

**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 261 of 2019**

**The Branch Manager, Tata Motors Finance Limited & Anr.**

**Vs**

**The State of West Bengal & Anr.**

**For the Petitioners** : Mr. Tirthankar Dey.

**For the State** : Mr. A. Ganguly,  
Ms. Debjani Sahu.

Heard on : 28.11.2022

Judgment on : 14.12.2022

**Shampa Dutt (Paul), J.:**

This revisional application is for quashing of proceedings in Durgapur Police Station Case No. 178 of 2018 dated 29.04.2018 corresponding to G.R. No. 611 of 2018 pending before the learned Additional Chief Judicial Magistrate, Durgapur under Sections 467/471/474/120B/34 of the Indian Penal Code.

The petitioner company is engaged in the business of providing financial facilities to its various customers for purchase of vehicles including commercial vehicles amongst others.

Durgapur Police Station Case No. 178 of 2018 corresponding to G.R. NO. 611 of 2018 was lodged against the petitioners and other co-accused persons pursuant to an order passed in an application filed by the opposite party no. 2 under Section 156(3) of the Code of Criminal Procedure before the learned Additional Chief Judicial Magistrate, Durgapur alleging commission of offences punishable under Sections 467/471/474/120B/34 of the Indian Penal Code.

The case as made out in the **written complaint** is to the effect that the defacto complainant/opposite party no. 2 entered into a Loan cum Hypothecation agreement with the petitioner company being agreement no. 5001140045 dated 02.08.2013 for purchase of a vehicle having registration no. WB 39A-7905.

The defacto complainant was regularly paying the monthly installments but with ulterior motive the said company refused to accept the loan installments. The accused nos. 1, 2 and 3 on 18.04.2015 seized the vehicle having registration no. WB39A-7905 and kept it in a parking yard.

The accused persons/company, after careful scrutiny of all documents submitted by the opposite party no. 2 and upon ascertaining the financial credentials, age, qualifications and employment of the said opposite party no. 2 had sanctioned a commercial vehicle loan.

The company agreed to finance a sum of Rs. 18,50,000/- to the opposite party no. 2 for the purchase of the said (truck) vehicle. It was agreed that the opposite party no. 2 would clear off his financial liabilities by paying Rs. 15,000/- for the first month, Rs. 59,000/- per month for the second to twenty sixth month, Rs. 51,000/- per month for the twenty seventh to thirty sixth month and Rs. 48,289/- per month for the rest thirty seventh to forty fifth month commencing from 2<sup>nd</sup> March, 2013. An agreement which included an Arbitration clause was executed by and between the parties.

**It is the case of the petitioner** that the opposite party no. 2/complainant defaulted in making timely repayment of the loan installments and inspite of repeated request, the opposite party no. 2

did not clear the outstanding dues and was then categorized by the petitioner/company as a wilful defaulter. A cheque bearing no. 787622 dated 4<sup>th</sup> August, 2014 for Rs. 14,65,197.63/- issued by the opposite party towards the outstanding dues was returned unpaid by the bank. A proceeding under Section 138 of the Negotiable Instrument Act was initiated and is pending before the learned Additional Chief Judicial Magistrate, Durgapur being CRR/421/2014.

The dispute was then referred by the petitioner/company to the Sole Arbitrator, Sri P.C. Phalgunan. The company preferred an application under Section 17 of the Arbitration and Conciliation Act, 1996 and the learned Arbitrator by his order dated 18.04.2015 was pleased to observe that the said company/claimant may repossess the hypothecated vehicle and sell/transfer the vehicle for realization of the outstanding loan amount.

Inspite of the order of the learned Arbitrator dated 18.04.2015 the opposite party no. 2 refused to make payment. The company then had no option but to execute the order dated 18.04.2015 whereby the vehicle in question was peacefully repossessed on 15.05.2015 upon due compliance with the necessary norms. Both pre and post repossession intimations were given to the jurisdictional Police station. Subsequently the said company had disposed off the said vehicle strictly in conformity

with the specific stipulation contained in the agreement entered upon by and between the parties.

