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

CRIMINAL APPLICATION NO. 2432 OF 2010

1. Mohd. Mohsin Mohd. Taqi,
Age 31 years, Occu. Service,
R/o. Yusuf Colony, Parbhani,
Tq. & Dist. Parbhani.

2. Chandrashekhar Rangrao More,
Age 28 years, Occu. Service,
R/o. Shivram Nagar, Parbhani,
Tq. & Dist. Parbhani. **....Applicants.**

Versus

1. The State of Maharashtra

2. Police Station Officer,
Police Station, New Mondh,
Parbhani.

3. Shrikant s/o. Gangaram Deshmukh,
Age 75 years, Occu. Pensioner,
R/o. Plot No. 87, Ramkrushna Nagar,
Basmath Road, Parbhani, Dist. Parbhani.

4. Vijay s/o. Kashinath Hasekar,
Age 25 years, Occu. Service,
R/o. Plot No. 87, Ramkrushna Nagar,
Basmat Road, Parbhani. **....Respondents.**

Mr. M.D. Narwadkar, Advocate for applicants.

Mr. M.M. Nerlikar, APP for respondent Nos. 1 and 2.

CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : 02/08/2018.

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

1) The proceeding is filed under section 482 of Criminal

Procedure Code for relief of quashing of F.I.R. No. 111/2010 registered with New Mondha Police Station, Parbhani for the offences punishable under section 379 of Indian Penal Code. Both the sides are heard.

2) The applicants are employees of IndusInd Bank Limited. Respondent No. 3 Shrikant Deshmukh had taken loan from this bank for purchasing motorcycle and under hire purchase agreement, loan was given in June 2009. In February 2010, respondent No. 3 became defaulter and so, notice was issued to him to ask him to make the payment of defaulted amount.

3) The crime is registered on the basis of report given by respondent No. 4. Respondent No. 4 has made allegations in the F.I.R. that on 8.6.2010 at about 10.30 a.m. when he was having the custody of the motorcycle of respondent No. 3 Shrikant Deshmukh and when he had taken it to Maharashtra Bank, he parked motorcycle outside of the bank and he entered the bank. It is his contention that from inside of the bank he noticed that two persons were present near the motorcycle and they were attempting to do something. It is his contention that before he could come out of this bank, these two persons took away the motorcycle. It is contended that out of the two persons, one person was held on spot and he

gave his name as Mohammad Mushtak Fakir Mohammad resident of Ghar Road, applicant No. 1. He gave report on the same day and the crime came to be registered.

4) The learned counsel for applicants has produced on the record the papers of investigation in respect of loan transaction of Deshmukh. The papers show that there are clauses in the agreement authorising the bank to take the custody of motorcycle when there is default committed by the debtor. (Clause Nos. 15.1, 15.2, 15.7.1, 15.7.2). The learned counsel submitted that in view of this provision and as there is record to show that proper notice was given to the debtor and this intimation was given to concern police station in respect of the action which IndusInd Bank was taking, it cannot be said that offence of theft is committed. The record is produced to show that said Deshmukh had become defaulter and notice was given to him to ask him to deposit the defaulted amount of Rs.16,000/-. This amount was due in February 2010. Before taking action, the bank had informed to Mondha Police Station that it was attempting to repossess it's vehicle which was given to Shrikant Deshmukh under hire purchase agreement. On 8.6.2010 intimation was given to police that vehicle was repossessed by bank on 8.6.2010. The F.I.R. was given on the same day and the crime was registered at about 18.30 hours.

5) The learned counsel for applicants placed reliance on observations made by the Apex Court in the cases reported as **AIR 2001 SC 3721 [Charanjit Singh Chadha Vs. Sudhir Mehra], LEX (SC) 2012 1075 [Anup Sharma Vs. Bhola Nath Sharma], LEX (BOM) 2013 587 [Khan Hasib Ibrahim Vs. Suresh Haribhau Kapare], LEX (SC) 2009 831 [M.N. Ojha Vs. Alok Kumar Srivastav]**. On the other hand, the learned APP submitted that guidelines are given by Apex Court which need to be followed by the creditor bank. He placed reliance on the case reported as **(2007) 2 Supreme Court Cases 711 [ICICI Bank Ltd. Vs. Prakash Kaur and Ors.]**. He submitted that Reserve Bank of India has also issued some guidelines which need to be followed. In subsequently decided case by the Apex Court in the year 2012, the Apex Court has considered the rights of such banks given under the agreement and Apex Court has observed that taking the custody of the vehicle cannot amount to offence of theft as the bank is owner and the person to whom the vehicle is given under hire purchase agreement, is at the most trustee or bailee of the financier. Further, it cannot be disputed that the applicants were working as employees of the bank and they were discharging their duty. They had intimated the concern police station about the action which they wanted to take and after the action, they had intimated the police

that the vehicle was repossessed by the bank. Dishonest intention cannot be gathered from the action taken by the bank. On the contrary, it can be said that the debtor had avoided to make the payments of installments and the defaulted amount was big and there was no other alternative before the bank to take action. As the employees of the bank took the action and there are aforesaid circumstances, this Court holds that it is not desirable to ask the applicants to face the trial for aforesaid offences. In the result, the application is allowed. Relief is granted to them in terms of prayer clause 'B'. Rule is made absolute in those terms.

[K.L. WADANE, J.] **[T.V. NALAWADE, J.]**

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