

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.R. 1722 of 2011
With
CRAN 1 of 2018(Old CRAN 3011 of 2018)**

**Vishal Singh & Anr.
-Vs-
The State of West Bengal & Anr.**

For the Petitioners : Mr. Debasish Roy
: Mr. Kaushik Chatterjee
: Mr. Tirthankar Dey

For the State : Mr. Narayan Prasad Agarwala
: Mr. Pratick Bose

Heard on : 06.07.2023

Judgment on : 26.09.2023

Ananya Bandyopadhyay, J.:-

1. The instant criminal revisional application is filed by the petitioners praying for quashing of investigational proceedings in connection with Behala Police Station Case No. 276 of 2010 dated 17.06.2010 under Sections 362/323/344/368/395/397/34 of the Indian Penal Code corresponding to BGR No. 3265 of 2010 pending before the Learned Additional Chief Judicial Magistrate, Alipore.

2. That HDFC Bank Ltd. is a banking a company incorporated under the Companies Act, 1956 (hereinafter referred to as the said bank) having its eastern regional office at Gillander House, 1st Floor, Block A, 8, N.S. Road, Kolkata-700 001. The said bank is engaged in the business of banking.
3. The petitioners are officials of the said bank and are designated as the Legal Manager and the Collection Managers respectively of the said bank.
4. The Behala Police Station Case No.276 of 2010 dated 17.06.2010 was registered for investigation pursuant to an order passed by the Learned Additional Chief Judicial Magistrate, Alipore in an application under section 156 subsection 3 of the Code of Criminal Procedure directing the Officer in Charge, Behala Police Station to treat the application under section 156 subsection 3 of the Code of Criminal Procedure as First Information Report and investigate into alleged commission of offences punishable under Sections 362/323/344/368/395/397/34 of the Indian Penal Code being committed by the petitioners being officials of the said bank.

The allegations levelled in the said complaint are as follows:

The complainant, who is a resident of P-164, Unique Park, Behala, Kolkata-700 034, received an information about the serious illness of his aunty Nilima Kanjilal and in order to visit her at Sealdah departed on 17.05.2010 at about 5.30 a.m. in the morning from his residence, in his Cherry coloured Tata Sumo, having (registration No.WB-02M-9651, Engine No.483DL47GY27-15110 and Chasis No. 418201GYZ913303) which he had purchased from one Shampa Roy. along with his driver Jiban Kumar Routh,

son of Late Jogdev Routh, originally of Village Hurrahi, P.S. Harlakhi. Dist. Madhubani, Bihar. At about 5.45 a.m. when the complainant was passing Pathakpara Bus Stoppage Behala suddenly 10(ten) well built person in 5(five) Motor Bike surrounded and stopped the Tata Sumo and declaring themselves as Police Personnel, demanded the papers of the vehicle. Suddenly one of them hit on the complainant's left ear, which started to bleed and he became senseless. They also slapped, punched and kicked the driver Jiban Kumar Routh and dragged him out.

When the complainant regained senses he found his driver and himself sitting in the middle seat of Tata Sumo and 2 persons were sitting beside them holding Revolver and knife. One person was driving, another in-front seat and one in the back seat. They threatened complainant not to shout or they would kill him. The complainant identified two of the persons as Vishal Singh and Ashutosh Kumar, both employee of H.D.F.C. Bank. Ltd. of Gillander House, A-1, First Floor, 8, N.S. Road, Kolkata-700001. Others were unknown persons. 5 others were following in Bikes. That the accused persons brought complainant and his driver to an old single storied house which was near about 30 minutes interior from Dum Dum Airport in an unknown place. There they locked the complainant and his driver inside a room of the house for 10(ten) days and also used to torture them physically. The complainant begged before those accused persons to release them but those unknown persons told, when time will come, they would be released.

The complainant never saw that the said Vishal Singh or Ashutosh Kumar again after the first day of the incident.

Thereafter the complainant came to learn from his driver Jiban Kumar Routh that the accused persons have taken all the papers of the vehicle and the music system of the vehicle and also forced him to sign in some papers. They have also snatched away Rs. 50,000/- cash from the complainant which was arranged for treatment of his aunty.

