

CRM-M-50424-2018 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-50424-2018 (O&M)

Date of Decision: 19.03.2024

DEEPAK HEDAU

... Petitioner

Versus

STATE OF PUNJAB & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sarthak Gupta, Advocate
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab
for respondent No.1.

Mr. Karambir Singh Kharbanda, Advocate
for respondent No.2.

JASJIT SINGH BEDI, J (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the FIR No.17 of 2018 dated 30.01.2018 registered under Section 408 IPC at Police Station Sohana, SAS Nagar and all subsequent proceedings arising therefrom.

2. The brief facts of the case as emanating from the pleadings are that the petitioner was appointed as an Associate Director with the Indian School of Business (hereinafter known as 'ISB'), Mohali on 14.08.2015 vide appointment letter dated 14.08.2015 (Annexure P-2). The petitioner opted for a car under the Policy on Compensation and Benefits of respondent No.2-ISB. The said Policy on Compensation and Benefits (Annexure P-10/R-2/3) was in terms of the lease agreement entered into between respondent No.2-ISB and L&T Finance (Annexure R-2/4). A Car Lease Undertaking was also given by the petitioner to respondent No.2/ISB (Annexure P-13/R-2/6).

3. The relevant provisions of the Car Lease Agreement (Annexure R2/4) entered into between ISB and L&T Finance dated December, 2013 are as under:-

Conditions on case of Motor Vehicles

In case the Asset/s is a Motor Vehicle within the meaning of The Motor Vehicles Act, 1988 (said Act) including any amendment or modification thereto, the Lease shall and/or ensure compliance with conditions mentioned hereunder:-

6.1. In case it is agreed between the parties that the Lessee/its nominee shall be designated as the owner, the Asset/s shall be registered as required under the said Act in the name of the Lessee/its nominee as owner of the Vehicle and the Lessor's name shall be registered therein as the financier- provided, however, the rights of the parties at all times shall be governed by the terms and conditions herein. The Lessee shall be fully liable and responsible at all times for performances of all the obligations, liabilities and duties as provided under the said Act or under any other for the time being in force.

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10 Events of Default

If the lessee

10.1. fails to pay the Lease Rentals or part thereof within the stipulated time whether demanded or not or any other charge or payment required hereunder within 7 days of their becoming due; or

10.2. fails to effect insurance cover of the Assets or fails to handover the insurance policy/ies or renewal endorsement, premium receipt in respect of such policy/ies to the Lessor within 14 days of arranging/renewing such policy/ies or fails to maintain insurance and pay insurance premia as and when due or fails to reimburse the same to the Lessor on demand; or

10.3. fails to perform or observe or carry out any other covenant, condition or Agreement to be performed, observed, or carried out by the Lessee, and such failure or breach continues unremedied for a period of 14 days after written notice to cure breach is sent to the Lessee; or

10.4. without the Lessor's consent, sells, transfers, abandons or attempts to sell or pledge, parts with possession or sublets or charges or encumbers or creates any lien on the Asset/s; or

10.5. in the opinion of the Lessor the Lessee has done or allowed to be done any act or thing which may prejudice or endanger or jeopardise the Lessor's property or rights in the Asset/s; or

10.6. shall commit an act of bankruptcy or become an insolvent or bankrupt or is wound up or make an assignment for the benefit of creditors, or consent to the appointment of a Trustee or a Receiver, or either a Trustee or Receiver shall be appointed for the Lessee or for a substantial part of Lessee's property without the Lessor's consent, or if bankruptcy reorganisation, insolvency proceedings or winding up proceedings shall be instituted by or against the Lessee, voluntarily or otherwise; or

10.7. shall do or take such steps as to cause an adverse material change in its own acts or otherwise and as a result thereof, the capacity of the Lessee to service the Lease Rentals and other charges and monies payable under this Agreement, in the opinion of the Lessor, stands jeopardised and/or the Assets is endangered in any manner whatsoever; or

10.8. shall be in default under any other subsisting agreement executed with the Lessor or any other Bank or any other Financial institution and such default has not been remedied or rectified to the satisfaction of the Lessor; or

10.9. makes or is deemed to have made any representation or warranty in or pursuant to this Agreement and such representation or warranty is or proves to have been incorrect in any material particular or in any material respect or leads to the inference that there has been misinformation supplied by the Lessee or concealment of necessary or essential information by the Lessee based on which the Lessor has been prompted to act and enter into this Agreement; or

10.10. any substantial change in the constitution or management of the Lessee occurs without previous written consent of the Lessor; or

10.11. the Lessee's management ceases to enjoy the confidence of the Lessor.

