

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 01702 of 2016

District : Aurangabad

Shashank s/o. Shrikrishna Dani,
Age : 42 years,
Occupation : Manager,
M/s. Hinduja Leyland Finance,
Having its registered office at
1, Sardar Patel Road,
Guindy, Chennai - 600 032
& Having its Branch Office at
Kandi towers, Above IndusInd
Bank Ltd.,
Rokadiya Hanuman Colony,
Jalna Road, Aurangabad - 431 001.

.. Applicant.

versus

1. The State of Maharashtra,
Through Police Station Officer,
Satara Police Station,
Aurangabad.
 2. Nitin Trimbakrao Shejwal,
Age : 35 years,
Occupation : Service,
R/o. Jai Bhawani Nagar,
Aurangabad.
- .. Non-applicants.

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Mr. M.D. Narwadkar, Advocate, for the applicant.

Mr. S.W. Munde, Addl. Public Prosecutor, for
non-applicant no.01.

Mr. M.N. Navandar, Advocate, for non-applicant no.02.

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**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 07TH APRIL 2018

ORAL JUDGMENT *[Per Prasanna B. Varale, J.]* :

Heard learned Advocate for the applicant, learned Addl. Public Prosecutor for non-applicant no.01 and the learned Advocate for non-applicant no.02.

02. Rule. Rule made returnable forthwith. By consent, heard finally.

03. At the outset, Mr. Narwadkar, learned Advocate for the applicant, orally prays for amendment to the application. He submits that inadvertently the applicant is made party to the application in his capacity as Manager of M/s. Hinduja Leyland Finance, Chennai, having its branch office at Aurangabad, and the name is not referred to though the same is in the later part of the application i.e. at the stage of verification of the application. Learned Advocate, thus, orally prays for adding the name of the applicant i.e. Mr. Shashank s/o. Shrikrishna Dani in the cause title of the applicant.

04. That being a formal prayer and the learned

Addl. Public Prosecutor, in view of the fact that in the investigation papers also, the person Mr. Shashank s/o. Shrikrishna Dani is referred to as the Manager and notice is also issued to him, is not opposing the prayer. The oral prayer is granted. Amendment be carried out forthwith.

05. Learned Advocate for the applicant, by inviting our attention to the copy of the first information report, submitted that the report was lodged on 15.12.2015 at the instance of non-applicant no.02, stating therein that his two wheeler which was parked at a place known as Devlai Chowk and while non-applicant no.02 proceeded for purchase of apples and when he returned back to that place, he found that his vehicle was not there. An amount of Rs. 35,000/- was also kept in the compartment of the two wheeler. With these averments, he approached to the police station. Offence was registered under Section 379 of the Indian Penal Code against an unknown person.

06. Mr. Narwadkar, learned Advocate appearing for the applicant, submits that in a transaction of the nature providing loan for purchase of two wheeler, non-applicant no.02 was a borrower and the loan was sanctioned by the applicant's finance company. As per the terms of the loan agreement

which are placed on record at Exhibit "B", the vehicle was hypothecated. Mr. Narwadkar then submits that the brother-in-law of non-applicant no.02 obtained the loan from the applicant on 08.08.2014. It was assured to repay the loan in 24 months in equal instalments. As per the terms and conditions of the loan agreement, in case of default as provided in Article 13 the lender was entitled to re-possess the vehicle as per Article 14 of the agreement. There was continuous default in payment of the amount of instalments. As the applicant - finance institution took the steps provided under the conditions of the agreement and the vehicle was re-possessed, an intimation was forwarded to the police station. Copy of the said intimation notice dated 13.12.2015 is placed on record at Exhibit "D". It was the submission of the learned Advocate for the applicant, that though non-applicant no.02 was having knowledge of all these facts, on a spacious plea of missing of the vehicle, a report was lodged on an allegation of theft of vehicle.

