

24.11.2022

Court No.35
Item No. 1

d.g.

CRR 2163 of 2015

With

CRAN 11 of 2022

Malay Chakraborty & Anr.

Vs.

The State of West Bengal & Anr.

Mr. Sabir Ahmed,
Mr. Subhankar Chakraborty,
Ms. Ruchira Manna.

... For the petitioners

Mr. Madhu Sudan Sur, Id. APP.,
Mr. Manoranjan Mahata.

... for the State

In this revision case, the petitioners who are the financiers with respect to the vehicle purchased by opposite party no, 2 by executing a hire-purchase agreement, have challenged the proceedings in connection with G.R. Case No. 295 of 2015 in the Court of Additional Chief Judicial Magistrate at Garbeta, District Paschim Medinipur. The same arose in connection with Goaltore Police Station Case No. 137 of 2015 dated 06.06.2015 under Sections 341/379/34 of the Indian Penal Code.

Petitioners contention in a nutshell is that, the ingredients of the offence as alleged against them as regards the concerned vehicle would not be satisfied, in so far as they, having provided the finance for the same and having not been repaid back, remains in the status of owner of such vehicle, in accordance with law.

Learned Advocate appears on behalf of the petitioners have pointed out various documents annexed to the affidavit of his clients, that is, copy of a letter dated 16th May, 2015 showing acceptance by opposite party no, 2 regarding his failure and default in repaying the E.M.I. He has also mentioned about "Repossessed Vehicle Inventory List" dated 23rd May, 2015 to submit that the opposite party no. 2

himself, having failed to repay the amount of money as against the said vehicle and has voluntarily returned back the vehicle on the said date, by endorsing his signature thereon. He has also pointed out to the relevant portion of the “hire-purchase agreement” to submit about lenders’ right to the vehicle and enforcement of the security interest as regards the same. He submits that in default of payment, the petitioners being the lenders have right to confiscate the vehicle for realizing of the unpaid loan.

On the above facts and circumstances, according to him, the present criminal proceedings should not be allowed to proceed against his clients in so far as, none of the offence as alleged against the petitioners may be substantiated by any material in this case. During his argument he has referred to the following two judgments of the Hon’ble Supreme Court as noted below:-

- i. ***Sardar Trilok Singh & Ors. vs. Satya Deo Tripathi***
reported in ***(1979) 4 Supreme Court Cases 396.***
- ii. ***Charanjit Singh Chadha & Ors. vs. Sudhir Mehra***
reported in ***(2001) 7 Supreme Court Cases 417.***

The principle of law that was settled by dint of the said judgments of the Hon’ble Supreme Court may be discussed as below:-

In the judgment of ***Sardar Trilok Singh***, the Hon’ble Apex Court held that, action/inaction pursuant to alleged contravention of any provision of a hire-purchase agreement, would give rise to a civil dispute. By any stretch of imagination, criminal proceeding cannot be a consequence thereof, since in such a contravention, criminality cannot be said to be involved. Parties would be bound by the terms of agreement and would be within their limits, in doing an act in terms of such an agreement.

In the judgment of ***Charanjit Singh Chadha***, the Hon’ble Court held, as quoted below:-

“17. The hire-purchase agreement in law is an executory contract of sale and confers no right in rent 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.”

No one is appears on behalf of the opposite party no. 2 in spite of service.

The State is represented.

Learned Advocate appearing on behalf of the State has handed over the case diary in connection with Goaltore Police Station Case No. 137 of 2015 dated 06.06.2015 to submit that the investigation has already ended into filing of charge-sheet. Unfortunate to see that the case diary is silent about any investigation as regards above-stated facts of the case. Instead, statement of the opposite party no. 2 recorded by police during investigation would go on to support the petitioners' case here.

The entire as above prompt this Court to find the following facts emerging from the documents produced in this case; that the petitioners are the money lenders and financiers who advanced money from the opposite party no. 2 for purchase of vehicle; that the opposite party no. 2 defaulted in payment of money; that the opposite party no. 2 has voluntarily returned back the vehicle to the petitioners on 23rd May, 2015; documents produced to support the same appear to be unimpeachable and incontrovertible.

In such view of the fact, the allegations levelled against the petitioners in the FIR dated 6th June, 2015 appear to be baseless. None of the ingredients of the offence as alleged against the petitioners can be substantiated even at least prima facie. Those, even if accepted in their entirety, do not prima facie constitute any offence or make out a case against the petitioners.

This is the trait law that, a situation like this should mandatorily lead to quashing of the criminal proceedings started against the petitioners or otherwise that same shall amount to abuse of the process of Court. The case of ***State of Haryana & Ors. vs. Bhajanlal & Ors.*** reported in ***1992 Supp. (1) Supreme Court Cases 335*** has settled the law, in this regard.

On the facts and grounds and findings as above, the proceedings in connection with Goaltore Police Station Case No. 137 of 2015 dated 06.06.2015 is liable to be quashed and set aside.

Hence, CRR 2163 of 2015 is allowed. All the proceedings/further proceedings in connection with Goaltore Police Station Case No. 137 of 2015 dated 06.06.2015 (connected to G.R. Case No. 295 of 2015) stand quashed and set aside.

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

Case diary be returned.

Parties are granted liberty to obtain server copy of this order, for any future reference, until certified copy of the same is obtained.

(Rai Chattopadhyay, J.)