

(2017) 01 JH CK 0220
In the Jharkhand High Court
Case No : 1172 of 2015

Rajesh Kumar, son of Jagdish Prasad

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 156\(3\)](#) - Police officers power to Investigate cognizable case
[Indian Penal Code, 1860](#), [Section 379](#),
[Section 323](#)

Citation : (2017) 01 JH CK 0220

Hon'ble Judges : Rongon Mukhopadhyay

Bench : SINGLE BENCH

Advocate : Bharat Kumar, Mukesh Kumar, Rajesh Kumar Mishra, Ram Lakhan Yadav

Judgement

1. Both the matters are being heard and disposed of together since the same arises out of Complaint Case No. 121 of 2015.
2. Heard Mr. Bharat Kumar, learned counsel appearing for the petitioners, learned APP appearing for the State and Mr. Ram Lakhan Yadav, learned counsel for the opposite party No. 2.
3. In this application, the petitioners have prayed for quashing the entire criminal proceedings in connection with Complaint Case No. 121 of 2015 including the order dated 13.04.2015 passed by learned Chief Judicial Magistrate, Koderma, whereby and whereunder, cognizance has taken for the offences punishable u/s 323, 341 and 379 of the Indian Penal Code (IPC).
4. It has been submitted by learned counsel for the petitioners that no criminal case is made out against the petitioners who are the officials of SREI Equipment Finance Ltd. It has further been submitted the entire dispute is with respect to non fulfillment of the terms and conditions of hire purchase agreement relating to Pokelaine machine. Since the opposite party No. 2 failed to make payment of

installments, after following due process the said machine was repossessed by the financier company and subsequently the same was sold in auction. Initially, the complaint being Complaint Case No. 313 of 2014 was lodged before learned Chief Judicial Magistrate, Koderma which was forwarded u/s 156(3) Cr.P.C. (Code of Criminal Procedure) for registration of F.I.R. Accordingly, an F.I.R. being Koderma P.S. Case No. 149 of 2014 was instituted and upon investigation in the said case, the police had submitted final form and on protest petition having filed by the opposite party No. 2, cognizance has been taken by learned court below. Learned counsel further adds that there is no mens rea on the part of the petitioners and considering the entire scenario of the present case, the entire criminal proceedings deserve to be quashed and set aside.

5. Mr. Ram Lakhan Yadav, learned counsel appearing for the opposite party No. 2 has opposed the prayer made by the petitioners and has submitted that the petitioners had very surreptitiously, on account of non-payment of certain installments, had invoked the arbitration clause and had appointed an Arbitrator according to their choice, who had subsequently passed order against the opposite party No. 2. and on executing the Award passed by the Arbitrator, the vehicle in question was repossessed by the petitioner. It has further been submitted that the opposite party No. 2 had deposited a huge amount in getting the said Pokelaine machine and only on account of failing to make payment of three installments, the vehicle was repossessed and subsequently it was sold in auction. It has also been submitted that the petitioners were not authorized to repossess the vehicle in question in the eye of law and the act of repossession of the vehicle is itself a criminal act. In support of his argument, learned counsel for the opposite party No. 2 has referred to the judgment passed in Citicorp. Maruti Finance Ltd. V. S. Vijayalaxmi reported in (2012 AIR SCW 251).

6. It appears that initially a complaint case was instituted by the opposite party No. 2 against the petitioners in Cr.M.P. No. 1172 of 2015 on the allegation that the opposite party No. 2 had purchased one Pokelaine Machine from SREI Equipment Finance Ltd. on loan for which hire purchase agreement was also entered into. It has been stated that the regular installments were being paid by the opposite party No. 2 and till 05.02.2015 only Rs. 2.3 Lakhs was required to be paid. It has been alleged that when the Pokelaine machine was coming from Deoghar to Telaiya, the accused persons had taken the vehicle under their possession and on the point of pistol they had also removed Rs. 50,000/- from the pocket of the complainant.

7. The complaint petition being Complaint Case No. 313 of 2014 which was instituted against five accused persons before learned Chief Judicial Magistrate, Koderma was sent for registration of F.I.R. u/s 156(3) Cr.P.C. and an F.I.R. being Koderma P.S. Case No. 149 of 2014 was instituted and upon investigation in the said case, the police had submitted final form and on protest petition filed by the opposite party No. 2, cognizance has been taken by the learned court below u/s 323, 341 and 379 of the Indian Penal Code.

8. Although in the initial complaint five persons were made accused, but subsequently in the protest petition seven persons were made accused. It appears that since the complainant had failed to make regular payment of the installments, a legal notice was given to him with respect to clear all the dues pending against him. Subsequently an agreement was entered into on 01.05.2010 between the SREI Equipment Finance Ltd. and the opposite party No. 2 on various terms and conditions. It is stated that as per the said agreement on account of non-payment of the installment by the opposite party No. 2, the first party invoked arbitration clause being clause 9.1.1 and an arbitrator was appointed, who had subsequently given an Award on 31.07.2012. The Award further disclosed that failure to pay remaining amount which was payable by the opposite party No. 2, the accused persons were entitled to retain possession of the vehicle. After the passing of the arbitration Award, vehicle was repossessed on 10.03.2014 and subsequently the same was auction sold on 27.05.2014. The entire scenario as depicted would therefore suggest that the financier company had the right to repossess the vehicle as the same was on the basis of an arbitration clause which was invoked on account of non-payment of the installment by the opposite party No. 2.

9. In the case of *Anup Sarmah v. Bhola Nath Sharma & others*, reported in (2013)1 SCC 400 it was held as follows:- "7. In view of the above, the law can be summarised that in an agreement of hire purchase, the purchaser remains merely a trustee/ bailee on behalf of the financier/ financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is repossessing the goods owned by him."

Similar view has been expressed in the case of *Charanjit Singh Chadha V. Sudhir Mehra* reported in (2001) 7 SCC 417.

10. Learned counsel for the opposite party No. 2 has referred to the case of *Citicorp. Maruti Finance Ltd. V. S. Vijayalaxmi* reported in (2012 AIR SCW 251 to substantiate his contention that the financier company was not empowered to execute the agreement. It appears that in the judgment under reference it was held that the recovery process has to be in accordance with law and the recovery process referred to in the agreements also contemplates such recovery to be effected in due process of law and not by use of force. It was further held that till such time as the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods, but that does not entitle him on the strength of the agreement to take back possession of the vehicle by use of force.

11. As has been stated above on account of non-payment of the installment the petitioner had invoked the arbitration clause and after the arbitrator had passed the Award on 31.07.2012 and even in spite of expiry of a considerable length of time since no steps were taken by the opposite party No. 2, the vehicle was repossessed on 10.03.2014. It would thus appear that the financier company had adhered to the terms and conditions of the agreement so as to invoking of

arbitration clause is concerned and since the Award passed by the Arbitrator was never under challenge, the same had attained finality and consequently based on the said Award, the vehicle was repossessed.

12. The factual aspect coupled with the judicial pronouncements on the subject as has been stated would clearly lead to the conclusion that the entire dispute was with respect to the financing of the vehicle and the petitioners, who are officials of the financier company, cannot be allowed to be criminally prosecuted.

13. As a cumulative effect as to what has been stated above, these applications are allowed and the entire criminal proceedings in connection with Complaint Case No. 121 of 2015 including the order dated 13.04.2015 passed by learned Chief Judicial Magistrate, Koderma, whereby and whereunder, cognizance has taken for the offences punishable u/s 323, 341 and 379 of the Indian Penal Code (IPC) is hereby quashed and set aside, so far as the petitioners are concerned.