11. Consequences of the Events of Default

On the occurrence of any of the events specified above, without prejudice to the Lessor's rights and without any notice to the Lessee, the lessor shall have right to;

11.1. Terminate this Lease Agreement forthwith;

11.2. Recover from the Lessee the arrears of monies due and unpaid upto the date of termination and such other future rentals for the period, had this Agreement continued;

11.3. Claim damages for any breach of this Agreement and all expenses and costs incurred by the Lessor in retaking possession and selling or attempting to sell the Asset/s and/or enforcing its rights under this Agreement;

11.4. Initiate legal action as available under applicable laws;

11.5. Reposses, sell, re-lease, or otherwise dispose of or deal with the Assets in such manner, as the Lessor may think fit.

12 Redelivery/Repossession of Assets

12.1. Upon the expiration of this Agreement if the Lessee does not propose to renew the Lease for further fixed period or secondary period, or in the event of termination of this

Agreement, the Lessee shall, if required by the Lessor, forthwith deliver or cause to deliver the Assets, in good working condition, to the Lessor at the address of the lessor stated in this Agreement or at such other addresses as the Lessor may specify or not so required, shall hold the Assets in trust for the Lessor so as to make it available to the Lessor for collection by itself or by its employees or agents; the Lessor or its employees or agents shall be entitled to retake possession of the Assets and may for that purpose enter upon any land or buildings on or in which the Assets are or are believed by the Lessor or its employees or agents to be situated.

12.2. In the events of the termination of Lease, or expiration of this Agreement, for any reasons whatsoever or in the event of the Lessor taking repossession of the Asset, the Lessee hereby unconditionally and irrevocably undertakes to and agrees with the Lessor that the Lessee shall sign, execute and deliver all such instruments forms applications and writings and shall do all such other acts, deeds and things as may be required by the Lessor may chose and for this purpose the Lessee hereby irrevocably and unconditionally authorizes the Lessor that in the event of the Lessee reusing or being unable to or failing to sign and deliver any of the aforesaid instruments application forms of other writings as may be required by the Lessor, the Lessor shall be entitled to sign such instruments forms, applications papers and writings for and on behalf of the Lessee as a duly constituted attorney of the Lessee.”

4. The relevant provisions of the Policy on Compensation and Benefits (Annexure P-10/R-2/3) are as under:-

“v. Monthly EMIs will be adjusted against the flexible pay of the employee.

vi. At the end of lease period, the car will be returned to the leasing company. However, the employee can directly approach the leasing company to buy the car allotted to him/her as per the rules of leasing company.

vii. In case the employee leaves the services of the school before completion of the lease period, he/she shall pay the outstanding lease amount and prepayment charges, as per the rules of the leasing company, directly to the leasing company and produce an NOC from the leasing company to ISB.”

5. The relevant provisions of the Car Lease Undertaking given by the petitioner to respondent No.2 (Annexure P-13/R-2/6) are as under:-

“5. In the event of foreclosure of the lease of the Car by the School at my instance or on my account including termination due to severance of my relationship with the School as an employee, irrevocably agree to transfer the ownership of the Car immediately in my name or to surrender the Car to L&T Finance Ltd as per terms of the Lease Agreement with the School, and further, irrevocably agree to pay the School on demand the following:

- a. All lease rentals due and payable under the Lease Agreement up to the date of foreclosure*
- b. The foreclosure value as per Lease Agreement*
- c. All applicable taxes on the said transaction*
- d. All payments to authorities pertaining to the transfer of the ownership of the Car in my name*
- e. Such other sums as have become due under the Lease Agreement, and*
- f. Any other dues as mentioned in the Policy;*

12. Notwithstanding the above, I further undertake that in the event I breach the terms of the lease of the Car as per the Lease Agreement and/or the Car Lease Policy and/or this

Car Lease Undertaking, I shall indemnify the School against any loss, cost or damage (including loss of business) that the School may suffer as a result of such breach. Without prejudice to the above, I confirm that the indemnify for breach shall not be less than Rs.10,000/-.”

6. The Registration Certificate (R.C.) of the car was prepared reflecting the name of respondent No.2-ISB as the owner represented through the petitioner (Deepak Hedau). The copy of the RC is attached as Annexure R-2/5.

