IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 3792 of 2009
CRAN 2 of 2010

SUMIT CHAKRABORTY
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioner	: Mr. Debasish Roy, Sr. Adv. Mr. Kaushik Chatterjee, Adv.
For the State	: Mr. Madhusudan Sur, Adv. Mr. Dipankar Paramanik, Adv.
Hearing concluded on	: 7th February, 2023
Judgement on	: 17th February, 2023

<u>Siddhartha Roy Chowdhury, J.:</u>

1. This application under Section 482 of the Code of Criminal Procedure challenges the proceeding being G.R. Case No. 1029 of 2009 in connection with Cokeoven P.S. Case No. 91 of 2009 dated 9th September, 2009 pending before the learned Additional Chief Judicial Magistrate, Durgapur, Burdwan under Section 420/406/323/506/34 of the Indian Penal Code.

2. Briefly stated, the petitioner no. 2, Smt. Ranjana Biswas filed a petition of complaint before the learned Chief Judicial Magistrate, Durgapur alledging, *inter alia,* that she was approached by HDFC bank to take a loan when she expressed her mind to purchase vehicle and accordingly hire purchase agreement was executed. The

complainant deposited a sum of Rs.6,974/- as advised by the borrower. On 16th March, 2009 the vehicle Tata Indica E3 was delivered to the complainant, which was registered on that very date bearing no. WB39A 2177. The complainant paid installments regularly till 29th May, 2009. On 28th August, 2009 when the said vehicle was stationed near Bankura More the accused persons with 2/3 unknown persons came and assaulted the driver, abused him, snatched the keys along with all connected papers, took his signature on some blank papers and left the place with the vehicle no. WB39A 2177 after intimidating the driver. The driver came and informed the complainant about the incident, who approached the police authorities but in vain. Learned A.C.J.M., Durgapur forwarded the said petition of complaint to the concerned police station and Cokeoven P.S. Case No. 91 of 2009 dated 9th September, 2009 was registered under Section 420/406/323/506/34 of the Indian Penal Code.

3. Mr. Debasish Roy, learned Senior Counsel has drawn my attention to the notice dated 3rd July, 2009 issued by the lender bank to the borrower Smt. Ranjana Biswas and on 29th August, 2009 the borrower was informed by the bank about repossession of vehicle. The police authority was also informed in writing. According to Mr. Roy, had there been any incident of assault or criminal intimidation as alleged by the complainant opposite party no. 2, the matter would have been brought to the notice of the police and police would have taken appropriate action. No such incident of assault ever took place.

The opposite party no. 2 has made a desperate attempt to paint the entire episode with the colour of criminality. In terms of agreement, the vehicle was given to the opposite party no. 2. She however, failed to discharge her obligation and her failure to pay installments in terms of agreement compelled financial institution to take repossession of the vehicle. There is no ingredient of offence under Section 420/406/323/506/34 of the Indian Penal Code as alleged.

4. In support of his contention Mr. Roy relies upon the judgements of Hon'ble Apex Court in the Case of ***Charanjit Singh Chadha & Ors. vs. Sudhir Mehra*** reported in **(2001) 7 SCC 355** and ***Surya Pal Singh vs. Siddha Vinayak Motors & Ors.*** reported in **(2012) 12 SCC 355**. I have perused the judgements of Hon'ble Apex Court. In *Charanjit Singh Chadha (supra)* Hon'ble Apex Court held:-

> *"5. Hire-purchase agreements are executory contracts under which the goods are let on hire and the hirer has an option to purchase in accordance with the terms of the agreement. These types of agreements were originally entered into between the dealer and the customer and the dealer used to extend credit to the customer. But as hire-purchase scheme gained popularity and in size, the dealers who were not endowed with liberal amount of working capital found it difficult to extend the scheme to many customers. Then the financiers came into picture. The finance company would buy the goods from the dealer and let them to the customer under hire purchase agreement. The dealer would deliver the goods to the customer who would then drop out of the transaction leaving the finance company to collect instalments directly from the customer. Under hire purchase agreement, the hirer is simply paying for the use of the goods and for the option to*

purchase them. The finance charge, representing the difference between the cash price and the hire purchase price, is not interest but represents a sum which the hirer has to pay for the privilege of being allowed to discharge the purchase price of goods by instalments.

11. The whole case put forward by the respondent-complainant is to be appreciated in view of the stringent terms incorporated in the agreement. If the hirer himself has committed default by not paying the instalments and under the agreement the appellants have taken re-possession of the vehicle, the respondent cannot have any grievance. The respondent cannot be permitted to say that the owner of the vehicle has committed theft of the vehicle or criminal breach of trust or cheating or criminal conspiracy as alleged in the complaint. When the agreement specifically says that the owner has got a right to re-possess the vehicle, there cannot be any basis for alleging that the appellants have committed criminal breach of trust or cheating."

5. In *Surya Pal Singh (supra)* Hon'ble Apex Court held:-

"*2. Under the hire-purchase agreement, it is the financier who is the owner of the vehicle and the person who takes the loan retains the vehicle only as a bailee/trustee, therefore, taking possession of the vehicle on the ground of non-payment of instalment has always been upheld to be a legal right of the financier. This Court vide its judgment in Sardar Trilok Singh v. Satya Deo Tripathi 1979 4 SCC 396 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 v. Kora Bibbikutty 1996 7 SCC 212. Jagdish Chandra Nijhawan v. S.K. Saraf 1999 1 SCC 119 and Charanjit Singh Chadha v.*

> *Sudhir Mehra 2001 7 SCC 417 following the earlier judgment of this Court in Sundaram Finance Ltd. v. State of Kerala AIR 1966 SC 1178: Lalmuni Devi v. State of Bihar 2001 2 SCC 17 and Balwinder Singh v. CCE 2005 4 SCC 146."*

6. From the attending facts of the case when it is admitted that the lender or financer took possession of the vehicle, pursuant to the agreement executed by and between the parties, it cannot be said that the lender committed offence within the meaning of Penal Code with the requisite mens rea and dishonest intention. At best it could be a civil dispute which has been imbibed with the colour of criminality.

7. In my humble opinion, this is the fit case to invoke the provision of Section 482 of the Code of Criminal Procedure to quash the proceeding of G.R. Case No. 1029 of 2009 pending before the learned Additional Chief Judicial Magistrate, Durgapur to avert abuse of process of law, which I accordingly do. The criminal revision is thus allowed.

8. Application, if any, stands disposed of.

9. Let a copy of this judgement along with lower Court record be sent to the learned Trial Court for information and necessary action.

10. Urgent certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)