24.11.2020
Mithun
Sl. No.4
D/L.
Ct.No.05

CRR/1112/ 2020
With
I.A.No.CRAN/1/2020
(Old No.CRAN/4092/2020)
(Via Video Conference)

In Ref: An application under Section 482 of the Code of Criminal Procedure, 1973 by quashing of the proceeding in connection with Dadpur P.S.Case No.163/18 dated 22.11.2018 under Section 420/406 and 34 of the Indian Penal Code corresponding to G.R. Case No.1884/2018.

Sri Chiranjib Kumar Das alias Chiranjit Das
Vs.
State of West Bengal & Anr.

Mr.Swarup Banerjee, Adv.,
Mr. H.C.Yadav, Adv.
... for the petitioner

Mr.Saibal Bapuli, Adv.,
Mr. Arijit Ganguly, Adv.
...for the State

Opposite Party No.2 purchased a tractor on Hire Purchase Agreements with the State Bank of India, Chinsurah ADB Branch, Hooghly. The said Hire Purchase Agreement along with a Hypothecation Agreement was executed by and between the opposite party No.2, Hirer and the Bank where it is clearly stipulated, " In the event of default, the bank will have a right to take over possession of the securities charged and sell them and recover its dues. The borrower hereby authorises the bank to act as their attorney/agents for all intents and purposes for effectual implementation of the aforesaid action."

The opposite party No.2 failed to make E.M.I. amount and for such irregular payment, he was declared defaulter. The bank finally took over possession of the tractor purchased by the hirer with the bank loan through a third party recovery agent. Subsequently on 21st August, 2018, the opposite party No.2 filed a complaint under Section 156(3) of the Code of Criminal Procedure which was subsequently registered as G.R. Case No.1884 of 2018 against the petitioner stating *inter alia* that on 7th August, 2018 the petitioner along with some other persons who were named co-accused in his complaint took away a sum of Rs.90,000/- from the opposite party No.2 and told him to come to the bank on the next day to collect the receipt. However, when the opposite party No.2 went to the bank on the following date, he was driven out by the petitioner stating *inter alia* that the opposite party No.2 would not be provided with any receipt for the said sum of Rs.90,000/-. On the basis of such allegation police registered a case under Section 420/406 of the I.P.C. against the present petitioner and others.

The petitioner, the Manager of the Bank has moved this Court praying for quashing of the proceeding.

I have carefully perused the documents annexed with the application by the petitioner. It is not disputed that on the basis of an agreement with the bank the opposite party No.2 purchased one tractor on installments. The tractor was hypothecated to the bank till the repayment of the loan amount. The hypothecation agreement is undoubtedly in the nature of the executory contract, the performance of which is solely dependent upon payment of E.M.I. by the opposite party No.2. it is not disputed that the opposite party No.2 failed to make payment of the E.M.I. and the said tractor was seized by the bank authority as per Hypothecation Agreement. Subsequent claim of a sum of Rs.90,000/- has only been corroborated by the opposite party No.2/*de facto* complainant and his wife during investigation of the case. The villagers who were examined by the police did not support the prosecution case. There is absolutely no evidence forthcoming before the Investigating Officer to the effect that actual sum of Rs.90,000/- was paid to the petitioner. There is also no evidence that the petitioner claim any money for unlawful purpose from the *de facto* complainant/opposite party No.2.

Under the facts of the case, the principle laid down by the Hon'ble Supreme Court in ***Anup Sarmah Vs. Bhola Nath Sharma and Ors.*** reported in ***(2013) 1 Supreme Court Cases 400*** is fully applicable. In the said judgment the question which came up before the Supreme Court for consideration is as to whether in case of Hire Purchase Agreement, recovery of possession of vehicle by the financer owner as per terms of the hire purchase agreement is an offence or not. It was held by the Hon'ble Supreme Court on consideration of previous pronouncement that in an agreement of Hire Purchase, purchaser remains merely a trustee/bailee on behalf of the financer/financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the financer, no criminal action can be taken against him as he is repossessing the goods owned by him.

In the instant case, the criminal proceeding was initiated by the oposite party No.2 only after his tractor which was hypothecated to the bank was seized by the bank authority.

In the absence of any cogent evidence regarding demand and payment of the alleged sum of money, further proceeding of G.R.Case No.1884 of 2018, in my considered view will be abuse of process of law.

For the reasons stated above, further proceeding in G.R. Case No.1884 of 2018 is quashed. The instant criminal revision is, thus, allowed on contest, however, without costs.

(Bibek Chaudhuri, J)