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CRR 787 of 2015
IA NO: CRAN 6 of 2017 (Old No: CRAN 3692 of 2017)

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Citicorp Finance (India) Ltd.
Vs.
State of West Bengal & Anr.

Mr. Prabhat Kr. Srivastawa,
.... For the petitioner.

Mr. Sudip Ghosh,
Mr. Koushik Kundu ... for the State.

1. This revisional application has been filed with a prayer for quashing of proceeding of G.R. Case No. 602 of 2006 in connection with Raiganj Police Station Case No. 288 dated 21.07.2006 under Sections 406/379/384/109 of the Indian Penal Code, pending before the learned Chief Judicial Magistrate, Uttar Dinajpur, Raiganj.
2. One Chinmoy Mitra/opposite party no.2 filed a petition under section 156 (3) of the Code of Criminal Procedure before learned Chief Magistrate, Uttar Dinajpur, Raiganj, which was forwarded to Raiganj Police Station for investigation. On receipt of the application on 21.07.2006 at 20.15 hours Raiganj Police Station Case No. 288 of 2006 dated 21.07.2006 under Sections 406/409 of the Indian Penal Code was

started. After investigation charge-sheet was submitted against the petitioner/company.

3. The allegation of the de-facto complainant against the petitioner/company is that the petitioner/company had forcibly taken the custody of the truck bearing No. WB 23A/5252 purchased by the de-facto complainant on hire purchase from the petitioner.
4. Mr. Prabhat Kumar Srivastawa, learned advocate appearing on behalf of the petitioner has relied on the hire purchase agreement between the parties as well as the case of **Anup Sarmah versus Bhola Nath Sharma & Ors.** reported in **(2013) 1 SCC 400**.
5. Learned advocate appearing on behalf of the petitioner has submitted that de facto complainant purchased the truck mentioned above taking loan from the petitioner/company after executing a hire purchase agreement wherefrom it is seen that in case of default in payment of instalment, company had right to take possession of the hypothecated assets from the possession of the de-facto complainant.
6. However, gist of the complaint was that de-facto complainant purchased a truck bearing No. WB 23A/5252 after obtaining loan from the petitioner/company after executing hire purchase agreement keeping a right of taking possession of the vehicle in favour of the petitioner/company in case of

default in payment of instalment.

7. In **Anup Sarmah (Supra)** Hon'ble Apex Court observed in paragraph 8 as quoted below:

"8. In view of the above, the law can be summarised that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is re-possessing the goods owned by him."

8. Learned advocate appearing on behalf petitioner also relied upon a case of **Magma Fincorp Limited versus Rajesh Kumar Tiwari** reported in **(2020) 10 SCC 399**, wherein Hon'ble Apex Court also observed in paragraph 80 as follows:

"80. When the agreement between the financier and the hirer permits the financier to take possession of a vehicle financed by the financier, there is no legal impediment to the financier taking possession of the vehicle. When possession of the vehicle is taken, the financier cannot be said to have committed theft."

9. Learned advocate appearing on behalf of the State has submitted a report regarding service of summon. Let

the same be taken on record. It appears that the opposite party no.2/ Chinmoy Mitra could not be traced out due to insufficient address.

10. In the aforesaid view of the matter, I have no hesitation to hold that petitioner/Citicorp Finance (India) Ltd. has right to take possession of the hypothecated truck mentioned hereinbefore, in case of any violation of hire purchase agreement at the instance of the de-facto complainant/OP No.2.
11. Regard being had to the principle laid down by the Hon'ble Apex Court in various cases including the cases referred to above, I am unable to disallow the prayer of the petitioner/company as no offence stands against the petitioner/company either under section 406/ 379/384 /109 of the Indian Penal Code.
12. In the aforesaid view of the matter, the proceeding in connection with G.R. Case No. 602 of 2006 in connection with Raiganj Police Station Case No. 288 dated 21.07.2006 under Sections 406/379/384/109 of the Indian Penal Code stands quashed.
13. The revisional application being CRR 787 of 2015 stands allowed.
14. Connected application also stands disposed of.
15. Interim order, if there be any, also stands vacated.
16. All parties to this revisional application shall act on the server copy of this order downloaded from the

official website of this Court.

17. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)