7. The services of the petitioner were terminated on 10.03.2016. Thereafter, the ISB (respondent No.2) asked the petitioner to pay his dues vide email dated 31.03.2016 (Annexure P-5). A legal notice dated 21.04.2016 was served by the petitioner on to respondent No.2-ISB asking the respondent No.2-ISB to settle the matter (Annexure P-3). The petitioner wrote an email dated 17.06.2016 (Annexure P-8) to respondent No.2-ISB stating that the money due to him from respondent No.2-ISB was sufficient to cover the EMIs. Various other emails were exchanged between the parties as is evident from Annexure R-2/13. In response to the petitioner's legal notice (Annexure P-3), the respondent No.2-ISB asked the petitioner to return the car or purchase the same by paying the balance EMIs vide communication dated 20.09.2016 (Annexure P-4). ISB sent a legal notice to the petitioner to return the car on 15.02.2017 (Annexure R-2/11).

8. Meanwhile, the petitioner instituted a civil suit dated 23.03.2017 (Annexure P-6) against the ISB claiming a year of back wages plus Rs.22 lakhs salary in lieu of the notice. ISB/respondent No.2-complainant however filed a complaint to the SAS Nagar Police on 02.06.2017 which led to the

registration of the FIR No.17 of 2018 dated 30.01.2018 (Annexure P-1) under Section 408 IPC.

9. The car was recovered from the petitioner from Nagpur in March, 2018. Meanwhile, the complainant foreclosed the loan obtained from L&T as is evident from the document (Annexure R-2/7 and R-2/8).

10. The details of the instalments paid are as under:-

Car Purchased: 31-Oct-15

Amount Financed by L&T	1,250,000	Notes
Paid in Nov 2015	(25,163)	Deducted from the Salary of the petitioner
Paid in Dec 2015	(25,163)	Deducted from the Salary of the petitioner
Paid in Jan 2016	(25,163)	Deducted from the Salary of the petitioner
Paid in Feb 2016	(25,163)	Deducted from the Salary of the petitioner
Total EMI paid by Deepak	1,00,650	4 months EMI paid
Balance by the time he resigned March 2016	11,49,350	
GST at the time of foreclosure, 2018	7360	
Balance payment foreclosed as on 31 st May 2018 by ISB	11,56,809	As per foreclosure statement 2017-2018

11. On 24.09.2018, the report under Section 173(2) Cr.P.C. was presented (Annexure P-9). Vide order dated 18.01.2024, charges were framed under Section 408 IPC (Annexure P-16).

12. Thereafter, the instant petition for quashing of the FIR and all subsequent proceedings arising therefrom came to be instituted in November, 2018 on the grounds that a civil dispute had been given the colour of a criminal offence. The petitioner at most was liable for the breach of the Car Lease Agreement (Annexure R-2/4), the Policy on Compensation and Benefits (Annexure P-10/R-2/3) and the Car Lease Undertaking (Annexure P-13/R-2/6). The petitioner had no obligation whatsoever to return the car to respondent No.2-ISB and the obligation at best was to pay the EMIs directly to the leasing company (L&T) or surrender the car to it. There was no entrustment in this case as the petitioner took delivery of the vehicle directly as per communication addressed by respondent No.2-ISB to L&T Finance dated 15.10.2015 (Annexure P-11) and thereafter, the possession remained with the petitioner. Having paid part EMIs out of his salary, he was in fact a part owner and the RC of the vehicle (Annexure R-2/5) reflected the ownership of the vehicle as that of respondent No.2-ISB through Deepak Hedau (petitioner) and not by designation. The FIR had been registered only after the institution of the civil suit against ISB on 23.03.2017 and thus, it was nothing but a counter-blast to the same as the complaint leading to the registration of the FIR only came to be instituted on 02.06.2017. Even otherwise, the complainant-Madanjit Randhawa (respondent No.2) was neither a Director nor a CEO of ISB and was unauthorised to file the complaint culminating in the FIR.

13. The respondent No.2-ISB, on the other hand in its reply has stated that the owner of the car at all times was respondent No.2-ISB. The said car was entrusted to the petitioner being an employee. Once, he ceased

to be one, he should have been returned it to ISB or should have continued to pay instalments to L&T. He chose to do neither thereby committing the offence of breach of trust as he was in unlawful possession. The respondent No.2-ISB was left with no option but to foreclose the lease and obtain an NOC from the Finance Company regarding the removal of the hypothecation clause and became an absolute owner of the car. Merely because a civil suit had been filed did not preclude the ISB from getting registered the instant FIR. Even otherwise, as the Court had taken cognizance on the report under Section 173 Cr.P.C., no question of quashing of the FIR and consequential proceedings arose at this stage.

