Form J(1) **IN THE HIGH COURT AT CALCUTTA**
**Criminal Revisional Jurisdiction**
**Appellate Side**

**Present :**
**The Hon'ble Justice Bibek Chaudhuri**

**CRR 1053 of 2022**

**Sankar Mahato & Anr.**
**Vs.**
**IndusInd Bank Limited & Anr.**

**For the petitioner : Mr. Sobhendu Sekhar Roy, Adv.,**
**Mr. Amarendra Chakraborty, Adv.**

**Judgement on : 31.10.2022.**

**<u>Bibek Chaudhuri, J.</u>**

The petitioners are accused persons in connection with CS/93986/2021 under Section 34/120B/406/415/418/420 of the Indian Penal Code pending before the Learned Metropolitan Magistrate, 10th Court at Calcutta. The opposite party no. 1, a financial banking institution is the complainant on the basis of which the learned Magistrate took cognizance of the offence as stated above and issued process against the accused persons. The petition of complaint suggests that the petitioners had taken a truck on financial loan from the complainant Company. They paid a number of installments. Subsequently their vehicle was stolen and the petitioners filed an FIR in this regard. However, the Police could not recover the vehicle or take a concrete measure in respect of the said FIR filed by the petitioners. Thereafter the petitioners defaulted in making some payments. This led the opposite party no. 1 to lodge a complaint against the petitioners.

It is submitted by the learned Advocate for the petitioners that indisputably the petitioners purchased a truck on higher purchase agreement. Under such agreement the petitioners were under obligation to repay the loan amount as per equal monthly installments (EMI). It is also not in dispute that the petitioners failed to make repayment of the entire loan amount in favour of the complainant/opposite party no. 1. I am in agreement with the contention made by the learned Advocate for the petitioners that breach of conditions of agreement results in accrual of a dispute of civil nature. It is specifically pleaded by the petitioners that the truck purchased by them was stolen and as they failed to use the said truck, they could not pay the EMI in favour of the complainant Bank. In such case there is clear breach of contractual agreement and no amount of criminal liability is present as against the petitioners. In absence of any material to show that any deception has been practiced by the accused, he cannot be saddled with a criminal liability and the remedy lies in getting back the money due and for getting damages for non-payment of EMIs against the accused. In support of the above observation this Court may profitably rely on the decision of this Court in the case of ***Sukumar Bhattacharyya –Vs.- State of West Bengal*** reported in ***1992 C CLR (Cal) 261***. In ***Sunil Ranjan Ghosh Roy –Vs.- Samar Roy & Ors.*** reported in ***1987 Cri.L.J. 1603*** a Coordinate Bench was pleased to take the same decision in a case under the same facts and circumstances as that of the present case.

Thus, I do not have any hesitation to hold that non-payment of EMI for repayment of loan amount does not create any criminal liability. The dispute is absolutely civil in nature and accordingly criminal proceeding against the petitioners is not maintainable.

In view of the above discussion, further proceeding in connection with CS/93986/2021 (TR No. 645/2022) pending before the learned Metropolitan Magistrate, $10^{th}$ Court at Calcutta be quashed.

The petitioners are at liberty to act on the server copy of the order.

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

**(Bibek Chaudhuri, J.)**

**Srimanta, A.R.(Ct.)**
**Item No. 25.**