

**PATNA HIGH COURT****Kailash Nathan Working For Gain At Ing Visya Bank Ltd. As
Assistant Vice-President Vs The State Of Bihar And
Another**

Criminal Miscellaneous No. 13126 of 2011

JUDGMENT DATE
03-01-2013JUDGES
SHIVAJI PANDEY JACTS AND SECTIONS
PENAL CODE, 1860 (IPC)

- **SECTION 120B, SECTION 379, SECTION 420, SECTION 427**

PETITIONER
**KAILASH NATHAN WORKING FOR
GAIN AT ING VISYA BANK LTD. AS
ASSISTANT VICE-PRESIDENT**RESPONDENT
THE STATE OF BIHAR AND ANOTHERBENCH
SINGLE BENCHRESULT
ALLOWEDCOUNSEL
**SUDHIR SINGH, RAGHWANAND AND ARBIND KUMAR SINGH, FOR THE
APPELLANT; PANKAJ KUMAR AND MR. ARUN KUMAR PANDEY FOR THE STATE,
FOR THE RESPONDENT**

Shivaji Pandey, In this case, petitioner, who is the Assistant Vice-President of ING Visya Bank Ltd. is challenging the order of cognizance dated 2nd January, 2009 passed by the Judicial Magistrate, 1st Class, Vaishali at Hajipur in

Complaint Case No. 3297 of 2008 for the offences under Sections 420, 427, 379, 120B of the Indian Penal Code. From the complaint petition it appears that the O.P. No. 2 filed a criminal case against the Bank and its Officials, including other individual persons where primarily allegation has been made that the Bank has wrongly recovered the truck from the possession of the complainant in the event of non-payment of instalment within the time which is an act of criminal offence and the Bank could not have acted in the manner, rather for recovery of the vehicle they ought to have gone to the civil court or any appropriate, forum instead of forceful recovery of the truck. One Babul Chandra Paul had purchased the truck bearing Regd. No. WB-23A/9777 from loan granted by the Bank with a stipulation for payment of loan amount on instalment. As Babul Chandra Paul did not pay the loan amount, it led to recovery of the said truck by the Bank concerned. The accused persons approached the petitioner for purchase of the said truck being satisfied with the paper, instantly asked to pay Rs. 1,80,000/- through Bank Draft. Accordingly, for purchase of the said truck, the O.P. No. 2 paid the aforesaid amount and from time to time, as per the stipulation, was paying the loan amount. Though he paid Rs. 1,80,000/- but the accused No. 1 provided the receipt for Rs. 1,20,000/- with an assurance, later on receipt for the full amount will be handed over to him. The receipt which was handed over, was raised in the name of original owner. On his objection, assurance was given that the receipt will be given in his name after change of the name in the owner book. Relying on the statement of the accused persons, the complainant, as alleged, handed over the draft to Anil Kalla and from time to time, the complainant was paying the money in instalment and every time, pretended to hand over the receipt but did not give the same in token of the payment of the said amount. It has been further alleged that on 30th May, 2008, the accused No. 2 called the complainant in the Bank and handed over the documents and owner book changing the registration Number as NL-01D-8346. The complainant has further alleged that he had changed all tyres of vehicle thereby incurred the expenses of heavy amount. It has further been stated that he had already paid total amount of Rs. 8,75,500/-. Only one more instalment was left to be paid. It has further been alleged that all the accused persons in furtherance of common intention, on 16th September, 2008 forcibly and illegally recovered the said truck. After that he had sent the legal notice which was never replied. Allegation has been made, they are in the habit of committing fraud and the petitioner suffered loss of Rs. 2,50,000/- on account of replacement of new tyres of the truck.

2. Counsel for the petitioner has submitted that it is admitted fact that one

Babul Chandra Paul had purchased the truck from the loan advanced by the Bank and the said truck was in hypothecation. It is also undisputed fact that Babul Chandra Paul did not return the said loan amount, accordingly, his loan account was declared NPA. It has further been stated that as the truck was traceless, they were making frantic enquiry and they could know the said truck was in possession of the complainant and replaced registration number with Nagaland which itself shows the malicious intention of the complainant. In terms of the agreement between the Bank and Babul Chandra Paul in a case of default/violation to pay the loan amount, the Bank had an authority to salvage the vehicle in hypothecation and the complainant was in Illegal possession of the vehicle, the Bank had all authority to recover the vehicle from the possession of complainant.

3. Counsel for the petitioner submits that the action of Bank in taking possession of the truck will not constitute criminal offence, may be a civil dispute between the Bank and the loanee and the Bank in the event of violation of payment of loan amount, as per the terms of agreement, had power to recover the truck.