14. The learned counsel for the petitioner contends that the allegations levelled in the FIR if taken to be the gospel truth would only constitute a civil dispute at best and the said civil dispute had been given the colour of a criminal offence. As per the provisions of the Car Lease Agreement entered into between respondent No.2-ISB and L&T Finance Company (Annexure R-2/4), the Car Lease Policy of ISB-respondent No.2 (Annexure P-10/R-2/3) and the Car Lease undertaking (Annexure P-13/R-2/6) furnished by the petitioner to ISB-respondent No.2, in case, the services of the petitioner were terminated, he was to return the vehicle to L&T or pay the instalments for the same directly to L&T. There was absolutely no reference in any agreement/undertaking that the petitioner was to return the vehicle in question to the respondent No.2-ISB. In fact, there was no entrustment in this case as the petitioner took delivery of the asset directly, paid some EMIs out of his salary and the R.C. of the vehicle reflected the ownership as that of respondent No.2-ISB through Deepak Hedau (petitioner)

and not respondent No.2-ISB through some designation. Be that as it may, even if there was a default in the payment of instalments on the part of the petitioner the lessor L&T was well within its right to initiate appropriate civil proceedings and reposses the vehicle in accordance with law. The FIR had come to be registered only after the institution of the civil suit against ISB on 23.03.2017 and was thus, a counter-blast to the said suit and vexatious. He, therefore, contends that the FIR and all consequential proceedings arising therefrom including the report under Section 173 Cr.P.C. (Annexure P-9) and the order framing charges were liable to be quashed. Reliance is placed on the judgments in the cases of *S. Mitter Versus State & another, Criminal Revision cases Nos.1172 and 1173 of 1656, decided on 12.12.1956*, *Tatineni Srinivas Rao Versus State of A.P. & another, 1997(2) Andh LD (Criminal) 880*, *Kirankumar Ratilal Soni Versus State of Gujarat & Another, Criminal Misc.Application No. 18049 of 2011, decided on 17.3.2017*, *G. Ram Prasad Versus State of Telangana rep. by its Prosecutor Hyderabad and others, 2018(2) HLT (CrL) 1*, *M/s Jhajjz Pvt. Ltd. & others Versus State of NCT of Delhi & others, 2022(294) DLT 515*, and *Deepak Gaba & others Versus State of Uttar Pradesh, 2023 SCC Online SC 3*.

15. On the other hand, the learned State counsel contends that the offence was *prima facie* made out and therefore, the report under Section 173(2) Cr.P.C. had been submitted after which the charges had been framed against the petitioner. Therefore, at this stage, the FIR and consequential proceedings could not be quashed.

16. The learned counsel for respondent No.2 contends that the car was purchased by respondent No.2-ISB and the Registration Certificate

reflected the ownership of the respondent No.2-ISB. However, it was entrusted to the petitioner being an employee. Once his services were terminated, he ought to have returned the vehicle to ISB or should have continued to pay the instalments to L&T. He chose to do neither thereby committing an offence under Section 408 IPC as he was in unlawful possession and in breach of trust. The legal notice sent by the complainant to the petitioner dated 15.02.2017 (Annexure R-2/11) clearly refers to a conversation between the petitioner and respondent No.2-ISB to the effect that the petitioner had agreed to hand over the car to the ISB but had failed to do so. The answering respondent No.2-ISB was left with no option but to foreclose the lease and obtain an NOC from the Finance Company regarding the removal of the hypothecation clause and subsequently became an absolute owner of the car. Merely because a civil suit had been filed did not preclude respondent No.2-ISB from getting registered the instant FIR once the offence was made out. He, therefore contends that present petition was liable to be dismissed. Reliance is placed on the judgment in the case of *Sanjeev Kakar Versus The State of NCT of Delhi & another, 2023(2) JCC 834.*

17. I have heard the learned counsel for the parties.

18. Before proceeding further in the matter, it would be apposite to examine the provisions of Sections 403, 405, 406 and 408 IPC, which read as under:-

403. Dishonest misappropriation of property.— Whoever dishonestly mis-appropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may

extend to two years, or with fine, or with both.

