IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.516 OF 2019

SREI Equipment Finance Ltd.
Having it registered office at
"VISWAKARMA" 86 C,
Topsia Road (South)
Kolkata 700046
Having Branch office at F-7,
1st Floor, Sharaddha House,
Kingsway, Nagpur (Maharashtra)
through its Authorized person
Mr. Nandkishor s/o Devidas Ghotekar

...APPLICANT

VERSUS

1. State of Maharashtra,
through its Police Inspector,
Police Station, Frejarpura,
Amravati, Maharashtra

2. Mr. Avinash Shamraoji Khatri,
Aged about 39 years,
Occupation – Business,
R/o 34, Shivkrupa Colony,
Chhatri Talo Road,
Amravati 444605

3. M/s. S.L. Khatri and Son
through its Partner
Shyamlal Lahorimal Khatri,
Aged about 65 years,
Occupation – Business,
R/o 34, Shivkrupa Colony,
Chhatri Talo Road,
Amravati 444605

...NON-APPLICANTS

Ms Ayushi Dange, Advocate h/f Shri A.N. Ansari, Advocate for the applicant.
Shri M.J. Khan, Additional Public Prosecutor for non-applicant No.1/State.
Shri S. Zia Quazi, Advocate for non-applicant Nos.2 and 3.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATE : NOVEMBER 14, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

ADMIT. Heard finally with the consent of learned Counsel for the parties.

2. The accused in Crime No.524/2019 for the offences punishable under Sections 392 and 420 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the IPC' for short) has approached to this Court by filing this application under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Cr.P.C.' for short), for quashing of First Information Report (hereinafter referred to as 'the FIR' for short).

3. It is the case of the prosecution that non-applicant Nos.2 and 3 in the year 2015 being the partners of Shyamlal Lahorimal Khatri had approached to the applicant-Company for purchasing a vehicle Eicher Terra 25 truck along with Apollo make Transit Mixer ATM 6 under an

agreement and had represented the applicant-Company that the form of non-applicant Nos.2 and 3 is financially sound. Non-applicant Nos.2 and 3 obtained financial assistance from the applicant-Company to purchase the said vehicle. The amount of Rs.18,75,000/- (Rs. Eighteen lacs seventy five thousand) was financed for purchasing Truck under loan agreement No.88209 and an amount of Rs.6,88,000/- (Rs. Six lacs eighty eight thousand) was financed to purchase the Transit Mixer ATM 6 under loan agreement No.88261. As per the agreed terms and conditions, both the vehicles were hypothecated to the applicant-Company and kept as collateral security. Thus, total amount of Rs.25,63,000/- (Rs. Twenty five lacs sixty three thousand) was financed and non-applicant No.3 had purchased the said vehicles. It was agreed by non-applicant No.3 that he would pay the amount punctually in monthly installments but as per the agreement, non-applicant No.3 failed to make the payment and committed default. Therefore, the applicant-Company issued demand notice to non-applicant No.3 on 12/09/2016, 08/12/2018 and 18/01/2019. However, the borrower failed to comply with the said notices. Therefore, the applicant-Company started procedure to resume the possession of the said vehicles. On 30/01/2019, non-applicant No.3 *suo moto* handed over the possession of the vehicle to the applicant-Company. This fact was duly informed to the Nandgaonpeth police station by giving an intimation letter dated 31/01/2019 that the possession of the vehicle was taken by the applicant-Company. After repossession of the hypothecated vehicle, the applicant-Company by its letter dated 04/02/2019 duly intimated the M/s. S.L. Khatri and sons that in view of repossession of two vehicles on 30/01/2019, the agreement bearing Nos.88209 and 88261 entered into by the borrower were stand terminated. Though the agreement was terminated only with a view to give a fair chance to the borrower to clear their outstanding, applicant-Company issued a letter dated 15/02/2019 but after several request non-applicant No.3 failed to pay the amount, therefore, the applicant-Company sold out the said vehicle. The sale proceeds so realized are adjusted against the dues of borrowers. Accordingly, the vehicle release order was issued on 18/04/2019. Thereafter on 25/04/2019, the borrower had deposited an amount of Rs.3,22,000/- (Rs. Three lacs twenty two thousand) in the account of the applicant-Company through RTGS without any intimation to the applicant-Company.

