

(2007) 05 PAT CK 0136**Patna High Court****Case No:** Criminal Miscellaneous No. 20761 of 2006

Tata Finance Ltd. and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision: May 2, 2007**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 120B, 406, 420

Citation: (2007) PLJR 21**Hon'ble Judges:** S.C. Jha, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

S.C. Jha, J.

Heard learned counsel for the petitioners, opposite party No. 2 as also learned Additional Public Prosecutor, appearing on behalf of the State. This petition has been filed by the applicants Tata Finance Limited, through Manager Sourav Sikdar, A.I. Rebello @ Aubery Ignatius Rebello, Sourav Sikdar and Sudip Roy, who are office bearers of Tata Finance Limited (hereinafter referred to as TFL for sake of convenience), for quashing the order dated 19.12.2005 passed by Sri S.K. Mishra, Judicial Magistrate, Patna, in Complaint Case No. 2101(C)/2003, whereby cognizance, against the petitioners for the purpose of their trial for the offences punishable under Sections 406, 420 and 120B of Indian Penal Code, has been taken.

2. Facts giving rise to the present application in short is that a Complaint case as stated above was filed in the court of the Chief Judicial Magistrate, Patna, against the petitioners and two others, by Opposite party No. 2 Ranju Devi in respect of the offences having been committed in between 28.3.2003 and 15.9.2003 alleging therein that Opposite party No. 2 Ranju Devi purchased Tata-407 mini Truck bearing Registration No. BR-O1G-1690 for a sum of Rs. 1,40,000/- (Rupees One lac and forty

thousand) on 28.3.2003 in auction sale from Petitioner No. 3 Sourav Sikdar and thereby a No Objection Certificate to District Transport authority for transfer of ownership in the name of the complainant as also money receipt was issued by the TFL. It has been further stated that necessary form for transfer of ownership was also issued which was signed by Petitioner No. 3 Sourav Sikdar who is Manager, Recovery and Repossession, Tata Finance Limited at Kolkata, having its office at Apeejay House, 8th Floor, Block-B, 15, Park Street, Kolkata-700016, to Opposite party No. 2 Ranju Devi. Petitioner No. 3 Sourav Sikdar also directed the New Prabhat Roadways, Barh, to deliver the vehicle to the complainant-O.P. No. 2 Ranju Devi where the vehicle had been parked. The vehicle in question was also inspected by the complainant alongwith her men in presence of representatives of TFL and the same was found in very good condition having all the four tyres new. It has been further alleged that on 8.4.2003 the complainant-O.P. alongwith her companion went to accused No. 5 Ram Bilash Yadav, Proprietor, M/s New Prabhat Roadways, Gulabbagh, Barh (who is not petitioner here) for taking delivery of the said vehicle. But the complainant was refused to take delivery of the vehicle on the pretext that the same would be delivered after ten days in consultation with the TFL and, thereafter, in spite of her repeated request, she was refused delivery of the same and was also abused.

3. It has also been alleged that in spite of two letters dated 8.4.2003 and 12.6.2003 issued to accused No. 5 Ram Bilash Yadav by Director of Maurya Motors, a representative of TFL, the vehicle in question was not delivered to the complainant-O.P. No. 2 and after being fed up with the behaviour of accused No. 5 Ram Bilash Yadav, she requested Petitioner No. 3 Sourav Sikdar in writing on 26.5.2003. Put he also did not pay any heed to it. On her frequent visit, the complainant found many spare parts of the vehicle missing and all its new tyres were also replaced by old ones and in spite of her complaints to the petitioners, delivery of the vehicle was not made till 15.9.2003.

4. Learned counsel for the petitioners, while assailing the impugned order, has submitted that the vehicle in question was given to the husband of the complainant under the Hire Purchase Agreement (HPA) and when he defaulted in making payment of monthly installment in spite of repeated request, the vehicle was repossessed on 25.7.2000 and was parked at New Prabhat Roadways, Barh, whose proprietor is Ram Bilash Yadav. When even after re-possession the hirer i.e. the husband of the complainant did not pay the amount, the financier i.e. TFL proposed to auction sale the vehicle and, accordingly, it was auction sold to the complainant on 28.3.2003 for Rs. 1,40,000/- against a sale letter and money receipt was issued by the financier who was the owner of the vehicle and after sale, a No Objection Certificate was also issued in the name of the District Transport Authority to transfer the vehicle in the name of the complainant and she was also given required forms signed by the Company for its transfer. Not only that, the accused No. 5 Ram Bilash Yadav was also directed vide the sale letter to deliver the said vehicle in favour of the

complainant and when it was delayed for the reasons best known to accused No. 5 Ram Bilash Yadav, he was also reminded on different dates as disclosed in the complaint petition and, therefore, it is absurd that these petitioners who hold higher rank in TFL, residing in Kolkata, Mumbai and Delhi respectively, to have conspired or committed any mischief on their part against complainant from taking lawful possession of the vehicle.