405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

408. Criminal breach of trust by clerk or servant.—Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

19. The judgments of various High Courts and the Hon’ble Supreme Court relied upon by the petitioner are as under:-

In **S. Mitter Versus State & another, Criminal Revision cases**

Nos.1172 and 1173 of 1656, decided on 12.12.1956, it was held as under:

“3. The opposite party preferred complaints charging the Petitioner with having committed breach of trust in respect of the refrigerator and the radiogram in violation of the two agreements executed by the Petitioner. It is said that the Petitioner executed these hire purchase agreements, and

entered into contracts with the complainant's firm called "Alamode "Furnishers" which carry on business at Calcutta. The principal terms and conditions of the agreements were that the Petitioner was to pay Rs. 100 as initial payment by way of hire and thereafter he would pay Rs. 100 per month towards hire for 24 months. It was further stipulated that if any monthly hire was left unpaid, complainant firm might terminate the agreement and recover possession of the article-in question. It was also stipulated that during the currency of the contract of hire, the Petitioner was to have no right of property or lien in the articles. The Petitioner who was described as the lessee failed to pay the stipulated hire for several months whereafter the contract of hire was terminated on a certain date; and as there was failure to deliver back possession of the properties in question, the two complaints were preferred in court charging the Petitioner with having committed criminal breach of trust under Section 406 of the Indian Penal Code.

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6. It is necessary to recall some of the conditions attached to the contract of hire. The lessee was given the option to" purchase the articles which were the subject-matter of hire at any earlier time during the currency of the contract of hire by paying in a lump sum the balance of all the hire payments stipulated for. The lessee was also given the liberty to terminate the contract of hire at any time before the articles became his property and he was to have no right of property over the articles otherwise than as a "lessee" thereof. There are various other conditions attached to the contract which it is not necessary, for the purpose of these Rules, to recapitulate. Suffice it to say that the agreement of hire is, on the face of it, a contract entered into between the parties, evidencing an arrangement between them, as respects hire of certain articles which hire was in the course

of time to ripen into purchase. The contract itself describes the parties as "lessors" and "lessees" and the Petitioner is treated throughout on the footing of the lessee in respect of the radiogram and the refrigerator. this Court need not be detained over the appositeness of the expression "lessor" and "lessee" in the context of these contracts. The fact remains that the accused Petitioner is treated as having certain rights. Whatever those rights may have been, he was certainly 'entitled to keep and possess the articles which were the subject-matter of hire, provided he fulfilled the other conditions of the contract. But from the bundle of rights belonging to the lessor some sticks appear to have been taken away and the lessee is to be treated as a person having some rights under the contract of hire. The contract, evidencing the agreement and regulating mutual rights and obligations embody certain conditions and it is the breach of some of the conditions that forms the subject-matter of the present criminal proceedings. It seems to me that mere failure to pay the instalments of hire will not make out a case of criminal breach of trust. There can be no doubt that the case of mere breach of hire agreement without more, cannot possibly form the subject-matter of a criminal charge.

7. Mr. Basu has strenuously contended that Section 405 of the Indian Penal Code is widely worded so as to include within its ambit cases of breach of hire purchase, agreement. Whatever may be said of this view of Section 405 it is reasonably clear upon the allegations made in these cases that the real complaint against the Petitioner is that he failed to pay certain sums of hire money. In a case of criminal breach of trust, the property remains with the person entrusting and the person entrusted does not have any right of his own in the property. In the present case, the lessee is acknowledged to have some interest He has his rights. As for example he has his rights not to have the

property taken away as long as he fulfils the conditions mentioned in the contract. That being so, this is not a case which could be pressed into the four corners of Section 405 of the Indian Penal Code,

8. As I have already indicated the only allegation is that there has been a breach of agreement in the sense that there was failure to pay some instalment of the hire. For that certainly the complainant has his remedy in the civil court. I am not suggesting for a moment that simply because there is a civil remedy available, the criminal court will even in an appropriate case be deprived of its jurisdiction. What I wish to say is that here the allegations merely point to a civil dispute between the parties and do not contain the Kernels of a criminal case. The terms of the contract themselves indicate that the Petitioner who is described as a lessee of the properties have certain rights in respect of the properties and that again in the view of. the lessor himself. Besides the allegation that there was default in payment of the hire instalments, there is no others allegation in these cases. That being so. I think the present proceedings are misconceived.

9. In the result, the Rules are made absolute and the proceedings out of which they arise are quashed.”

(emphasis supplied)

In *Tatineni Srinivas Rao Versus State of A.P. & another,*

1997(2) Andh LD (Criminal) 880, it was held as under:-

“2. The petitioners in all these criminal petitions purchased motor vehicles with the finance of the second respondent, M/s. Midwest Growth Fund Limited, and they entered into hire purchase agreements promising to pay the said amount in monthly instalments together with interest at 16% per annum and also executed promissory notes in favour of the second respondent. According to the second respondent, the petitioners failed to pay the monthly instalments regularly

and thereby defaulted in payments and accordingly the second respondent is entitled to seize the vehicles and he deputed his representative to find out and verify the condition of the vehicles and he found that the vehicles were not available on an enquiry they came to know that the petitioners disposed of the vehicles and thus committed breach of trust and hence, liable for punishment under Section 406 I.P.C.