On 27.05.2010 at about 5 p.m. in the evening those accused persons released the complainant and his driver at an unknown place after escorting them in the vehicle and their eyes were tied with clothes. After release the complainant and his driver somehow reached Dum Dum Air Port Bus Stop by 10(ten) minutes walk and from there to Behala Police Station at about 8.15 p.m. and reported the incident with Behaqla Police Station by filing written complaint, being G.D. Entry No. 2004, dated 27.05.2010. However, till date police had done nothing.

On the next day the complainant and Jiban Kumar Routh went to Vidyasagar S.G. Hospital at Behala, and got treated. Their medical papers were annexed.

The complainant took a used car loan of Rs. 165000/- approx. from H.D.F.C. Bank, Gillandere House, and also repayed 28 installments. Thereafter he stopped paying it, as the Bank was claiming more amount than its original dues. Earlier also the Tata Sumo was snatched illegally by Bank people on 27.03.2009. Thereafter complainant was lodged under Section 156(3) Cr.P.C.

and by virtue of order of Learned A.C.J.M., Alipore the vehicle has been recovered by Behala Police Station. Thereafter complainant also filed a Civil Suit vide T.S. No. 2579 of 2009, praying injunction and the same is pending before the Learned 7th Civil Judge (Sr. Divn.)

The above named two accused persons also with their eight anti-social associated have kidnapped your petitioner and his driver and confined them for 10 days and also caused hurt by biting them and committed dacoity of the vehicle and the cash and also used lethal weapons in committing such illegal acts and they committed offences under Section 323/363/368/395/397/34. I.P.C.

5. The Learned Advocate for the petitioner submitted as follows:-

- a) In the month of April, 2006 the opposite party no.2, obtained financial assistance from the said bank for purchasing a four wheeler. An amount of Rs. 1,68,000/- was sanctioned and disbursed to the opposite party no.2 which the opposite party no.2 agreed to clear off by paying 48 installments of Rs. 4827/- each. The opposite party no.2 has utilized the said loan for purchasing a Tata Sumo vehicle bearing Registration No- WB 02M-9651.
- b) The opposite party no.2 had initially paid a few installments and thereafter committed default in repayment of the loan. In view of such persistent defaults the said bank in exercise of its rights under the agreement repossessed the aforesaid vehicle upon compliance with the necessary norms. Prior to such repossession the said bank was

constrained to recall the loan agreement by its letter dated 2nd February, 2009.

- c) The opposite party no.2 by suppressing the defaults committed by him obtained an order under Section 156(3) of the Code of Criminal Procedure which led to the registration of Behala Police Station Case No. 135 of 2009 dated 3.04.2009 under Section 341/323/379/506 of the Indian Penal Code. During the course of investigation in the aforesaid case the vehicle in question was seized by the Investigating Officer of the said case. The opposite party no.2 approached the competent court by filing an application praying for release of the vehicle. The said bank was not aware of filing of such application. However the concerned court was pleased to release the vehicle in favor of the opposite party no.2
- d) The said bank through its employees preferred an application for quashing before the Hon'ble High Court at Calcutta which was numbered as C.R.R. 2662 of 2009 and the Hon'ble Court after hearing the submissions made on behalf of the petitioners therein was pleased to stay of all further proceedings in the aforesaid case.
- e) Despite such release of the vehicle in his favour, the opposite party no.2 persistently defaulted in repayment of the loan and in such circumstances the said bank was constrained to file a Title Suit being 3017 of 2009 before the Learned 6th Bench, City Civil Court at Calcutta and also filed a connected application under Order 40 Rule 1

read with section 151 of the Code of Civil Procedure inter alia praying for appointment of Receiver. By order dated 17.6.2009, the Learned Judge, 6th Bench, City Civil Court at Calcutta, considering the exigency of the situation was pleased to pass an interim order thereby allowing the prayer of the said bank for appointment of Receiver. The Receiver so appointed was directed to repossess the vehicle through his agent and if necessary with assistance of police.

