

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay.

CRR 2413 of 2013

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

For the petitioner	: Mr. Debashis Roy Mr. Kaushik Chatterjee Ms. Mouli Sarkar
For the State	: Mr. Narayan Prasad Agarwal Mr. Pratick Bose.
Heard on	: 19.12.2022
Judgement on	: 23.02.2023

ANANYA BANDYOPADHYAY, J.:

1. The instant revisional application under Section 482 of the Criminal Procedure Code has been filed to quash the proceedings being G.R. Case No. 441 of 2010 arising out of Baranagar P.S. Case No. 55 of 2010 dated 07.02.2010 under Sections 419/420/379/506/34 of the Indian Penal Code

pending before the Court of the Learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas.

- 2.** Baranagar P.S. Case No. 55 of 2010 dated 07.02.2010 was instituted on the basis of a written complaint dated 07.02.2010 filed by the opposite party No.2 which precisely stated that the opposite party No. 2 purchased a Tata Indica Car bearing Registration No. WB 02M8973 obtaining loan from the HDFC Bank Limited. The opposite party No.2 was asked to go near Dunlop Gurudwara to collect a gift as informed by one Mr. Tanmay on 07.02.2010 at about 11.30 A. M.. She reached the aforesaid spot and was further instructed over telephone to go near Sonali Cinema Hall. Subsequently her driver informed her on phone that two unknown persons compelled him to carry goods to the go-down, who forcefully boarded the vehicle and fled with the car threatening the driver. Later on the opposite party No. 2 identified those two persons to be the collection agent of the HDFC Bank Limited to have repossessed the vehicle along with the original papers of the car.
- 3.** Mr. Debashis Roy, learned advocate appearing for the petitioner submitted that the opposite party No.2 failed to pay monthly installments in consequence of the agreement with the

bank which propelled the bank to repossess the said vehicle through its recovery agents. Therefore the bank was justified in enuring such an act. The dispute being civil in nature, based on hire purchase agreement between the parties cannot be a subject matter of a proceeding before the criminal court. The present petitioner being the legal manager of HDFC Bank Limited had no role to play in the transaction between the parties and had been falsely implicated and the entire proceeding required to be quashed.

4. Mr. Narayan Prasad Agarwal, learned advocate for the state emphasized upon the materials present in the case diary implicating the present petitioner and submitted that the revisional application should be dismissed.
5. Admittedly the vehicle in question was removed from the possession of the opposite party No. 2 without her knowledge or proper explanation on the pretext of an allurement of gift coupled with an alleged threat upon the driver. Materials in the case diary consisting statements under Section 161 Cr. P.C. and 164 Cr. P.C. apparently presupposes the involvement of the petitioner in the alleged offence. However his extent of involvement or active participation can only be justifiably

revealed in trial. The power of the High Court under Section 482 Cr. P.C. is to be used sparingly and not randomly where elements of commission of an offence manifest in the facts on record. The instant proceedings cannot be quashed at its inception in view of the observation of Hon'ble Supreme Court enumerated in paragraphs 102 and 103 of the decision cited in **State of Haryana and Others – Vs.- Bhajanlal and Others¹**.

“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 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 channelized 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

¹ 1992 Supp (I) Supreme Court Cases 335

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.*

103. *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”*

6. The repossession of the vehicle by the said Bank does not fall within the purview of Section 379 IPC as observed by Hon’ble Supreme Court in **K. A. Mathai alias Babu & Anr. Vs Kora Bibi Kutty & Anr.**², **Charan Singh Chadha Vs Sudhir Mehra**³ and **Anup Sariuah Vs Bholanath Sharma & Ors**⁴. The violation of terms of a hire purchase agreement is a civil dispute. The concerned financial organisations dealing with grant of loan may devise proper mechanisms for direct repossession of vehicles in case of default on the part of the

² 1996 (7) sec 212

³ [2001] 7 sec 417]

⁴ .2013(1) SCC 400

borrower/loanee rather than resorting to devious tactics encouraging otherwise unscrupulous people to indulge in offences with myriad ramifications.

7. Allegedly a wrongful act in a civil dispute or attributive of criminal proceedings cannot be justified and absolved through the commission of another wrongful act. The allegation raised against the present petitioner is at its nascent stage and his participation in the alleged offence if at all will emerge through the trial and accordingly the instant revisional application is dismissed.
8. Case diary be returned to the learned advocate for the State.
9. There is no order as to cost.
10. 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.
11. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(ANANYA BANDYOPADHYAY, J.)