4. On 05/05/2019, non-applicant No.3 lodged the report against the applicant-Company alleging that the vehicle was forcefully taken by the applicant-Company on the basis of the said FIR. Police have registered the offences punishable under Sections 392 and 420 read with Section 34 of the IPC against the Company's authorized person – Nandkishor Devidsas Ghotekar.

5. It is the contention of the applicant-Company that there was loan agreement between the applicant-Company and non-applicant No.3. The applicant-Company has acted as per the terms of agreement dated 30/06/2015. As non-applicant No.3 who is the borrower failed to deposit the amount, offence was registered. Though the offence was registered under Sections 392 and 420 of the IPC the ingredients of the offence are not made out. Therefore, the present applicant approached to this Court for quashing of the FIR.

6. In response to the notice issued by this Court, affidavit-in-reply is filed by the State and opposed the application on the ground that there is a *prima facie* material to show that the applicant-Company had committed an offence. Non-applicant Nos.2 and 3 submitted that the forceful possession of their vehicle was taken by the applicant-Company, thus the Company has committed an offence punishable under Sections 392 and 420 of the IPC. It is further submitted by non-applicant Nos.2 and 3 that though they have deposited an amount, the vehicle was illegally sold out. Thus, the applicant-Company has committed an offence of cheating. Hence, the application deserves to be rejected.

7. Heard Ms Ayushi Dangre, learned Counsel for the applicant. She submitted that there is no dispute that non-applicant Nos.2 and 3 obtained the financial assistance from the applicant-Company. It is also

not in dispute that total amount of Rs.25,63,000/- was due and it was agreed by non-applicant Nos.2 and 3 to pay the said amount regularly. However, they have committed the default. It is also not disputed that the applicant-Company issued various notices dated 12/09/2016, 08/12/2018 and 18/01/2019 and claimed the amount which was due from non-applicant Nos.2 and 3. It is the contention of non-applicant Nos.2 and 3 that their vehicle was forcibly obtained by the applicant-Company. In fact, the possession of the vehicle was handed over by non-applicant Nos.2 and 3 *suo moto* on 30/01/2019. Annexure-4 is on record to show that they have handed over the said vehicles to the applicant-Company. Thereafter the applicant-Company informed the Nandgaonpeth police station about the possession taken regarding the said vehicles. Said letter is also on record. Thereafter again opportunity was granted to non-applicant Nos.2 and 3 to deposit the amount but as there was no response, the applicant-Company had sold out the said vehicle on 17/04/2019 to Shri Pankaj Chandrashekhar Bajoria Accordingly release letter dated 18/04/2019 was issued. After the said transaction, non-applicant Nos.2 and 3 deposited an amount of Rs.3,22,000/- (Rs. Three lacs twenty two thousand) without any intimation to the applicant-Company through RTGS. She submitted that the dispute between the applicant-Company and non-applicant Nos.2 and 3 is of a civil nature. No criminal offence is made out against the applicant-Company. By suppressing the material facts from the police, this FIR registered and the Investigating officer had registered the offence without ascertaining whether *prima facie* case is made out or not.

8. On the other hand, Shri M.J. Khan, learned Additional Public Prosecutor submitted that the *prima facie* material is sufficient to attract the ingredients of the offence, hence no interference is called for.

9. Whereas Shri S. Zia Quazi, learned Counsel for non-applicant Nos.2 and 3 submitted that the possession of the vehicle of non-applicant Nos.2 and 3 was forcibly obtained and without their consent it was sold. Therefore, it is further submitted that though non-applicant Nos.2 and 3 deposited an amount, their vehicle was sold out by the applicant-Company. Thus, the offence under Section 392 of the IPC is made out. As well as the Company had cheated non-applicant Nos.2 and 3 by selling the said vehicles without their consent. Therefore, no interference is called for.