- f) The pursuant to such order the Receiver appointed by the Learned Civil Court through its agent repossessed the vehicle in question on 17.05.2010. After such repossession the Learned Receiver has duly intimated the concerned court regarding the factum of repossession by his authorized agent.
- g) The opposite party no.2, despite having knowledge regarding repossession of the vehicle by the Receiver appointed by the Civil Court, with ulterior motive and with malafide intention had moved an application under Section 156(3) of the Code of Criminal Procedure thereby giving birth to the instant case.

6. The Learned Advocate for the petitioner prayed for quashing of the proceedings pending before the Trial Court.

7. It appears that the vehicle in question has been seized by the Receiver appointed by the City Civil Court and not by the officials of the said bank. The de facto complainant despite having knowledge of such repossession by

the Receiver had filed the complainant based on false and concocted grounds.

8. In **Suryapal Singh V. Siddha Vinayak Motors And Anr.**¹, the Hon'ble Supreme Court observed as follows:

“2. Under the Hire Purchase Agreement, it is the financier who is the owner of the vehicle and the person who takes the loan retain the vehicle only as a bailee/trustee, therefore, taking possession of the vehicle on the ground of non-payment of installment has already been upheld to be a legal right of the financier. this Court vide its judgment in Trilok Singh and Ors. v. Satya Deo Tripathi has categorically held that under the Hire Purchase Agreement, the financier is the real owner of the vehicle, therefore, there cannot be any allegation against him for having the possession of the vehicle. This view was again reiterated in K.A. Mathai alias Babu and Anr. v. Kora Bibbikutty and Anr.; Jagdish Chandra Nijhawaa v. S.K. Saraf and Charanjit Singh Chadha and Ors. v. Sudhir Mehra, following the earlier judgment of this Court in Sundaram Finance Ltd. v. State of Kerala and another; Smt. Lalmuni Devi v. State of Bihar and Ors. and Balwinder Singh v. Asstt. Commissioner, C.C.E.

3. In view of the above, prima facie we are of the view that the courts below has committed an error in granting compensation to the present Petitioner and which appears to be non-sustainable in law.”

9. In **Tata Motors Finance Limited V. State of West Bengal**², the Hon'ble Calcutta High Court observed as follows:

“Now from records, it appears that before repossessing the vehicle the notice was issued to the de facto complainant of the case, opposite party no. 2 and both the pre-repossession intimation and post repossession intimation were sent to the concerned police station. The position has not been disputed by the learned counsel of the opposite

¹ (2012) 12 SCC 355

² 2013 SCC OnLine Cal 18655

party except that relying on a decision of the Hon'ble Apex Court in the case of Manager, ICICI Bank Limited v. Prokash Kaur reported in AIR 2007 Supreme Court 1349, he contended the recovery of bank loans and seizure of vehicle can only be done only through legal means and not in the way resort to by the petitioner.

Thus from the rival submissions of the parties and materials available from the records, I find this is a case where the financier repossessed a vehicle invoking the default clause contained in the hire purchase agreement for non-payment of the instalments amount. Having regard to that no criminal offence can said to have been committed. In this regard reliance may be placed in the case of Trilok Singh v. Satya Deo Tripathi reported in AIR 1979 SC 850. The view taken by the Hon'ble Apex Court in the said case has been reaffirmed in the case of K.A. Mathai @ Babu v. Kora Bibbikutty reported in (1996) 7 SCC 212 as well as in the case of Charanjit Singh Chaddya v. Sudir Mehera reported in (2001) 7 SCC 417.

This criminal revision accordingly succeeds and the impugned complaint is quashed.”

10. In the case of **State of Haryana and Others v. Bhajan Lal and Others**³

the Hon'ble Supreme Court has held as follows :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of

³ 1992 Supp (1) SCC 335

illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or

the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. In view of the above discussions, BGR No. 3265 of 2010, under Sections 362/323/344/368/395/397/34 of the Indian Penal Code, pending before the Court of the Learned Additional Chief Judicial Magistrate, Alipore, in connection with Behala Police Station Case No. 276 of 2010 dated 17.06.2010 is quashed.
12. The criminal revisional application being no. CRR 1722 of 2011 is allowed.
13. Accordingly, CRR 1722 of 2011 stands disposed of. Connected application, if there be any, also stands disposed of,
14. There is no order as to cost.
15. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
16. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)