3. The second respondent filed a private complaint against the petitioners for the said offence under Section 406 I.P.C. and requested to refer the complaints to the police for investigation under Section 156(3) Cr.PC and the learned XI Metropolitan Magistrate, Secunderabad, referred the cases to the police and the police registered cases in Cr.Nos.78/1997, 75/1997 and 89/1997 of Police Station, Begumpet for the offence under Section 406 I.P.C. and issued F.I.R, and took up investigation.

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11. The learned Counsel for the petitioners submitted that there are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive. Hence there is no bar to proceed against the petitioners and relied on Supreme Court decision in Pratibha Rani v. Suraj Kumar and another, AIR 1985 Supreme Court 628. The learned Counsel of the petitioner submitted that the facts leading to the decisions relied upon by the learned Counsel for the Respondent are different to the facts of the case on hand and their Lordship held that any breach of terms of the hire purchase agreement is purely of civil nature and the second respondent also filed suits for recovery of the amount advanced by him to purchase the vehicles and hence the respondent is not entitled to initiate any criminal proceedings against the petitioners.

12. It appears that there is a considerable force in the contention of the learned Counsel of the petitioners. The facts leading to the decision relied upon by the learned Counsel for the Respondent are different to the facts of the cases on hand and are not helpful to him. But the facts leading to the case are almost identical to the facts of the case of the Apex Court in Trilok Singh 's case, first referred to above and the principle laid down herein clearly applies to the facts of these cases. Their Lordships held that the initiation of criminal proceedings for breach of terms of the hire purchase agreement is clearly an abuse of process of the Court. Therefore, the Criminal proceedings initiated against the petitioners are not maintainable and are liable to be quashed in view of the decision of the Apex Court relied upon by the learned Counsel of the petitioner.”

(emphasis supplied)

In **Kirankumar Ratilal Soni Versus State of Gujarat & Another, Criminal Misc.Application No. 18049 of 2011, decided on 17.3.2017,**

it was held as under:-

“9. Considering the aforesaid propositions of law laid down by the aforesaid decisions, the Court is of the considered opinion that background of the present fact is also almost on the similar line in which the Court has no option but to accept the plea of applicant that on account of non-payment of installments filing of such general FIR is nothing but a clear example of abuse of process of law and therefore conjoint effect with ingredients contained in Sections 406 and 420 of IPC and the basic averments mentioned in the present complaint would lead to a situation where the propositions of law laid down, as referred to above, clearly suggests that the present FIR is not required to be precipitated any further and if the same is allowed the same

would nothing but a clear example of coercive method against the person or an armed twisting method to recover money. Such kind of civil disputes prima facie visibly are not required to be encouraged and accordingly FIR being found to be abuse of process of law, this Court deem it proper to exercise inherent jurisdiction under Section 482 of the Code and accordingly the FIR lodged before Naroda Police Station being I-C.R.No.615 of 2011 for the offences punishable under Sections 406 and 420 of the Indian Penal Code, 1860 is ordered to be quashed.”

(emphasis supplied)

In G. Ram Prasad Versus State of Telangana rep. by its Prosecutor Hyderabad and others, 2018(2) HLT (CrL) 1, it was held as under:-

“8. Thus, in view of the terms and conditions of MOU, the obligation is cast upon both the parties and they have to discharge the contractual obligation as agreed. When the petitioner allegedly not paid an amount of Rs. 2,50,000/- as agreed under MOU and failed to pay EMI due to the financial institution, whether such act would constitute an offence under Sections 406 and 420 of I.P.C. is a question to be decided.

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13. If these principles are applied to the present facts of the case, there was nothing in the complaint that the petitioner utilized the property for himself with dishonest intention. In the absence of dishonest intention, the allegations made in the complaint at best would amount to breach of contract but not criminal breach of trust.”

