IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.R. No.1958 of 2009
With
I.A. No. C.R.A.N.1 of 2010 (Old No. C.R.A.N.1165 of 2010)

MELROY SHARPE AND ANOTHER

-VERSUS-

THE STATE OF WEST BENGAL AND ANOTHER

For the petitioners	: Mr. Dipanjan Dutta, Adv., Mr. Amitava Mitra, Adv., Mr. Surojit Saha, Adv., Mr. Subhadip Banerjee, Adv.
For opposite party no.2	: Ms. Rituparna De Ghose, Adv., Ms. Jyoti Singh, Adv., Mr. Hariram Singh, Adv., Mr. S. Ghosh, Adv.
Hearing concluded on	: 21.06.2023
Judgment on	: 17.10.2023

Kausik Chanda, J.:-

This present application under Section 482 of the Code of Criminal Procedure, 1973, has been filed for quashing of C.G.R. Case No.4499 of 2008, pending before the Court of Judicial Magistrate, Alipore, 24 Parganas (South), arising out of Bhowanipore P.S. Case No.315 dated December 21, 2008, under Sections 384/379/506/34 of the Indian Penal Code, 1860.

2. Petitioner no.1, at the relevant juncture, was the Zonal Manager and petitioner no.2 was the Legal Head of the HDFC Bank Limited ("the Bank", in short).

3. It appears that opposite party no.2 entered into an "Agreement for Auto Loan" with the Bank. The total loan amount was Rs.3,73,000/-, which was to be repaid in 60 monthly installments of Rs.7,868/- commencing from January 7, 2007.

4. Admittedly, there were instances of default in the payment of monthly installments prompting the bank to issue a Loan Recall Notice to opposite party no.2 on November 6, 2008. It appears that on November 29, 2008, the possession of the relevant vehicle was taken by the men/agents of the bank.

5. Against such possession of the vehicle, opposite party no.2 lodged a complaint before the learned Chief Judicial Magistrate, Alipore, under Sections 384/379/506/34 of the Indian Penal Code, 1860. Following the

order of the learned Magistrate, the aforesaid F.I.R. was lodged before the Bhowanipore Police Station against four persons including petitioner nos.1 and 2 under Sections 384/379/506/34 of the Indian Penal Code, 1860.

6. An attempt was made by this Court to resolve the dispute between the parties amicably out of Court, leading to several adjournments of the case for this purpose. Regrettably, the parties informed this Court that the settlement talks had failed.

7. The learned advocate appearing for the petitioners, Mr. Dipanjan Dutta, has argued that there is no allegation against the petitioners in the F.I.R. that constitutes offences under Sections 384/379 of the Indian Penal Code. Furthermore, Mr. Dutta has contended that in respect of Section 506 of the Indian Penal Code, the only allegation relates to an alleged threat to sell the vehicle which cannot be deemed as a threat as it was the agreed-upon consequence of the Loan Recall Notice. On the contrary, it is apparent that through the complaint, opposite party no.2 sought to restrain the bank from exercising its right under the agreement.

8. Mr. Dutta has argued that the complaint does not disclose any allegation of hurt. The same is supported by the fact that Section 323 of the Indian Penal Code does not feature in the complaint. He has submitted that Section 506 of the Indian Penal Code is a non-cognizable offence. As there exists no cognizable offence, Section 506 of the Indian Penal Code cannot survive in isolation.

9. Finally, it has been argued by Mr. Dutta that it is manifestly impossible that the Zonal Manager or the Legal Head of the bank, the petitioners herein, would be involved in the affairs of a single loan account.

10. In support of his submission Mr. Dutta has placed reliance upon the judgments reported at **(2001) 7 SCC 417 (*Charanjit Singh Chadha v. Sudhir Mehra*), (1979) 4 SCC 396 (*Sardar Trilok Singh v. Satya Deo Tripathi*), (1996) 7 SCC 212 (*K.A. Mathai alias Babu v. Kora Bibbikutty*)** and **(2013) 1 SCC 400 (*Anup Sarmah v. Bhola Nath Sharma*)**.

