IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.546 OF 2006

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1. Mr.Rajesh Menon
Senior Manager,
HDFC Bank Ltd. having his office at
Trade Star, 3rd floor, J.B.Nagar,
Andheri-Kurla Road, Andheri (East),
Mumbai- 400 059

2. Mr.Jitendra Singh
Assistant Manager,
HDFC Bank Ltd. having his office at
Trade Star, 3rd floor, J.B.Nagar,
Andheri-Kurla Road, Andheri (East),
Mumbai- 400 059 ...Applicants

v/s.

1. State of Maharashtra
2. Senior Inspector of Police,
Kalachowki Police Station,
Mumbai
3. Mr.Gurjit Tarlochan Singh Bindra ...Respondents

…

Mr.Yashpal Thakur i/b M/s.Paras Kuhad & Associates for the Applicants.

Mrs.M.H.Mhatre, APP for Repondents Nos.1 & 2.

Mr.S.P.Kadam with Mr.Kalpesh Patil for the Respondent No.3.

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CORAM : A.S.OKA &
A.A. SAYED, JJ.

DATED : 9 JUNE 2016

ORAL JUDGMENT: *(Per A.S.Oka, J.)*

The Applicants who were at the relevant time employees of HDFC Bank Ltd. (for short "the said Bank") have filed this Application under Section 482 of the Code of Criminal Procedure, 1973 for quashing the First Information Report (Cr.No.218 of 2005) registered at Kalachowki Police Station at the instance of the third Respondent.

2. In the First Information Report, the third Respondent stated that he had applied to the said Bank for grant of loan for acquiring two Jeep vehicles and that the said Bank had granted approval to the loan. Out of the two vehicles, delivery of the first vehicle was received by the third Respondent on 13 March 2015. It is alleged that for the purpose of taking delivery of the second vehicle, the driver of the First Informant visited the H.B.S.International Mahendra Servicing Center, Cotton Green, Kalachowki, Mumbai on 19 March 2005 at 11 O'clock. It is alleged that the signature of the driver on delivery memo was obtained by Shri. Gaikwad on behalf of the said Servicing Center. The allegation in the First Information Report is that after signing the delivery note, the driver was told to wait for few minutes to take the actual possession of the vehicle. At that time, one Shri Joseph, an officer of the said Bank alongwith two persons took the custody of the said

vehicle. The allegation is that the said two persons namely Shri Joseph Jitendra Singh and Shri Rajesh Menon (Applicants), who were working in the said Bank committed the theft of the said vehicle by acting in conspiracy with the owner of the Service Center. An offence was registered under Section 406 read with Sections 34 and 120B of the Indian Penal Code.

3. The submission of the learned Counsel appearing for the Applicants is based on the Car Loan Agreement executed by the third Respondent and the terms and conditions incorporated in the said agreement. He invited our attention to the material averments in the Application namely the averments made in paragraphs 3 to 5. He pointed out that the borrower purposely made material misrepresentation with a view to avoid being caught under the credit criteria for disbursement of loan. He also invited our attention to the paragraph 6 of the Application. He invited our attention to Clauses 11 to 14 of the Loan Agreement. He pointed out that as the information given by the borrower in the Application for grant of loan was found to be misleading and incorrect and as the third Respondent failed to perform his obligation and committed breaches, the Bank decided to exercise its authority under sub-clause (i) of Clause 14.2 of the Agreement. He submitted that the Applicant alongwith one Shri Joseph Singh, who were the officers of the said Bank took the custody of the

vehicle by exercising the powers under the Loan Agreement. He relied upon the decision of the Apex Court in the case of **Charanjit Singh Chadha and ors, v/s. Sudhir Mehra**[1].

4. Learned APP supported the action of the police of registering the First Information Report.

5. Learned Counsel for the third Respondent supported the APP and urged that prima facie case of commission of offence is made out.