The opposite party no. 2 herein inspite of proper notice did not appear and contest the arbitration proceedings and finally the matter was heard ex-parte and the learned Arbitrator was pleased to pass an award on July 23, 2016.

The present case was then initiated by the opposite party no. 2 /complainant long after the repossession of the said vehicle. The repossession was done on 15.05.2015, final Arbitral award was passed on 23.07.2016 and the present case has been initiated on 29.04.2018, only to harass and humiliate the petitioners.

**Mr. Tirthankar Dey learned Counsel for the petitioner** submits that the present proceedings before the learned Magistrate is causing serious oppression and undue harassment to the petitioners. It is further submitted that the right of a financier and/or financial institutes to take repossession of the vehicle and sell it by public auction or private treaty, due to nonpayment of the hire charges by the hirer and/or loan amount has been well established by various decisions of the Hon'ble Supreme Court as also by this Hon'ble Court. The agreement of Loan executed between the opposite party no. 2 and the said company (petitioner) also clearly postulates that in the event of failure on the part of the hirer to pay the monthly installments the

agreement would stand ipso facto terminated and the said company would be entitled to take repossession of the vehicle. In the instant case it is apparent that the borrower had failed to pay the due monthly installments as agreed to be paid by him in the agreement, thereby forcing the said company to take repossession of the said vehicle. Such act of repossession by the said company and subsequently sale of the repossessed asset cannot be termed to be illegal and as such the impugned proceeding is liable to be quashed.

That the instant case has been filed with malafide intention and ulterior motive and that none of the ingredients as required to be constitute the offences as alleged are present in the dispute between the parties and the dispute as in this case arising out of a contract is not maintainable before a criminal court and as such the conduct of the opposite party no. 2/complainant is clear abuse of process of law and as such the present proceedings are required to be quashed in the interest of justice.

The learned Counsel for the petitioner has relied upon the ruling of the Supreme Court in ***Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh and Ors. [(2015) 6 Supreme Court Cases, 287]*** where in the Court observed:-

*“16. On the basis of the aforesaid order, FIR No. 298 of 2011 was registered, which gave rise to case Crime No. 415 of 2011 for the offences*

*punishable under Sections 465, 467 and 471 IPC. Being dissatisfied with the aforesaid order, the appellants moved the High Court in CrI. Misc. No. 24561 of 2011. The High Court in a cryptic order opined that on a perusal of the FIR it cannot be said that no cognizable offence is made out. Being of this view, it has declined to interfere with the order. Hence, this appeal by special leave.*

**19.** *We have narrated the facts in detail as the present case, as we find, exemplifies in enormous magnitude to take recourse to Section 156(3) CrPC, as if, it is a routine procedure. That apart, the proceedings initiated and the action taken by the authorities under the SARFAESI Act are assailable under the said Act before the higher forum and if, a borrower is allowed to take recourse to criminal law in the manner it has been taken, it needs no special emphasis to state, has the inherent potentiality to affect the marrows of economic health of the nation. It is clearly noticeable that the statutory remedies have cleverly been bypassed and prosecution route has been undertaken for instilling fear amongst the individual authorities compelling them to concede to the request for one-time settlement which the financial institution possibly might not have acceded. That apart, despite agreeing for withdrawal of the complaint, no steps were taken in that regard at least to show the bona fides. On the contrary, there is a contest with a perverse sadistic attitude. Whether the complainant could have withdrawn the prosecution or not, is another matter. Fact remains, no efforts were made.*

**27.** *Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the Bank.*

*We are absolutely conscious that the position does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) CrPC and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.*

**28.** *Issuing a direction stating “as per the application” to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants, like Respondent 3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, Respondent 3 had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of Appellant 1, who is presently occupying the position of Vice-President, neither was the loan taken, nor was the default made, nor was any action under the SARFAESI Act taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present Appellant 1. We are only stating about the devilish design of Respondent 3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to*

task because an application under Section 156(3) CrPC is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance with Section 154(3), indicating it has been sent to the Superintendent of Police concerned.