(emphasis supplied)

In the case of M/s Jhajjz Pvt. Ltd. & others Versus State of NCT of Delhi & others, 2022(294) DLT 515, the cars were purchased by the complainants to be used by the petitioners (accused) to run as taxis. The complainants were to receive a commission and the EMIs were to be paid by the petitioners. On account of non-payment of EMIs and the accounts being declared as NPAs, an FIR was registered by the complainant party against the petitioner/accused. The Court held as under:-

“37. In the illustrations provided to the Section, examples have been given where entrustment has been made with certain stipulations or directions for the use of the property in a particular manner and contrary to those stipulations or directions the one entrusted with the property uses it in a manner that benefits himself. In the present instance, the cars are claimed to be the property that the respondents No.3 to 5 assert was entrusted to the petitioners. Assuming it to be so, it was understood that the petitioners would be utilizing those cars to earn profits. It is thus a business arrangement where some payments out of such earning were to be made to the bank, i.e. the EMI, and to the respondent No.4, as commission. The petitioners having dominion over the cars have neither misappropriated nor converted those cars dishonestly or otherwise. The allegations are that the EMIs were not paid and the loans turned into NPAs and the petitioners had not paid the commission due to the respondents. It is amply clear that neither the ingredients of the offence under Section 406 IPC nor of any conspiracy to commit such criminal breach of trust, is made out on the basis of the complaint. The Status Report filed by the ACP, EOW also records the admission of the complainant of having received a sum of Rs. 4,27,78,138/-. In other words, the quarrel is regarding balance payment, either of the EMIs

or of the commission. There could be no clearer case of a civil dispute.”

(emphasis supplied)

In the case of **Deepak Gaba & others Versus State of Uttar Pradesh, 2023 SCC Online SC 3**, the Hon’ble Supreme Court held as under:-

"13. Section 406 of the IPC prescribes punishment for breach of trust which may extend to three years or with fine or with both, when ingredients of Section 405 of the IPC are satisfied. For Section 406 of the IPC to get attracted, there must be criminal breach of trust in terms of Section 405 of the IPC.

14. For Section 405 of the IPC to be attracted, the following have to be established:

(a) the accused was entrusted with property, or entrusted with dominion over property;

(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and

(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

15. Thus, criminal breach of trust would, inter alia, mean using or disposing of the property by a person who is entrusted with or otherwise has dominion. Such an act must not only be done dishonestly, but also in violation of any direction of law or any contract express or implied relating to carrying out the trust".

(emphasis supplied)

20. The judgment relied upon by the complainant/respondent No.2-
ISB is as under:-

In *Sanjeev Kakar Versus The State of NCT of Delhi & another,*
2023(2) JCC 834, it was held as under:-

“2. The brief facts of the present case are that on 02.03.2022, complainant Mr. Sandeep Behl, who is Director and Shareholder of Printland Digital (India) Private Limited ('the company'), filed a complaint with police that the petitioner was appointed as an Additional Director on 28.05.2012 in the said company. On 03.04.2016, the company had purchased a car i.e., Creta 1.6 CRDi Auto SX+ Sleek Silver from Koncept Cars India Pvt. Ltd for official purpose. The company had availed loan facility of an amount of Rs.12,60,000/- from ICICI Bank and for smooth functioning of the company, the management of the company had decided to entrust the said car to the petitioner herein. It is further stated that on 22.02.2019, the petitioner had resigned from the directorship of the company. The authorized representative, being one of the directors of the company, while accepting the resignation of the petitioner had requested him to return the car no. DL 12CJ 6451 and other properties given to him at the time of appointment, but he had not returned the same despite various requests and reminders. It was further alleged that the company was forced to send an email to the petitioner for return of car and other properties of the company but he had neither replied nor returned the car and other valuable articles of the company. The company had already paid the entire loan amount to the bank. It is further alleged that the petitioner had misappropriated the car and other valuable properties of the company. On the basis of the complaint, present FIR was registered against the petitioner.

*** *** ***

10. Learned counsel for petitioner has mainly contended that there was some amount which was due towards petitioner from the side of complainant and that amount has been provided in tabular form as Annexure P/2. However, even if it is presumed that some amount was due towards the petitioner from the side of complainant, it did not give him the right to keep in his custody, the car in question and to refuse to return the same. The attention of this Court has been drawn to the legal notice sent to petitioner and the various reminders as well as messages sent to him for return of car. It is not case of petitioner that the car in question belongs to him or was bought by him. The same was also not registered in his name. Just because there was some amount which was to be paid by complainant to him, it did not give him any right to retain the car in question.

11. In this case, therefore, it is clear that car in question was in possession of petitioner in his capacity as Director. Pursuant to his resignation, petitioner was duty bound to return the car as it was entrusted to him by virtue of his official post in the company. Considering the same at this stage, when the investigation is under way, this Court is not inclined to interfere with the same.

