IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 36 OF 2009.

1. Shailesh S/o Hiralal Khobre,
Age: 32 Years, Occu: Service,
R/o : Jyoti Nagar, Aurangabad.

2. IndusInd Bank Ltd,
formerly known as
Ashok Leyaland Finance Ltd.,
through its Legal Executive
Shri. Mahendra S/o Gokuldas Gadiya,
Age: 32 Years, Occu: Service,
having its Regional Office located
at Kandi Towers, Jalna Road,
Aurangabad. **....Petitioners.**

Versus

1. The State of Maharashtra
Through Superintendent of Police,
Aurangabad.

2. The Police Inspector,
Kranti Chowk Police Station,
Aurangabad.

3. Sandip S/o Shridhar Shinde,
Age: 28 Years, Occu: Business,
R/o : Near Zilla Parishad Quarters,
Naralibaug, Aurangabad. **....Respondents.**

Mr. A. A. Mukhedkar, Advocate for petitioners.

Mr. S.J. Salgare, APP for respondent Nos.1 and 2.

CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : JULY 21, 2017.

JUDGMENT : [PER T.V. NALAWADE, J.]

. The petition is filed for quashing of F.I.R. bearing No.

161/2006 registered in Kranti Chowk Police Station, Aurangabad for the offence punishable under section 392 r/w. 34 of Indian Penal Code ('IPC' for short) and also the chargesheet No. 262/2006 filed in the Court of J.M.F.C. Aurangabad for this offence which is given case No. 1771/2016. Both the sides are heard.

2) Petitioner No. 1 is an employee of petitioner No. 2 Bank. The first informant Sandeep Shinde had taken loan of Rs. 2.25 lakh from petitioner No. 2 Bank for purchasing a car. He had become defaulter as some cheques given for making payment of installments of loan had bounced. The loan was taken in March 2005 and the incident took place on 7.5.2006.

3) It is the contention of the first informant that on that day at about 4.00 p.m. when he and his mother were proceeding in the aforesaid car, for making purchase for one marriage and when they were carrying with them cash amount of Rs.50,000/- and when his mother was having neckless of 20 grams gold, two persons came to his car. One person was Chandan Pardeshi and he was known to the first informant. Allegation was made that Chandan snatched the key of the car from him and compelled him to get down from the car. He has made allegations that second person virtually dragged his mother from the car and then these two persons went away with the

car. Chandan said that he was working for the bank and the informant should come to bank. The informant went to bank. In the bank the informant approached petitioner No. 1 and he asked about the car. He also told the petitioner No. 1 that there was cash amount of Rs.50,000/- and there was gold ornament of 20 grams which were kept on front seat of the car. Petitioner No. 1 asked him to pay first entire amount due. Allegations are made by the first informant that he waited for one day and as they did not return the cash and the ornament, he gave report to police. After making investigation, chargesheet came to be filed on 26.5.2006 and the present proceeding came to be filed on 12.1.2009. With the chargesheet, there are statements of witnesses to whom incident was disclosed by the first informant. There is statement of the mother of the first informant to the aforesaid effect.

4) The learned counsel for the petitioner No.1 submitted that name of petitioner No. 1 was not mentioned in the F.I.R. and due to this circumstance, the proceeding cannot be continued for the offence punishable under section 392 of IPC against the petitioner No. 1. This contention cannot be accepted at this stage. The police papers which include report show that it is petitioner No. 1 who had informed in writing that he and Chandan had taken the vehicle in custody for recovery of the loan.

5) The learned counsel for the petitioners drew the attention of this Court to the terms and conditions of the contract under which loan was given. He submitted that petitioner No. 2 bank was given right to take the vehicle in custody for recovery of loan amount. On this point, two cases of the Apex Cort reported as **(2007) 2 Supreme Court Cases 711 [ICICI Bank Ltd. Vs. Prakash Kaur and Ors.] and 2009 CRI.L.J. 327 [ICICI Bank Vs. Shanti Devi Sharma and Ors.]** can be cited. These cases show that the Apex Court has laid down that the institutions like petitioner No. 2 cannot be allowed to use muscle power for recovery of the loan. Some procedure is laid down to see that harassment and humiliation of borrower is avoided and such untoward incidents are avoided. In the present matter, it is not the contention of the petitioners that before taking the aforesaid action of seizure, the procedure was followed. It can be said that only after registration of the crime, it was informed to police that bank has taken the vehicle in possession. Thus, the legal means were not used for enforcing the right. There is serious allegation that in the car there was cash amount of Rs.50,000/- and there was gold neckless weighing 20 grams. It appears that anticipatory bail was given to both these accused and the aforesaid property which was allegedly present in the car is not recovered. The said allegation, however, cannot be

ignored. There is allegation of use of force for taking of the custody of the car and in the car, aforesaid valuables as per the contention of the first informant were present. After completion of investigation, the investigating agency was satisfied that the case is made out and so, the chargesheet is filed. Due to the aforesaid circumstances, this Court holds that the case cannot be quashed now. In the result, the petition is dismissed. Rule is discharged.

[SUNIL K. KOTWAL, J.] **[T.V. NALAWADE, J.]**

ssc/