**30.** In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

**31.** We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already

*stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.*

**33.** *At this juncture, we may fruitfully refer to Section 32 of the SARFAESI Act, which reads as follows:*

**“32. Protection of action taken in good faith.**—No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act.”

*In the present case, we are obligated to say that the learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) CrPC. It is because Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needless to emphasise, the legislative mandate has to be kept in mind.”*

**Inspite of due service the opposite party no.2/complainant did not appear and contest the case.**

Heard the Counsel at length. Perused the materials on record.

Considered.

Annexure P-1, is the **agreement of hire purchase** between the petitioner no.1 and the opposite party. The said agreement is dated 2<sup>nd</sup> August, 2013 and relates to the financing/Loan for purchase of a truck. The said vehicle was taken by the opposite party on the basis of the said agreement of hire purchase which includes a clause for arbitration.

**The said nature of transaction remains in the position of hire till the hirer exercises his option of purchase by making full payment towards the goods purchased.**

Registration of the said vehicle in such cases may be made showing the hirer as registered owner with an endorsement of hire purchase in favour of the owners. The terms and conditions of the said hire purchase agreement has been clearly laid down in the said agreement which includes an agreement of arbitration.

By enforcing the agreement of arbitration the petitioners/accused persons referred the matter to the learned arbitrator who by an order dated 18.04.2015 and an award dated 23<sup>rd</sup> July, 2016 directed the repossession of the said vehicle.

The learned Arbitrator came to the finding that the complainant / opposite party herein had defaulted in making payment as per the terms of the agreement and as such an award for repossession of the said vehicle was passed.

The learned Arbitrator clearly held that the complainant/opposite party herein is a defaulter and as such are not entitled to retain possession of the said vehicle and accordingly allowed the petitioners/accused persons prayer for custody/repossession of the said vehicle.

On 15.05.2015 the said vehicle was repossessed from the custody of the complainant/opposite party as per the Order of the learned Arbitral Tribunal dated 18.04.2015.

The present complaint case filed by the opposite party/defaulters/complainant is in respect of the said seizure of the said vehicle and the hire purchase agreement between the parties. The present complaint was filed under Section 200 of the Cr.P.C by the accused/opposite party before the Court of Additional Chief Judicial Magistrate, Durgapur on 29<sup>th</sup> April, 2018 i.e., long after the vehicle had been repossessed and seized lawfully on 15.05.2015.

Herein the opposite party has initiated the proceedings against the petitioners/company limited and others as he is a defaulter in repayment of loan and the vehicle in question was repossessed by virtue of the order of the Ld. Arbitrator.

**The opposite party has chosen not to appear in spite of due service.** From the documents relating to the case before the magistrate

filed by the opposite party, there is no challenge as to the legality of the Hire purchase agreement and the agreement for arbitration.

Admittedly there has been a breach of contract (Hire purchase agreement) as prima facie the opposite party has failed to perform his part of the agreement.

An agreement with an arbitration clause survives/exists even after there is a breach, as **the seed of arbitration which is planted at the time of the agreement, germinates only when there is a breach of performance.** The parties right and liabilities depends on the order/award of the arbitration.

The petitioner/accused person's present stand is that, the outstanding amount has still not been paid by the opposite party/complainant which is not rebutted herein by the opposite party by his non-appearance.

Admittedly the petitioners on repossessing the vehicle on 15.05.2015 on the basis of an order of the learned Arbitrator have disposed of the said vehicle strictly in conformity with the specific stipulation contained in the agreement entered upon by and between the parties.

The Supreme Court in ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others (2021) SCC online SC 315*** has

laid down the guidelines to be followed by the High Courts while exercising its power under Section 482 of the Cr.P.C./or under Article 226 of the Constitution of India in para 80 of the said judgment as under:-

“ \* \* \* \* \*

iii) *It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*

iv) *The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).*

vii) *Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*

\* \* \* \* \*

x) *Save in exceptional cases where noninterference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

xiii) *The power under **Section 482** Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;*

xiv) *However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;*

xv) *When a prayer for quashing the FIR is made by the alleged accused and the court when*

*it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;”*

The court while deciding the said case also considered several other judgments of the said Court relating to the core issue therein being:-

For the appellants there in .....