07. Learned Advocate for the applicant further submitted that even perusal of the report would show that no offence under Section 379 of the Indian Penal Code could have been attracted against the applicant. He submitted, firstly it was a report against some unknown person and

subsequently the applicant is dragged in a criminal proceedings. A notice was issued to the applicant and on receiving the notice, the applicant immediately approached the police station authority and co-operated the investigating agency. His statement was also recorded. The documents were also submitted to the investigating agency. Learned Advocate then submitted that firstly on the face of report, as no offence is made out against the applicant, in view of the judgment of the Hon'ble Apex Court in the matter of *State of Haryana & others Vs. Ch. Bhajan Lal & others [AIR 1992 SC 604]*, the report lodged against the applicant needs to be quashed and set aside and secondly, even considering the nature of the transaction which was of a loan agreement, the judgment of the Hon'ble Apex Court in the case of *Charanjit Singh Chadha Vs. Sudhir Mehra [2001 AIR (SC) 3721]* is squarely applicable to the case of the present applicant.

08. Learned Addl. Public Prosecutor has vehemently opposed the application. He has made available the papers of investigation for our perusal.

09. On going through the material collected by the investigating agency and on hearing respective Advocates for the parties, we are of the opinion

that the learned Advocate for the applicant has made out a case for grant of relief as prayed in the petition. Learned Advocate for the applicant was also justified in placing heavy reliance on the judgment of the Hon'ble Apex Court in the matter of *Charanjit Singh Chadha (supra)*. In the said matter, the Hon'ble Apex Court has observed thus :-

"11. The whole case put forward by the respondent - complainant is to be appreciated in view of the stringent terms incorporated in the agreement. If the hirer himself has committed default by not paying the instalments and under the agreement the appellants have taken re-possession of the vehicle, the respondent cannot have any grievance. The respondent cannot be permitted to say that the owner of the vehicle has committed theft of the vehicle or criminal breach of trust or cheating or criminal conspiracy as alleged in the complaint. When the agreement specifically says that the owner has got a right to re-possess the vehicle, there cannot be any basis for alleging that the appellants have committed criminal breach of trust or cheating.

12. Before the learned Single Judge, the respondent had contended that the vehicle was in the possession of the respondent and it was taken out of his custody without his consent and, therefore, the offence of theft is made out. This plea is also without any basis as the appellants have taken re-possession of the vehicle in exercise of their right under the agreement. There may be instances where the owner of the goods may commit theft of his own goods. The illustration (k) of Section 378 Indian Penal Code, which is an instance of such a theft, is to the following effect :-

"Again, if A, having pawned his watch to Z, takes it out of Zs possession without Zs consent, not having paid what he borrowed on the watch, he commits

theft, though the watch is his own property in-as-much as he takes it dishonestly."

13. But in the instant case, the owner re-possessing the vehicle delivered to the hirer under the hire-purchase agreement will not amount to theft as the vital element of dishonest intention is lacking. The element of dishonest intention which is an essential element of constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer. It is appropriate to note that the term dishonestly is defined under Section 24 of the Indian Penal Code as follows :

"Dishonestly --- Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'."

17. The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the re-possession 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 re-possess 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 this appeal and set aside the impugned judgment. The complaint and any other proceedings initiated pursuant to such complaint are quashed. "

Though in the judgment of the Hon'ble Apex Court,

in the matter of *Charanjit Singh Chadha (supra)*, the nature of agreement was a hire purchase agreement and in the present case, it is a loan agreement, but there is hardly any difference in the nature of these two agreements.

10. In the result, the criminal application is allowed.

The first information report bearing Crime No. 0402/2015 registered on 15.12.2015 at Satara Police Station, Aurangabad, for offence punishable under Section 379 of the Indian Penal Code, is quashed and set aside.

11. Rule made absolute in the above terms.

(Smt. Vibha Kankanwadi)
JUDGE

(Prasanna B. Varale)
JUDGE

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