12. Applying the above mentioned principles, the facts would reveal that there is a strong suspicion and indication that prima facie case against the petitioner is made out since the car in question, which did not belong to present petitioner, had been kept by him and he was not returning the same despite legal notices, repeated requests and reminders.

13. Having given thoughtful consideration to the material on record, and considering the relevant principles governing quashing of FIR laid down by the Hon'ble Apex Court in Bhajan Lal (Supra) which is to be applied in the rarest of

the rare cases, and the instant case cannot be held to fall within its ambit. This Court is not persuaded to reach a conclusion that the allegations leveled are absurd, highly improbable and that such incident could not have happened so as to direct quashing of the FIR.

14. In view thereof, this Court does not deem it fit to exercise the discretion of quashing the present FIR.

15. Accordingly, the present petition stands dismissed.

16. The judgment be uploaded on the website forthwith.”

(emphasis supplied)

21. In the instant case, there are three relevant documents which need to be examined closely. The relevant provision of the lease agreement entered into between respondent No.2-ISB and L&T Finance (Annexure R-2/4) would show that in case of default in payment of instalments on the part of respondent No.2-ISB, L&T could repossess the car. Legal action under applicable laws could be initiated. A perusal of Clause (v), (vi), (vii) of the Policy on Compensation and Benefits (Annexure P-10/R-2/3) would show that the EMIs in question would be paid from the salary of the employee. At the end of the lease period the car would be returned to the leasing company (L&T) though the employee had the right to directly approach the said leasing company to buy the car as per the rules. In case the employee left the services of the school before completion of the lease period he/she could pay the outstanding lease amount directly to the leasing company and produce an NOC from the leasing company to respondent No.2-ISB. In terms of clause 5 & 12 of the Car Lease Undertaking (Annexure P-13/R-2/6), in the event of the foreclosure of the lease of the car by the school, the employee was to transfer the car immediately to L&T Finance and pay all necessary dues to

the school (ISB) on demand. Thus, apparently, there was no legal requirement for the petitioner to return the car to the complainant/respondent No.2-ISB. In fact, the purported willingness of the petitioner either orally or in writing to return the vehicle to the complainant/respondent No.2-ISB and him not doing so would not amount to the commission of an offence of breach of trust on the face of the various written documents referred to as per which the vehicle was to be returned to L&T alone. A perusal of the judgments relied upon by the learned counsel for the petitioner (supra) would clearly establish that where under a Higher Purchase Agreement the EMIs were not paid, the lessor had the right to avail his civil remedies for recoveries in accordance with law. Even in the instant case, L&T Finance could very well have recovered the vehicle from the petitioner, if so warranted under the Policy on Compensation and Benefits (Annexure P-10/R-2/3), the Lease Agreement (Annexure R-2/4) and the Car Lease Undertaking (Annexure P-10/R-2/6). On the other hand, if the complainant/answering respondent No.2-ISB chose to make the remaining payment and foreclose the account directly with L&T pursuant to the termination of services of the petitioner, it was well within its right to recover any amount due from the petitioner under civil law. In fact, it would not be out of place to mention here that the petitioner might not have been the owner but he had beneficial interest in the vehicle as not only were some of the instalments paid from his salary but it was he who had taken the possession of the vehicle in question at the initial stage. Therefore, the present case is not one of unequivocal entrustment by respondent No.2-ISB to the petitioner. The judgment in Sanjeev Kakar's case (supra) would not

come to the aid of the answering respondent. In the said case, the vehicle had been purchased by the employer alone. It had been entrusted to the employee along with certain other articles. When the repossession was sought on the termination of services of the said employee and the vehicle was not returned, the FIR had been registered. In the instant case, as has already been pointed out above, the petitioner was to return the vehicle, if so warranted directly to L&T and not to respondent No.2-ISB and secondly, not only did the petitioner take the possession of the vehicle as was evident from document (Annexure P-11) though on behalf of ISB-respondent No.2 directly, but the EMIs were to be paid from the salary package of the petitioner.

22. In view of the above-mentioned discussion, I find considerable merit in the arguments of the petitioner and therefore, the FIR No.17 of 2018 dated 30.01.2018 registered under Section 408 IPC at Police Station Sohana, SAS Nagar (Annexure P-1), the report under Section 173(2) Cr.P.C. (Annexure P-9), the order framing charges dated 08.01.2024 (Annexure P-16) and all subsequent proceedings arising therefrom stand quashed.

23. However, it is made clear that I have expressed absolutely no opinion on the respective financial claims of either party against each other, if any, and they are free to avail their civil remedies in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

19.03.2024
jitesh

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No