4. Counsel for the petitioner submits that the recovery of the truck is out and out a dispute of civil nature even assuming the facts mentioned in the complaint petition to be true does not constitute criminal offence and the complainant instead of filing the complaint petition out to have approached the properly constituted civil court.

5. Counsel for the opposite party, vehemently opposed the argument of the petitioner and has relied on different paragraphs of the counter affidavit and submitted that the truck was earlier financed to Babul Chandra Paul and in the event of non-payment of instalment, Bank took possession of the truck. On 5th May, 2006, the present petitioner and other accused persons approached the complainant, after negotiation the complainant agreed to purchase the said truck and in pursuance thereof an amount of Rs. 1,80,000/- was handed over to one Anil Kumar Kalla, accused No. 3. Instalments were paid upto November 2008 as total amount of Rs. 9,00,000/- was the cost of the truck. The accused persons executed the sale letter in favour of the complainant and gave No Objection Certificate for plying the truck. It has been stated that the complainant paid the instalment through Bank draft in favour of Anil Kumar Kalla during the period 11th November, 2006 to 28th May, 2007. The said amount was paid in instalment to the Bank. It has further been submitted that the complainant paid Rs. 8,74,500/- and the Bank all along issued the receipt in

the name of Babul Chandra Paul. The complainant was called by the accused persons in the Bank and was handed over the new Registration Number of the truck. The Number of the truck was changed to NL-01D/8346 and all the processes in the change of Registration Number was done by the Bank. Illegally the bank recovered the truck even though he was not defaulter at the time of seizure of the truck.

6. Counsel for the O.P. No. 2 submitted that the Bank had illegally taken possession of the truck instead of that Bank was required to file a case before the civil court for recovery of the truck. The Bank has not denied that the payment was made by the O.P. No. 2 and the facts mentioned in the complaint petition do constitute offence and the court was not required to examine the facts of the case meticulously.

7. In this case, it is an admitted fact that the Bank had granted the loan of the vehicle under hypothecation with the terms and conditions mentioned in the agreement. The terms of agreement deals with, in the event of failure to pay the instalment, the Bank will have a jurisdiction to recover the vehicle.

Events of Default:

If

(i) any of the Borrower or any one of more of them (in case of the Borrower being more than one person) fails to pay any sum due from it or firm herein; or

(ii) any of the Borrower fails duly to perform any obligation (other than those mentioned elsewhere in this Clause); or

(iii) any of the Borrower (in case of either of them being a corporation of partnership firm) takes any action or other steps are taken in legal proceeding and started for winding-up, dissolution or reorganization or for the appointment of a receiver, trustee or similar officer on its assets particularly on the Hypothecated Vehicle; or

(iv) any of the Borrower (in case of either of them being, an individual and in case if more than one, any of them) dies.. (sic) or taken any steps or any steps are taken with a view to his being made insolvent in any jurisdiction or with a view to the appointment of a receiver, trustee or similar officer of any of his

assets;-or

(v) the Borrower fails to pay any insurance premium for the hypothecated vehicle check bounce charges in terms and conditions hereof; or

(vi) the Hypothecated Vehicle is confiscated, attached taken into custody by any authority or subject to any execution proceedings; or

(v) the Borrower fails to pay any insurance premium for the Hypothecated Vehicle or check bounce charges in terms and conditions hereof; or

(vi) the Hypothecated Vehicle is confiscated, attached, taken into custody by any authority or subject to any execution proceedings; or

(vii) the Hypothecated Vehicle is badly damaged due to accident or any other reason whatever causing the same to be a total loss in the opinion of the Bank or caused bodily injury to any person due to any accident or otherwise; or

(viii) the Borrower fails to pay any tax imposed, duty or other imposition or comply with any other formalities required for the Hypothecated Vehicle under the law from time to time; or

(ix) the Hypothecated Vehicle is stolen or untraceable for a period of 30 days for any reasons whatever; or

(x) any of the cheques delivered or to be delivered by the Borrower to the Bank in terms and conditions hereof is not encashed for any reason whatever on presentation; or

(xi) any instruction given by the Borrower(s) for Stop Payment of Post-Dated Cheques, given as per clause 4(A), for any reason whatsoever;

(xii) the Borrowers) fail to supply a copy of the registration certificate within the time frames specified in clause 9(A)(vii);

(xiii) any circumstance arises which gives reasonable grounds in the opinion of the bank that it is likely to prejudice or endanger the Hypothecated Vehicle.

