

08.08.2022
Item No. 9
Ct. No.40
d.g.

**CRR 4129 of 2011
with
CRAN 1 of 2012 (Old No. CRAN 1091 of 2012)**

**Saurav Chandra
vs.
The State of West Bengal & Anr.**

**Mr. Dipanjan Dutt,
Mr. Amitava Mitra,
Ms. Antara Chowdhury.**

... for the petitioner

**Mr. Madhu Sudan Sur, Ld. APP.,
Mr. Narayan; Prasad Agarwala,
Mr. Pratick Bose.**

... for the State

The instant application is filed under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the proceeding of B.G.R. Case No. 250 of 2010 pending in the Court of Additional Chief Judicial Magistrate, Alipore related to Jadavpore Police Station Case No. 30 dated 12.01.2010 under Sections 323/379 of the Indian Penal Code.

The nutshell of the case is that the defacto complainant, the present opposite party no. 2 took a car loan from HDFC Bank Limited on executing hire purchase agreement. The opposite party no. 2 defaulted in payment of loan for which the present petitioner and his associates forcefully took possession of the vehicle within jurisdiction of Jadavpore Police Station. The Opposite Party no. 2 lodged written complaint in Jadavpore Police Station

for this incident. Investigation began which finally ended in filing of charge-sheet being C.S. No. 417 dated 31.07.2010.

It is the contention of Mr. Dutt, that dispute is basically a civil in nature. The car in question was recovered in terms of hire purchase agreement governing the terms of loan. Hire purchase agreement authorities, the bank to take possession of the vehicle in case of default in payment of loan. There is no criminality involved in this case.

Mr. Dutt, relied upon the observations of the Supreme Court of India in ***Sardar Trilok Singh & Ors. vs. Satya Deo tripathi*** reported in ***(1979) 4 SCC 396***, ***Charanjit Singh Chadha & Ors. vs. Sudhir Mehta*** reported in ***(2007) 7 SCC 417***, ***Orix Auto Finance (India) Ltd. vs. Jagmander Singh & Anr.*** reported in ***(2006) 2 SCC 598*** and ***Anup Sarmah vs. Bhola Nath Sharma & Ors.*** reported in ***(2013) 1 SCC 400*** and stated that where the dispute is civil in nature, frivolous criminal prosecution should be nipped at the bud.

According to him, the instant proceeding should be quashed.

Mr. Agarwala, learned Counsel for the State submitted that prima facie, there is no criminality in the matter as appears from the case diary.

I have heard the rival submissions.

Although fastened with criminal prosecution, there is no evidence or anything in the statement of the witnesses in particular, that the defacto complainant indicating there was any assault or any hurt in course of recovery of the vehicle. The vehicle in question was recovered in terms the hire purchase agreement. This is provided in Clause 14.2 of the said hire purchase agreement. Therefore, the recovery of the vehicle cannot be said to be an instant of larceny. Therefore, it is a fit case where this Court should intervene in exercise of jurisdiction under Section 482 of the Code of Criminal Procedure, in view of the settled principles of law.

Therefore, the impugned proceeding being B.G.R. Case No. 250 of 2010 pending in the Court of Additional Chief Judicial Magistrate, Alipore related to Jadavpore Police Station Case No. 30 dated 12.01.2010 under Sections 323/379 of the Indian Penal Code stands quashed against the present petitioner.

Accordingly, the instant application along with the pending application stands disposed of.

Case diary may be returned.

(Sugato Majumdar, J.)