5. It has also been contended by the learned counsel for the petitioners that as per norms of TFL, whenever a vehicle under Hire Purchase Agreement is repossessed because of default in payment of installments, it is parked at the nearest dealer of Tata Motors or any other parking yard so as to decide the further steps for the vehicle, like auction sale or sale at a negotiated price, and so the vehicle in question was parked at the parking yard of accused No. 5 Ram Bilash Yadav at a fixed rate per day and when it was auction sold to the complainant, a direction vide sale letter dated 28.3.2003 was issued to the accused No. 5 Ram Bilash Yadav for delivery of the vehicle to the complainant. But it was accused No. 5 Ram Bilash Yadav who did all the wrong as stated in the complaint petition in spite of repeated reminders by TFL and when these petitioners came to know about the present Complainant case filed for no delivery of the vehicle till 17.9.2003, Petitioner No. 3 Sourav Sikdar immediately consulted the accused No. 5 Ram Bilash Yadav and asked to deliver the vehicle forthwith or face consequences even without asking any parking charge from the complainant and when it was asked by the accused No. 5, petitioner No. 3 Sourav Sikdar on behalf of the TFL assured it to pay and then on 25.9.2003 the vehicle was delivered to the complainant in good condition which was at the time of auction sale, which the complainant also accepted and admitted in writing on 25.9.2003 saying that the vehicle was in good condition and she was taking delivery without paying any parking charge, which the financier would pay to accused No. 5 Ram Bilash Yadav and, thereafter, no grievance of the complainant was left against the petitioners. Not only that, further contention was that after taking delivery of the vehicle on 25.9.2003, the complainant had assured the petitioners not to pursue this case and withdraw the same against them. But for the reasons best known to the complainant, she again pursued the case in complete violation of assurance. It has been further contended that the complainant had taken the vehicle in auction sale knowing fully well that the same had been parked in the parking yard of accused No. 5 Ram Bilash Yadav at Barh because the vehicle was earlier with her husband under HPA and repossessed on 25.7.2000 at Barh due to default in payment of installment and when in spite of repossession, he did not clear the hire premium, his HPA was terminated and vehicle was put on auction sale.

6. Under the aforesaid circumstances. it has been contended that adding these petitioners with accused Nos. 5 and 6 without any such allegation against them was itself a conspiracy hatched between the complainant and her husband to harass them even after taking delivery of the vehicle in question and giving assurance not to pursue the case because the husband was not apparently happy with the TFL

because of repossession and termination of HPA. Learned counsel for the petitioners has, thus, contended that the facts of the case as stated in the complaint petition do not reveal any criminal conspiracy against them as they are high officials of a reputed company like TFL. rather, conduct of these petitioners right from the beginning was to accommodate the complaint O.P by auction sale in her favour in spite of default of payment by her husband so that the complainant could take possession of the vehicle in question from the parking yard of accused No 5 Ram Bilash Yadav and for the delay in delivery of the vehicle it was mainly due to accused Nos. 5 and 6 and they could be held responsible only for the same and not these petitioners. Rather, it is suggestive of the fact that these petitioners had no criminal conspiracy in committing any mischief. Further contention by the learned counsel for the petitioners that non-charging of the parking of the vehicle in favour of the complainant-O.P. is also a good indication of good gesture in favour of these petitioners. Reference of Annexure-2 has also been made so as to show that O.P. No. 2 Ranju Devi wrote a letter on 25.9.3003 to this effect that she had taken delivery of the vehicle in question in good condition and the vehicle remained in parking yard for 563 days whose parking charge Rs. 80/- per day amounting to Rs. 45,441/- was not paid by her and the same parking charge was to be paid by TFL, Apeejay House, Kolkata or Maurya Motors, Patliputra or its management meaning thereby that O.P. No. 2 was exonerated from paying the parking charge of the vehicle, meaning good gestures of the petitioners. Even from the plain reading of the complaint petition, there is no iota of any ingredient to show the fact that the petitioners conspired to commit any mischief, wrong or criminal breach of trust or cheating.

7. Learned counsel for the petitioners, thus, pin pointedly has argued that there is no ingredient to constitute offences punishable under Sections 406,420 and 120B of Indian Penal Code against these petitioners. Petitioner Nos. 2, 3 and 4 who happen to be the Office bearers of TFL are posted in Mumbai, Kolkata and Delhi respectively as Chief Tata Motor Finance, TFL, Manager, Recovery and Repossession, TFL and Area Manager, TFL, at present Regional Manager, Passenger Car Division, Tata Motor Finance.

8. Learned counsel for the petitioners has, thus submitted that O.P. No. 2 Ranju Devi is said to have adopted such a plea for the purpose of exerting pressure on these petitioners for some long term illegal gain.

9. Having considered the aforesaid facts and circumstances, I am persuaded to hold that no *prima facie* case for trial is said to have been made out against these petitioners. TFL is a well reputed corporate limited Company, which can only be prosecuted through proper person.

10. Continuance of the proceeding against these petitioners in the trial court will amount to abuse of process of law and for that these petitioners should be absolved at this juncture and O.P. No. 2 Ranju Devi may proceed against the real persons

against whom she has grievance. The petitioners should not face the rigour of trial and be harassed. In the facts and circumstances, this application is allowed and the impugned order stands quashed. I would not pass any comment in respect of continuance of proceeding against accused Nos. 5 and 6 Ram Bilash Yadav and Kailash Yadav who are not petitioners here as their case stand on different footing.