

Item No.5
Ct.No.34
dc.

C.R.R. 2093 of 2009

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973.

The present revisional application has been preferred challenging the proceedings being Complaint Case No. 494 of 2008 dated 16.08.2008 under Sections 504/506 of the Indian Penal Code then pending before learned Judicial Magistrate, 5th Court, Barrackpore, North 24-Parganas.

One Ruma Dutta, opposite party herein, in her petition of complaint alleged before the learned Additional Chief Judicial Magistrate, Barrackpore that she was humiliated and threatened by the present petitioners after she approached them when the arbitration award was passed. It has been categorically stated in the petition of complaint that the present petitioners manipulated arbitration procedure without serving any notice and illegally took possession of the vehicle belonging to the complainant bearing Registration Nos. WB-23A-0979 and WB-23A-0964 by fraudulent means.

On such complaint being received, the learned Additional Chief Judicial Magistrate, Barrackpore took

cognizance of the offence and transferred the case to the learned Judicial Magistrate, 5th Court, Barrackpore and subsequently after examination of the witnesses under Section 200 of the Code of Criminal Procedure, the learned Judicial Magistrate, 5th Court, Barrackpore was pleased to issue process against the present petitioners.

It is the contention of the learned advocate appearing for the petitioners that admittedly there was a hire-purchase agreement and the specific clause in the hire-purchase agreement provided is that in case of default of payment of any instalment, the petitioners being financiers were entitled to recover the vehicle. To that extent, learned advocate has relied upon a judgement of Hon'ble Supreme Court in ***Sardar Trilok Singh and Others Vs. Satya Deo Tripathi*** reported in ***(1979) 4 Supreme Court Cases 396***. Paragraphs 5 and 6 of the said judgement are relevant for the purpose of this case and set out as follows :-

“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 it was a 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 March 29, 1973 was 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 instalments admittedly paid by him was to the tune of Rs 3566 exactly at Rs 1783 per month. The complaint does not say as to when these two monthly instalments were paid. In the first information report which he had lodged he had not

stated that the third monthly instalment was payable on July 31, 1973. Rather, from the statement in the first information report it appears that the instalment had already become due on July 28, 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 papers 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 document 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 July 30, 1973 from the house of the respondent they could and did claim to have done so in exercise of their bona fide 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 version given by the respondent, the appellants went to his house with a mob armed with deadly weapons and committed the offence of dacoity in taking away the truck was so very unnatural and untrustworthy that it could take the matter out of the realm of civil dispute. Nobody on the side of the respondent was hurt. Even a scratch was not given to anybody.”

“6. In our opinion on the facts and in the circumstances of this case criminal prosecution deserves to be quashed. On behalf of the respondent it was argued that the appellants' filing a petition in the High Court for quashing the proceeding before issuance of the summons was premature and the High Court could not have quashed it. In our opinion the point is so wholly without substance that it has been stated merely to be rejected. Since the parties during the course of the hearing in this appeal showed their inclination to settle up and end all their disputes and quarrels in relation to the matter in question after we indicated our view that we are going to allow the appeal and quash the proceedings, we have not thought it necessary to elaborately give other reasons in support of our order.”

Learned advocate for the petitioners has also relied upon another judgement of the Hon'ble Supreme Court in ***Charanjit Singh Chadha and Others. Vs. Sudhir Mehra***

reported in **(2001) 7 Supreme Court Cases 417** and attention of the Court has been drawn to paragraphs 10, 11, 12, 13 and 17 of the said judgement which are set out as follows :-

“10. The agreement executed by the parties in this case also is to the effect that the hirer would not become the owner of the property until he pays the entire instalments. A copy of the agreement is produced as Annexure P-1 wherein the appellants are referred to as the first party and the respondent as the second party and it is specifically stated that the first party would be the absolute owner of the vehicle and the respondent second party agreed to pay all the instalments punctually. Clause 7 of the agreement says that the hirer may, at any time before the final payment under the hire-purchase agreement falls due and after giving the owners not less than fourteen days' notice in writing of his intention to do so and redelivering the vehicle to the owners at their office, terminate the hire-purchase agreement. Clause 8(viii) gives a right to the owner to repossess the vehicle in case of default by the hirer. Clause 9(ii) gives the owner an irrevocable licence to enter any building, premises or place where the vehicle may be or is supposed to be for the purpose of inspection, repossession or attempt to repossess the vehicle and the owner of the vehicle will not be liable for any civil or criminal action at the instance of the hirer. It is also made clear that the hirer would be liable for all the expenses of the owner in obtaining repossession or attempting to obtain repossession of the vehicle.”

“11. 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 repossession 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 repossess the vehicle, there cannot be any basis for alleging that the appellants have committed criminal breach of trust or cheating.”

“12. Before the learned Single Judge, the respondent had contended that the vehicle was in the possession of the respondent and it was taken out of his custody without his consent and therefore, the offence of theft is made out. This

plea is also without any basis as the appellants have taken repossession of the vehicle in exercise of their right under the agreement. There may be instances where the owner of the goods may commit theft of his own goods. Illustration (k) of Section 378 IPC, which is an instance of such a theft, is to the following effect:

“(k) Again, if A, having pawned his watch to Z, takes it out of Z’s possession without Z’s consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.”

“13. But in the instant case, the owner repossessing the vehicle delivered to the hirer under the hire-purchase agreement will not amount to theft as the vital element of “dishonest intention” is lacking. The element of “dishonest intention” which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer. It is appropriate to note that the term “dishonestly” is defined under Section 24 IPC as follows:

“24. ‘*Dishonestly*’.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing ‘dishonestly’.”

“17. The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence. The agreement (Annexure P-1) specifically gave authority to the appellants to repossess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire-purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. We, therefore, allow this appeal and set aside the impugned judgment. The complaint and any other proceedings initiated pursuant to such complaint are quashed.”

Having regard to the background of the facts of the case and the admitted position that there was hire-purchase agreement between the parties and the present complaint case has been filed pursuant to the vehicle being repossessed, I am of the opinion that the present case falls under Clause (7) of paragraph 102 of the judgement of Hon'ble Supreme Court in ***State of Haryana Vs. Bhajan Lal*** reported in ***1992 Supp (1) SCC 335***. The relevant Clause (7) of paragraph 102 of the said judgement is set out as follows :-

“102.
.....

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Having regard to the settled proposition of law and the manner in which the complaint has been initiated before the learned Judicial Magistrate, I am of the opinion that further continuation of the said proceedings would be abuse of process of the Court as also miscarriage of justice. Accordingly, all further proceedings being Complaint Case No. 494 of 2008 dated 16.08.2008 under Sections 504/506 of the Indian Penal Code pending before the learned Judicial Magistrate, 5th Court, Barrackpore are hereby quashed.

The revisional application being CRR 2093 of 2009 is, thus, allowed.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)