11. Ms. Rituparna De Ghose, learned advocate appearing for opposite party no.2, on the contrary, has submitted that the prevalent law condemned illegal seizure of vehicle. If the bank takes recourse to illegal means that amounts to an offence under the Indian Penal Code, the Court must ensure that the proper investigation is done to bring out the truth and bring the offenders to book. It has been submitted that if an illegal seizure of a vehicle cannot make out the offence of threat and extortion, the threat given in the process of such seizure causing injury to a person or his reputation would amount to an offence.

12. She further contended that if in the process of illegal seizure, a man's reputation is injured, he can always pray for a remedy. The specific charges should be looked into as separate and independent of each other in accordance with the essential ingredients of the offences as disclosed. Since a specific case has been made in the complaint against the petitioner, an

investigation for all the charges alleged by the complaint must be conducted.

13. In support of such assertion, she has relied upon the judgment reported at **(2007) 2 SCC 711 (*ICICI Bank Ltd. v. Prakash Kaur*)**. She has also relied upon the guidelines namely, "A Fair Practices Code for Lenders" dated May 5, 2003, issued by the Reservice Bank of India to argue that the said guidelines mandate that before taking the decision to recall a loan, a lender should give due notice to the borrowers and a lender should not resort to undue harassment and use muscle power for recovery of loans.

14. The learned advocate appearing for opposite party no.2 has further relied upon a judgment reported at **(2008) 7 SCC 532 (*ICICI Bank v. Shanti Devi Sharma*)** to argue that a hire-purchase agreement does not entitle the financer to take back the possession of the vehicle by use of force.

15. By placing reliance upon the judgment reported at **(2020) 10 SCC 399 (*Magma Fincorp Limited v. Rajesh Kumar Tiwari*)**, the learned advocate appearing for opposite party no.2 has submitted that possession of the vehicle cannot be taken by physical violence, assault and/or criminal intimidation. Nor can such possession be taken by engaging gangsters, goons, and musclemen as so-called recovery agents.

16. It has been argued that the petitioners being the Zonal Head and Legal Head of the bank, influenced and directed their musclemen to seize

the vehicle of opposite party no.2 by force. The petitioners shared a common intention of illegally taking possession of the vehicle and thus both of them are liable to be prosecuted for such illegal act as if it were done by them in person.

17. It has further been contended that under the instructions and the specific directions of the petitioners, their officials threatened to sell the car and thereby threatened to cause injury to the property of the opposite party and further manhandled him causing injury to his person and thus, both of them committed offence of criminal intimidation as envisaged under Sections 503 and punishable under Section 506 of the Indian Penal Code, 1860.

18. It has been further asserted that even if the petitioners were not present at the place of occurrence of the offences, the said offences were committed under the instructions/directions and instigation of the petitioners. Therefore, the petitioners cannot be absolved of their liability for the commission of the offences.

19. Before delving into the merits of the case, it is necessary to acknowledge that this application pertains to the quashing of a First Information Report. The relevant part of the said F.I.R. is quoted below:

> "4. That while the said vehicle was plying from Ballygunge Phari through Nafar Kundu Lane and reach toward Chitta Ranjan Sishu Sadan Hospital (accused no.5) some muscle man numbering 5/6 persons with TATA Indica Car deadly weapon including fire arms and chased the complainant and forced to come down to complainant to said

> vehicle and the said persons seized the said vehicle from the complainant and took away all the documents lying with vehicle including money receipt, R.C. Book, Tax token, Insurance Certificate and other valuable papers and it was having within the jurisdiction of Bhowanipore P.S. and it was happening on 29-11-08 at about 01.30 p.m. and they have not supply any inventery list to the complainant.
>
> 5. That the accused No.1,2,3 & 4 in collusion with other accused persons forcibly took away the vehicle from the lawful possession of the Complainant of the said Vehicle.
>
> 6. That the Owner/Complainant made contact with the accused No.1, 2 & 3 i.e. H.D.F.C. Bank Ltd. official at Glinder House 8, N.S. Road, 1st Floor, Kokata-700001, at about 3.00 P.M. and requested to released the said vehicle, but the officials of the accused No.1,2, & 3 misbehaved and manhandled with the complaint and threatened to sell of the vehicle.
>
> 7. That the accused No.1 knowing the vehicle is stolen properly received the same and dishonestly restrain the same in collusion with the other accused persons. The vehicle as per section 410 of I.P.C. is stolen property."