When and in any such case at any time thereafter, without prejudice to Clause 4 above & without prejudice to the rights mentioned in Clause 14 hereafter, the Bank may (but shall not be bound to do so), without the specific intervention of a court or any court order by written polices (sic) to the Borrower declare the loan to be immediately due and payable, whereupon the same shall become to payable together with accrued interest thereon and any other sums then owed by the Borrower herein.

8. As per the terms of the agreement, it is abundantly clear that in the event of default in payment of loan, as per the agreement between the parties, the Bank had authority to recover the said truck. The possession of the complainant cannot be better than the possession of the Babul Chandra Paul. Admittedly, the truck was under hypothecation with an agreement mentioned hereinabove. It appears from the record earlier the Registration Number of the truck was WB-23A/9777 and later on it was converted to LN01D-8346 issued from the State of Nagaland. The primary question which has to be decided in this case is as to whether the action of the Bank in recovery of the said truck in the event of default of loan amount will lead to a criminal offence or it will be a civil dispute can be adjudicated by a civil court.

9. This issue is no longer res integra, as the Hon'ble Supreme Court in the case d [Sardar Trilok Singh and Others Vs. Satya Deo Tripathi](#), in similar facts and circumstances, held that the dispute raised by the respondents was purely of civil nature even assuming the facts stated by him to be substantially correct. It will be apt to quote the relevant extract from Para-5 of the judgment which is as follows:--

Para-5... The dispute raised by the respondent was purely of civil nature even assuming the facts stated by him to be substantially correct. Money must have been advanced to him and his partner by the financier on the basis of some terms settled between the parties. Even assuming that the agreement entered on March 29, 1973 was duly filled up and the signature of the complainant was obtained on a blank form, it is to be noticed that the amount of the two monthly instalments admittedly paid by him was to the tune of Rs. 3,566/- exactly at Rs. 1,783/- per month. The complaint does not say as to when these two monthly instalments were paid. In the first information report which he had lodged he had not stated that the third monthly instalment was payable on July 31, 1973. Rather, from the statement in the first information report it appears that the instalment had already become due on July 28, 1973 when the complainant went out of Kanpur according to his case. The question as to what

were the terms of the settlement and whether they were duly incorporated in the printed agreement or not were all questions which could be properly and adequately decided in a civil court. Obtaining signature of a person on blank sheet of papers by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of the Penal Code making it an offence or when such a document is used as a genuine document. Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on July 30, 1973 from the house of the respondent they could and did claim to have done so in exercise of their bona fide right of seizing the truck on the respondent's failure to pay the third monthly instalment in time. It was, therefore, a bona fide civil dispute which led to the seizure of the truck.

10. The same issue again came for consideration in the case of [Charanjit Singh Chadha and Others Vs. Sudhir Mehra](#), where the Hon'ble Supreme Court has held that the complainant had paid only part of the consideration amount and defaulted in paying the instalment in that event the vehicle was taken in possession by the financier allegation made the first accused had driven away the truck from the possession of the complainant and the 2nd accused was present in the bus. The Court has held that it will not be a case of criminal offence, rather it will be a civil dispute and affirmed the view taken in Triloki Singh's case (supra). The same issue, again come for consideration before the Hon'ble Supreme Court in the case of [The Managing Director, Orix Auto Finance \(India\) Ltd. Vs. Shri Jagmander Singh and Another](#), where the Court has affirmed the above view that in the case of default, recovery of the subject of hypothecation cannot be a case of criminal offence.

11. The Hon'ble Supreme Court has reiterated the same view in the case of [Bharath Metha Vs. State by Inspector of Police Chennai](#),. The same view has again been repeated in the said judgment by the Hon'ble Supreme Court in [Anup Sarmah Vs. Bhola Nath Sharma and Others](#),.

12. In view of the consistent view of the Hon'ble Supreme Court, the hire purchaser does not get any title on the subject matter but a mere option to purchase on fulfilment of certain conditions and he will get the title over the subject matter after payment of the full loan amount.

13. In this case also, there is an agreement between the Bank and Babul Chandra Paul which specifically provides the terms of hire purchase deals with the events on failure to pay the loan amount, the authority has been given to

the Bank to get the said truck recovered. The complainant cannot get better right, title and possession over the truck than Babul Chandra Paul. This Court feels that recovery of the truck was made in terms of the hypothecation agreement as it is an undisputed fact that the loan amount was not repaid to the Bank. In this case, it is also a peculiarity that the registration number of the truck was changed without information to the Bank. On consideration of the aforesaid facts and circumstances, this Court is of the view that the order of cognizance is not sustainable in law. Accordingly, the same is quashed and this petition is allowed.