10. Heard both the sides and perused the record.

11. There is no dispute that non-applicant Nos.2 and 3 obtained the finance from the applicant-Company in the year 2015. Two loan agreements were executed by non-applicant Nos.2 and 3 and obtained

finance of Rs.25,63,000/- (Rs. Twenty five lacs sixty three thousand). It is not in dispute that non-applicant Nos.2 and 3 have agreed and accepted the terms and conditions of the loan agreement and agreed to repay the said amount regularly. But they failed to do so. The demand notices which are on record dated 12/09/2016, 08/12/2018 and 18/01/2019 shows that demand was made from them. It is also revealed that non-applicant Nos.2 and 3 handed over the possession of the vehicle to the applicant-Company and accordingly the Company had intimated the same to the Nandgaonpeth police station immediately. It was informed to the Nandgaonpeth police station that the Company has obtained the possession of the said vehicles as non-applicant Nos.2 and 3 failed to make payment. It was requested to the police that not to entertain any complaints of the borrower in this regard. It is further revealed from the documents that as non-applicant Nos.2 and 3 failed to pay the amount, the hypothecated vehicle was sold out on 17/04/2019 and release letter was issued on 18/04/2019 and thereafter non-applicant Nos.2 and 3 deposited the amount on 25/04/2019.

12. From the above facts and circumstances, it is crystal clear that the possession of the vehicle was obtained by the applicant-Company to recover its dues. The dispute between the applicant-Company and the non-applicant Nos.2 and 3 is of a civil nature regarding the recovery of loan amount. The offence registered against the applicant-Company is

under Section 392 of the IPC. The offence of robbery is defined in Section 390 of the IPC. As per the definition theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. Similarly, robbery involves extortion. The ingredients of the said offence are not revealed from the allegations. Thus, the ingredients of the offences punishable under Section 392 of the IPC are not made out. The offence is also registered under Section 420 of the IPC. Essential ingredients of the offence of cheating are deception on the part of the accused or dishonest inducement by them, releasing in any person delivering in property to such accused or alteration or destruction of a whole or any part of valuable security.

13. In the present case, the essential ingredients of the offence of cheating, possession on the part of the accused or dishonest inducement by them are not made out. The FIR in the present case does not show anything done by the accused which would show that there was any deception or any dishonest inducement by the accused. Thus, the ingredients of the offence punishable under Section 420 of the IPC are also not made out.

14. The Hon'ble Apex Court in the case of ***Jagmohan Singh Vs. Vimlesh Kumar and ors. 2022 LiveLaw (SC) 546*** held that while exercising jurisdiction under Section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not. The jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of Section 482 of the Cr.P.C. itself. It is further held that the criminal proceedings can be said to be in abuse of the process of Court, to warrant intervention under Section 482 Cr.P.C., when the allegations in the FIR do not at all disclose any offence or there are materials on record from which the Court can reasonably arrive at a finding that the proceedings are in abuse of the process of the Court.

15. Having observed that the offence under Sections 392 and 420 of the IPC does not attract against the applicant which further reveals that the dispute between the applicant and non-applicant Nos.2 and 3 is of a civil nature regarding the recovery of loan amount.

16. In view of that the FIR registered against the applicant-Company deserves to be quashed. Hence, we are inclined to allow the application by passing the following order :

(i) The criminal application is allowed.

(ii) The First Information Report vide Crime No.524/2019 for the offences punishable under Sections 392 and 420 read with Section 34 of the Indian Penal Code, is quashed and set aside

17. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.) **(ROHIT B. DEO, J.)**

**Divya*

Signed By:DIVYA SONU BALDWA
Personal Assistant
Signing Date:24.11.2022 16:43