6. We have perused the statement on the basis of the First Information Report was registered. We have also perused the averments made in the Application as well as the Loan Application Forms submitted by the third Respondent. We have also perused the relevant Clauses of the Loan Agreement. The vehicle in question was hypothecated with the said Bank. It will be necessary to make a reference to Clauses 14.1 and 14.2 of the Loan Agreement, which reads thus:

> *" 14.1: If the Borrower fails to perform any of the obligations herein and the same (if capable or remedy) is not remedied to the satisfaction of the Bank within the period to be specified by the Bank: or*

1 (2001) 7 SCC 417

14.2: any of the "Event or Default" pursuant to the terms of clause 11 arise (whether demand for repayment is actually made or not) then and in such case and at any time thereafter, the Bank through its officers, agents or nominees shall have the right (without prejudice to the right the clause 7) to take any one or more than one of the following actions without the specific intervention of a Court or any Court Order:

(i) without any notice and assigning any reason and at the risk and expense of the Borrower and if necessary as Attorney for and in the name of the Borrower take charge and/or possession of, seize, recover, appoint receiver of and remove the Hypothecated Vehicle. The Bank will be within its rights to use Tow-Van to carry away the vehicle/and/or.

(ii) enter into or upon any place or premises where the Hypothecated Vehicle may be kept or stored and inspect, value or insure the same at the costs and expenses of the Borrower, and/or,

(iii) sell by auction or any private contract or tender, dispatch or consign for realization or otherwise dispose of or deal with the Hypothecated Vehicle in the manner the Bank may think fit."

7. We have also perused the other Clauses of the Loan Agreement. The Loan Agreement itself records that the vehicle in question was

hypothecated with the said Bank. The Clause 14.2 of the Agreement confers powers on the said Bank to take possession or charge of the hypothecated vehicle without notice to the borrower and without assigning any reason in the event of any default in terms of Clause 11.

8. We have considered the decision of the Apex Court in the case of Charanjit Singh (supra). It is no doubt true that the Apex Court was dealing with the hire-purchase agreement executed by and between the financer giving finance for acquiring a vehicle and the borrower. Reliance was placed by the learned Counsel appearing for the Applicants on paragraph 17 of the said decision, which reads thus:

> *"17. The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence. The agreement (Annexure P-1) specifically gave authority to the appellants to repossess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire-purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned*

> *Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. We, therefore, allow appeal and set aside the impugned judgment. The complaint and any other proceedings initiated pursuant to such complaint are quashed."*

9. In the case before the Apex Court, the allegation of the borrower was that the vehicle was illegally possessed by the Finance Company. It is true that the Apex Court was dealing with the hire-purchase agreement. However, in the present case, the fact that the loan agreement was executed by the third Respondent is not in dispute. The loan agreement gives powers to the said Bank to possess the vehicle in case of default.

10. What is alleged is an offence of criminal breach of trust punishable under Section 406 of the Indian Penal Code. `Criminal breach of trust' is defined in Section 405 of the Indian Penal Code. Ingredient of dishonesty is an essential part of Section 405. The Applicants who were employees of the said Bank, on instructions of the said Bank, purported to act on the basis of Clause 14.2 of the agreement under which the Bank was entitled to take possession of the vehicle without notice and without assigning any reason. Hence, it is impossible to come to a conclusion that there was an element of dishonesty in the said conduct. In fact, taking the statement of

the First Informant on the basis of which First Information Report was registered as correct, the offence of criminal breach of trust is not at all made out. If according to the case of the borrower, if the Bank acted in violation of the terms and conditions of the loan agreement, civil remedies will always be available to the third Respondent.

11. Therefore, we are of the view that even by taking averments made in the statement of the Complainant as correct, an offence under Section 406 of the Indian Penal Code and for that matter, any offence punishable under the Indian Penal Code is not made out.

13. Therefore, the Application must succeed and we passed the following order:

ORDER

(i) Rule is made absolute in terms of prayer clause (a), reads thus:

> “(a) that this Hon'ble Court may be pleased to quash and set aside the First Information Report (FIR) under C.R.No.218 of 2005 in the Kalachowki Police Station, Mumbai, by the Respondent No.2 herein.”

(ii) However, we make it clear that we have made no adjudication on the legality and the validity of the action of the said Bank of possessing the vehicle. We clarify that the adjudication made by us is confined only to the question whether an offence has made out against the Applicants;

(A.A. SAYED, J.) **(A.S.OKA, J.)**