20. To appreciate the controversy involved in the present case, at the outset, it has to be noticed that the relevant agreement is not a "Hire-Purchase" agreement but rather a "car loan agreement." Therefore, the defence of ownership of the vehicle is not available to the bank to justify taking possession of the vehicle.

21. In dealing with the issue of quashing an F.I.R. in such cases, it may not be necessary for the Court to address the ownership of the vehicle. The act of taking possession of a vehicle following a loan or a hire-purchase

agreement may not by itself give rise to a criminal proceeding. However, at the same time, it must be appreciated that the procedure adopted by the bank or financier for the re-possession of the vehicle should adhere to the procedure recognised by law. The bank cannot resort to the actions prohibited by the Indian Penal Code or any other applicable law in force.

22. The principle of law relating to quashing of an F.I.R. is well-settled. When the F.I.R. has been lodged with malice and the complaint does not show ingredients of a cognizable offence against the accused, the First Information Report may be quashed by the High Court in the exercise of its power under Section 482 of the Code of Criminal Procedure, 1973. **[See: (1992) Supp 1 SCC 335 (*State of Haryana v. Bhajan Lal*), AIR 1960 SC 866 (*R.P. Kapur v. State of Punjab*)** and **(2021) SCC OnLine SC 315 (*Neeharika Infrastructure Pvt. Ltd. V. State of Maharashtra*)].** There cannot be any departure from the said principles in dealing with an F.I.R. lodged against the possession of a vehicle at the behest of a financier or bank from the borrower. The same test as propounded in the aforesaid cases should be applied. If on the plain reading of the F.I.R. it appears that the financier or bank has taken recourse to the actions that constitute an offence under the Indian Penal Code or any other law, the F.I.R. cannot be quashed.

23. I am of the view that a plain reading of the present F.I.R. does not disclose commission of any offence under Sections 379 and 384 of the Indian Penal Code as there is no element of dishonest intention involved in

the present case against both the petitioners. Mr. Dutta has rightly relied upon paragraph 13 of the ***Charanjit Singh Chadha (supra)***, which reads as follows:

> "13. But in the instant case, the owner repossessing the vehicle delivered to the hirer under the hire-purchase agreement will not amount to theft as the vital element of "dishonest intention" is lacking. The element of "dishonest intention" which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer. It is appropriate to note that the term "dishonestly" is defined under Section 24 IPC as follows:
>
>> "24. 'Dishonestly'.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'."

24. The relevant F.I.R. also makes it clear that the only allegation against the petitioners is that they "misbehaved and manhandled with the complaint and threatened to sell of the vehicle."

25. Selling the vehicle cannot be perceived as a threat as it was the agreed-upon consequence in terms of the relevant loan agreement.

26. In my view, Mr. Dutta's argument that the "sale of the vehicle" neither can be viewed as a "threat" nor the means of avoiding it, is well founded.

27. The mere allegations of misbehaviour and manhandling in the F.I.R. also do not attract any provisions of the Indian Penal Code particularly

when no case of "hurt" within the meaning of Section 323 of the Indian Penal Code has been made out.

28. In view of the aforesaid, I do not see any justification for the continuation of the present criminal case against the petitioners.

29. Accordingly, the Bhowanipore P.S. Case No.315 dated December 21, 2008, under Sections 384/379/506/34 of the Indian Penal Code is quashed as against the petitioners.

30. C.R.R. No.1958 of 2009 is allowed and the connection application being I.A. No. C.R.A.N.1 of 2010 (Old No. C.R.A.N. 1165 of 2010) is disposed of.

31. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)