*(a) State of Telangana vs. Habib Abdullah Jeelani, (2017) 2 SCC 779.*

*(b) State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335.*

*(c) Imtiyaz Ahmad Vs. State of Uttar Pradesh, (2012) 2 SCC 688.*

*(d) Ravuri Krishna Murthy Vs. The State of Telangana (Criminal Appeal Nos. 274-275 of 2021, decided on 05.03.2021).*

*(e) Asian Resurfacing of Road Agency Private Limited Vs. Central Bureau of Investigation, (2018) 16 SCC 299.*

For the respondents there in .....

***i) State of Karnataka Vs. L.Muniswamy, (1977) 2 SCC 699.***

Several other judgments of the Court were also placed before the

Court while considering the said case. The Court took notice of the decisions in:-

- i) R.P. Kapur vs. State of Punjab 1960 AIR 862.*
- ii) State of Andhra Pradesh vs. Golconda Linga Swamy and Anr. (Appeal (crl.) 1180 of 2003) dated 27.07.2004.*
- iii) Sanapareddy Maheedhar Seshagiri vs. State of Andhra Pradesh Appeal (crl.) 1708 of 2007 dated 13.12.2007. 11*
- iv) State of Maharashtra & Ors. Vs. Arun Gulab Gawali & Ors. Criminal Appeal no. 590 of 2007 dated 27.08.2010.*
- v) State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554.*
- vi) S.M. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653.*
- vii) Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195.*
- viii) Satvinder Kaur v. State (Govt. Of NCT of Delhi), (1999) 8 SCC 728.*
- ix) Supdt. Of Police, CBI v. Tapan Kumar Singh, (2003) 6 SCC 175.*
- x) P.Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24.*
- xi) Skoda Auto Volkswagen India Private Limited v. State of Uttar Pradesh, 2020 SCC Online SC 958.*
- xii) Special Director v. Mohd. Ghulam Ghouse, (2004) 3 SCC 440.*

*xiii) Nitco Tiles Ltd. V. Gujarat Ceramic Floor Tiles Mfg. Association, (2005) 12 SCC 454.*

*xiv) Hindustan Times Limited v. Union of India, (1998) 2 SCC 242.*

*xv) Kranti Associates (P) Ltd. V. Masood Ahmed, (2010) 9 SCC 496.*

**Among others.**

And finally the Court laid down the guidelines as noted above.

In the present case, the complaint before the Learned Magistrate is connected to a Hire Purchase agreement with an Arbitration clause and the vehicle in question was repossessed lawfully in execution of the order/award of the Learned Arbitrator, which was passed on the findings that the complainant/opposite party herein failed to perform his part of the agreement.

The facts clearly do not make out a criminal offence as made out in the written complaint.

The application under Section 156(3) of the Code of Criminal Procedure which resulted in registration of the First Information Report is also hit by the principle of law as enunciated in **Priyanka Srivastava** case (supra).

The Supreme Court says that, a quashing of a complaint/FIR should be an exception rather than an ordinary rule.

The prosecution/complaint case before this Court is a case where it is clearly seen that no cognizable offence or offence of any kind is disclosed in the petition of complaint and as such this Court cannot permit the said proceedings to continue which in view of the principle of law as enunciated in **Priyanka Srivastava case (supra)** is clearly an abuse of the process of law and this is one of the said rare circumstances in which the prayer of quashing should be considered.

Considering all these facts and the materials on record, the present case is fit to be interfered with under Section 482 Cr.P.C.

Having considered the aforesaid facts and circumstances of the case, if the present proceeding is allowed to continue, it would be sheer abuse of process of court and as such this is a fit case where, invoking this court's power under Section 482 of the Code of Criminal Procedure, the present proceeding is required to be quashed in the interest of justice.

**CRR 261 of 2019 is Allowed.**

The proceedings being in Durgapur Police Station Case No. 178 of 2018 dated 29.04.2018 corresponding to G.R. Case No. 611 of 2018 under Sections 467/471/474/120B/34 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Durgapur, is hereby quashed.

No order as to costs.

Let a copy of this Judgment along with the lower court records (if any) be sent to the trial court at once for compliance.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

**(Shampa Dutt (Paul), J.)**