Form J(2) **IN THE HIGH COURT AT CALCUTTA**
Criminal Revisional Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri

C.R.R. 4366 of 2007

Shivaji Das & Ors.
Vs.
State of West Bengal & Anr.

For the Petitioner : Mr. Sandipan Ganguly, Sr. Adv.
Mr. Dipanjan Dutt
Mr. Amitava Mitra
Ms. Antara Choudhury

Heard on : 09.11.2021

Judgment On : 09.11.2021

Bibek Chaudhuri, J.

In spite of service of notice as per order dated 22nd July, 2021, none appears on behalf of the opposite parties. The affidavit of service be kept with the record. The instant criminal revision under

Section 482 of the Code of Criminal Procedure is taken up for hearing.

By filing the application under Section 482 of the Code of Criminal Procedure the petitioners have prayed for quashing of the proceedings of G.R. Case No.530 of 2006 pending before the Court of the learned Chief Judicial Magistrate, Burdwan under Section 384 of the Indian Penal Code.

The instant revision arises out of the following facts:-

Opposite party No.2 purchased goods carriage having Registration No.WB-41B/4510 on the basis of a Hire Purchase Agreement dated 14th June, 2004 which was executed by and between the opposite party No.2 and M/s. Sundaram Finance Ltd. Though the opposite party No.2 was fully unaware about any default in payment of monthly installment against the loan taken by him from M/s. Sundaram Finance Ltd., the petitioners hijacked the vehicle from the road and / or neglected to return the same. The purported act of the petitioners led the opposite party No.2 to file a written complaint before the local police station. On the basis of which a case under Section 384 of the Indian Penal Code was registered against the petitioners. On completion of investigation police submitted charge sheet against the petitioners. On the basis of which G.R. Case No.530 of 2006 was registered.

It is submitted by Mr. Sandipan Ganguly, learned senior advocate for the petitioners that indisputably the petitioner took loan on Hire Purchase Agreement from M/s. Sundaram Finance Ltd. by executing a loan agreement. As the petitioner failed to make payment of monthly installments, the Finance Company took possession of the vehicle. The opposite party filed two writ petitions against M/s. Sundaram Finance Ltd. and in both the writ petitions he admitted that he failed to pay monthly installments to the Finance Company with effect from December, 2005 due to serious economic non-viability in the goods carriage business. The Finance Company took over possession of the hypothecated vehicle of the opposite party No.2.

Mr. Ganguly next draws my attention to Article 13 of the Hire Purchase Agreement. Article 13 contains various clauses in the event of default. Article 13.1 states, "the Borrower failing to repay the loan or any fee, charges, or costs in the manner herein contained and any one of the installments or any other amount due hereunder remains unpaid after the date on which it is due; such failure shall constitute "event of default". Article 14 of the Agreement stipulates lender's rights. Article 14.2 states, "Upon occurrence of an Event of Default, the Borrower shall be bound to return the Asset to the Lender at such location, as the Lender may designate in the same condition in which it was originally delivered to the Borrower, ordinary wear and tear excepted. The Borrower shall not prevent or obstruct the Lender from taking the possession of the Asset. For this purpose the Lender's authorized representatives, servants, officers and agents will have unrestricted right of entry and shall be entitled to forthwith, or at any time without notice to the Borrower to enter upon the premises or garage or godown, where the vehicle(s) shall be lying or kept, and to take possession or recover and receive the same and if necessary to break open any such place."

Thus, it is submitted by Mr. Ganguly that by executing the Hire Purchase Agreement the opposite party No.2 unequivocally agreed to the lender's right of taking over possession of the vehicle in the event of default.

In **Anup Sarmah versus Bhola Nath Sharma and others** reported in **(2013) SCC 400** it was held by the Hon'ble Supreme Court that in an agreement of Hire Purchase, the purchaser remains merely a trustee /bailee on behalf of the financier/financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is repossessing the goods owned by him.

In **Sardar Trilok Singh and others versus Satya Deo Tripathi** reported in **(1979) 4 SCC 396** it was held by the Hon'ble Supreme Court under the similar facts and circumstances as hereunder.

> *"5. We are clearly of the view that it was not a case where any processes ought to have been directed to be issued against any of the accused. On the well-settled principles of law ii was very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct. Money must have been advanced to him and his partner by the financier on the basis of some terms settled between the parties. Even assuming that the agreement entered on 29th March, 1973 was not duly filled up and the signature of the complainant was obtained on a blank form, it is to be noticed that the amount of the two monthly installments admittedly paid by him was to the tune of Rs. 3, 566/- exactly @ Rs. 1,783/- per month. The complaint does not say as to when these two monthly installments were paid. In the First Information Report which he had lodged he had not, stated that the third monthly installment was payable on July 31, 1973. Rather, from the statement in the First Information Report it appears that the*

installment had already become due on 28-7-1973 when the complainant went out of Kanpur according to his case. The question as to what were the terms of the settlement and whether they were duly incorporated in the printed agreement or not were all questions which could be properly and adequately decided in a civil court. Obtaining signature of a person on blank sheet of paper by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of the Penal Code making it an offence or when such a documents is used as a genuine document. Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on 30-7-1973 from the house of the respondent they could and did claim to have done so in exercise of their bonafide right of seizing the truck on the respondent's failure to pay the third monthly instalment in time. It was therefore, a bona fide civil dispute which led to the seizure of the truck. On the face of the complaint petition itself the highly exaggerated rated version given by the respondent that the appellants went to his house with a mob aimed with deadly weapons and committed the offence of dacoity in taking away the truck was so very unnatural and untrustworthy that it could not take the matter out of the realm of civil dispute. No *body on the side of the respondent was hurt. Even a scratch was not given to any body."*

*Again in **Charanjit Singh Chadha and others versus Sudhir Mehra** reported in **(2001) 7 SCC 417** the Hon'ble Supreme Court had the occasion to decide the nature of Hire Purchase Agreement. Paragraph 5 of the said judgment runs thus:-*

"5. Hire-purchase agreements are executory contracts under which the goods are let on hire and the hirer has an option to purchase in accordance with the terms of the agreement. These types of agreements were originally entered into between the dealer and the customer and the dealer used to extend credit to the customer. But as hire-purchase scheme gained popularity and in size, the dealers who were not endowed with liberal amount of working capital found it difficult to extend the scheme to many customers. Then the financiers came into picture. The finance company would buy the goods from the dealer and let them to the customer under hire purchase agreement. The dealer would deliver the goods to the customer who would then drop out of the transaction leaving the finance company to collect instalments directly from the customer. Under hire purchase agreement, the hirer is simply paying for the use of the goods and for the option to purchase them. The finance charge, representing the difference

> *between the cash price and the hire purchase price, is not interest but represents a sum which the hirer has to pay for the privilege of being allowed to discharge the purchase price of goods by instalments."*

Finally in paragraph 11 the Hon'ble Surpeme Court held

> *"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."*

For the aforesaid decisions the proceeding in G.R. Case No.530 of 2006 arsing out of Burdwan Sadar Police Station Case No.236 dated 14.04.2006 under Section 384 of the Indian Penal Code is liable to be quashed. Accordingly, the instant revision is allowed. All the proceedings in G.R. Case No.530 of 2006 arsing out of Burdwan Sadar Police Station Case No.236 dated 14.04.2006 is hereby quashed.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties on usual undertakings.

(Bibek Chaudhuri, J.)