

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2130 of 2019

M/s Hytone Merchants Pvt. Ltd. & Ors.

Vs

Asit Das

For the Petitioners : Mr. P. K. Srivastava

For Opposite Party : None

Heard on : 21.11.2022

Judgment on : 29.11.2022

Shampa Dutt (Paul), J.:

The criminal revision application has been preferred by the petitioners/accused persons praying for quashing of the proceedings in C.R. Case No. 5012 of 2018 under Sections 420/406/323/341/506/ 120B of the Indian Penal Code pending before the learned Judicial Magistrate, 7th Court, Alipore, South 24 Parganas.

The petitioner's case is that the petitioner no.1 is a private limited company registered under the Companies Act, 1956 and the petitioner no.2 is a firm. The petitioner no.3 is the director of the petitioner no.1 and the petitioner no.4 is the son of the petitioner No.3 and the petitioner no.5 is the employee of petitioner no.1 and 2. The petitioner no.1 is engaged in the business of providing financial facilities to its various customers for purchase of vehicles including commercial vehicles amongst others.

The opposite party namely Asit Das took a loan of Rupees Four Lakh Two Thousand and Three Hundred (Rs. 4,02,300/-) on May 22, 2017 for purchasing a Second hand Maruti car by executing an **agreement for hire purchase** dated May 22, 2017 along with an **agreement for arbitration**. The said loan had to be repaid by twenty seven equal monthly installments of Rupees Fourteen thousand and nine hundred only (Rs.14,900/-) as per the agreement for hire purchase dated May 22, 2017. The opposite party

failed to pay the said installments as per the hire purchase agreement and thereby defaulted in making payment despite repeated request and demands.

Further case of the petitioner is that the custodian, appointed by the Learned Arbitrator vide the Arbitral tribunal's order dated **October 9, 2018** repossessed the said maruti car on **October 27, 2018** from the custody of Asit Das, the opposite party herein upon whom a copy of the inventory list was also served. The fact of such repossession of the said maruti car by the duly appointed custodian, was intimated to the Officer in Charge, Behala Police Station, Lake P.S. as directed by the Arbitral tribunal and the opposite party by letter dated **November 9, 2018**. The complainant filed the present case on **16.11.2018**.

Inspite of proper service in this case there is no representation on behalf of the opposite party/complainant.

The complainant's case before the trial Court is that one Biswajit Chakraborty called the complainant claiming himself as a passenger wanting to hire a car for travelling to Barasat and the complainant agreed to the said proposal. When the complainant came to the location in the said maruti car, the said Biswajit Chakraborty snatched the keys of the car and further threatened the complainant that they would sell the car if the loan amount is not repaid. The complainant then filed an application for return

of the vehicle under Section 94 of the Code of Criminal Procedure along with the said complaint petition on 16.11.2018.

Cognizance was taken by the Trial Court and process was issued against the petitioners/accused persons herein. The learned Magistrate also directed the Officer-in-charge of the Lake Police Station to search the premises of 21/3, S.N. Chatterjee Road, Police Station-Behala and recover the said Maruti Car from the custody of the said accused person. As per Order dated 26th November, 2018 the said vehicle was seized by the Sub-Inspector and the learned 7th Judicial Magistrate directed the Officer-in-Charge Lake Police Station to return the seized vehicle on furnishing a 'Zimma' bond of Rupees Three Lakh by the complainant. Accordingly, the said vehicle was returned to the complainant.

Mr. P.K. Srivastava, learned counsel for the petitioner has submitted before the Court that in a hire purchase agreement, the financier remains the owner of the vehicle so long as the entire loan remains to be liquidated by the borrower. The said vehicle was repossessed as per the direction /order of the Learned Arbitrator in view of the fact that the opposite party was a chronic defaulter.

As such the continuation of the criminal proceeding against the accused persons being C.R. Case No. 5012 of 2018 (T.R. 2169 of 2018), would amount to abuse of process of law since the dispute is civil in nature.

It is further submitted that the recovery of possession of vehicle by financier was through the duly appointed receiver/custodian as per order dated 09th October, 2018 passed by learned Arbitral Tribunal and in terms of the hire purchase agreement and agreement for arbitration which clearly does not amount to criminal offence.

The wrongful release of vehicle being subject matter of hire purchase agreement is required to be set aside and the possession of the vehicle should be restored to the custodian.

Thus being aggrieved by the said Orders of the learned magistrate in C.R. Case No. 5012 of 2018 pending before the learned Judicial Magistrate, 7th Court, Alipore, the present revision application has been preferred stating that the said proceedings is a clear abuse of process of Court and totally against interest of justice and if the said decisions are not quashed there will be serious miscarriage of justice.

Further contention of the petitioner is that the said maruti car was legally recovered and not stolen by the petitioner/accused person and as such section 94 of the Code of Criminal Procedure will not be attracted in the present 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 22nd of May, 2018 and relates to an old maruti car of the Model 2017. The said car was taken by the opposite party on the basis of the said agreement of hire purchase which includes an agreement 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 his Order dated 9th October, 2018 passed an Order in favour of the accused/petitioners company for repossession of the 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 of the said vehicle which should be taken with the help of the local concerned police station on making an inventory and seizure list. A custodian was also appointed by the learned Tribunal for the said purpose.

On 27.10.2018 the said vehicle was repossessed from the custody of the complainant/opposite party as per the Order of the learned Arbitral Tribunal dated 9th October, 2018. The said document of repossession and seizure list cum inventory list has been filed annexed to the supplementary affidavit by the petitioners.

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 Chief Judicial Magistrate, Alipore on 16th November, 2018 i.e., long after the vehicle had been repossessed and seized lawfully on 27.10.2018.

The opposite party has chosen not to appear. 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 award of the arbitration.

On what basis the criminal case was filed by the complainant /opposite party is a matter of record before the Learned Magistrate and as to why the vehicle was released in favour of the opposite party/complainant herein by the Magistrate is also a matter of record.

But considering the materials before this Court, including the award of the Learned Arbitrator and the documents relating to the lawful repossession of the vehicle by the custodian appointed by the Learned Arbitrator, the question remains as to why inspite of such circumstances, the vehicle was given in Zimma to the opposite party/complainant.

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.

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

*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 Agreement and the vehicle in question was repossessed lawfully in execution of the 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 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 and this is one of the said rare circumstances in which the prayer of quashing should be considered.

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 its the power under Section 482 of the Code of Criminal Procedure, the present proceeding is required to be quashed.

CRR 2130 of 2019 is Allowed.

It is further directed that the vehicle in question here in be released in favour of the petitioner who shall not dispose of or change its nature and character till the final order in the Arbitral proceeding. The Magistrate Concerned shall ensure that the vehicle is received back from the complainant/opposite party and released in favour of the petitioner here in on such terms and conditions as may be fit and proper, which shall be done

within two weeks from the date of communication of this order. The parties here in will abide by the Arbitration proceeding as per their agreement.

No order as to costs.

Let a copy of this Judgment/order/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.)