

CRR 1068 of 2009
CRAN 1 of 2009
CRAN 2 of 2010
CRAN 3 of 2010

In the matter of : Sanjay Chamaria & Anr.

Mr. Milon Mukherjee, Sr. Adv.
Mr. Sandipan Ganguly, Sr. Adv.
Mr. Debangana Bhattacharyya .. for the petitioners

Mr. N. P. Agarwala
Mr. P. Bose ... for the State

This revisional application challenges the proceeding being C.R. Case No. 210 of 2004 under Sections 406/420 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Contai (erstwhile S.D.J.M. Contai) as well as the order passed by the learned Additional Chief Judicial Magistrate, Contai on 02.9.2008 expressing the satisfaction of the learned Court about the *prima facie* disclosure of offence within the meaning of Sections 406/420 of the Indian Penal Code.

Briefly stated that the opposite party no. 2 was given financial accommodation by Magma Fincorp Limited and in terms of the agreement, opposite party no. 2 who wanted to purchase a Maruti Omni vehicle, incurred the obligation to repay the loan by sixty installments of Rs.4585/- each commencing from 01.10.2003 to 31.9.2008. The agreement contains an arbitration clause. Subsequently, when the borrower failed to discharge his obligation, arbitration clause was invoked and an award was passed on 29.7.2005 by the learned Arbitrator. Pursuant to such award, the borrower surrendered the vehicle to the financier

company prior to that on 24.3.2004 and its value was duly assessed and taken into consideration by the learned Arbitrator. Suppressing such development the petition of complaint was taken out by the borrower and the learned Trial Court issued process against the accused person without complying with the provision of Section 202 of the Code of Criminal Procedure. The issue was brought to the notice of this Court by way of criminal revision and direction was given to the learned Additional Chief Judicial Magistrate, Contai to comply with Section 202 of Code of Criminal Procedure. In compliance with such direction a report was called for after due enquiry and the report under Section 202 of Code of Criminal Procedure supports the fact that vehicle was surrendered by the complainant.

Mr. Mukherjee, learned senior counsel appearing on behalf of the petitioners submits that there is no ingredient of offence within the meaning of either Section 406 of the Indian Penal Code or Section 420 of the Indian Penal Code.

Learned Trial Court failed to appreciate this factual aspect in its proper perspective and in my view the proceeding should be quashed to avert the abuse of process of law which I accordingly do.

With this observation the criminal revision is disposed of along with all applications.

Let a copy of this order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)