.

Consideration

Having heard learned counsel for the parties and on perusal of the records, this Court finds that the facts of this case are not at all in dispute. A bare reading of the First Information Report shows admission of the informant that he had along with his brother availed financial assistance from petitioner no. 1 company for purchase of vehicles. The grievance of the informant is that at the time said purchase was made the respondent no. 5 was given to believe that the vehicles will have good mileage in lesser oil consumption and then several other services will be provided by the manufacturing company. In fact, the manufacturing company has not even been made accused in this case but one of the officers has been made accused without describing any role of the said officer. The matters relating to defect in the goods and deficiency in service are admittedly pending consideration before the State Consumer Dispute Redressal Commission where respondent no. 5 had claimed a compensation of Rs. 80,00,000/- (Eighty Lakhs) with interest. About the alleged threat given to respondent no. 5 over telephone again a complaint case is pending at Sherghati which is not under

challenge in the present case. To this Court, therefore, no difficulty in accepting the plea of the petitioners that this case is more by way of a grievance over the lodgement of the cheque issued by respondent no. 5 at the time of availing the financial assistance. The said cheque stood dishonoured on presentation in want of sufficient fund and apparently the respondent no. 5 while premediating a legal action and filing of a complaint case against him for the alleged dishonour of cheque brought the present complaint and got it referred to Amas Police Station by the learned A.C.J.M., Sherghati.

This Court finds from the order passed by the learned A.C.J.M., Sherghati that he has simply acted as a post office in a routine and mechanical manner by forwarding the complaint petition to the police station for institution of FIR and investigation. There was no compliance with the directions of the Hon'ble Supreme Court in the case *Mrs. Priyanka Srivastava and another v. State of U.P. and others* reported in AIR 2015 SC 1758. There was no statement in the complaint petition that the steps required to be taken under Section 154(3) Cr.P.C. was complied with by the informant. This Court would also observe that the learned A.C.J.M., Sherghati has recorded the order on the body of the petition itself which cannot be said to be a healthy practice.

Apart from the aforesaid fact that no statement was made in the complaint petition that there was a compliance of Section 154(3) Cr.P.C., this Court finds on the face of the allegations made in the FIR that a bare reading of the same would not disclose any offence. This case is covered by one of the exceptions laid down by the Hon'ble Supreme Court in the case of *Bhajan Lal (supra)* and is squarely covered by the views expressed by the Hon'ble Apex Court in the case of *Inder Mohan Goswami (supra)* in the following words :-

"37. In *Indian Oil Corpn. v. NEPC India Ltd.* 12 (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188 this Court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that: (SCC p. 749, para 13)

"13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

In the given facts and circumstances of the case and in the light of the discussions made hereinabove, this Court finds it just and proper to exercise its extraordinary power under Article 226 of the Constitution of India to quash and cancel the First Information Report giving rise to Amas P.S. Case No. 110 of 2017. The First Information Report is, thus, quashed and this application is allowed.

At this stage, Mr. Pradhan, learned Senior Counsel for respondent no. 5 submitted that respondent no. 5 is willing to settle the dispute through mediation

and amicable resolution of the dispute ending various litigations between the parties and it may be possible if a mediation takes place. Learned counsel for the petitioners has after seeking instruction submitted before this Court that they are not averse to idea of amicable settlement of dispute.

In the aforesaid view of the matter, since at the end learned counsel for both the parties have shown good gesture to each other and have submitted on instruction that they can get the matter settled amicably, either parties may approach a mediation centre in this regard.

This Court while allowing the application grants liberty to the either parties to approach a mediation centre where they can sit together and efforts may be taken to amicably resolve the dispute.