IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 3245 of 2010

HDFC BANK LIMITED
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioner	: Mr. Sandipan Ganguly, Sr. Adv. Mr. Dipanjan Dutt, Adv. Mr. Amitava Mitra, Adv. Ms. Antara Choudhury, Adv.
For the State	: Ms. Faria Hossain, Adv. Ms. Baisali Basu, Adv.
Hearing concluded on	: 7th February, 2023
Judgement on	: 17th February, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 482 of the Criminal Procedure Code challenges the proceeding being Jadavpur P.S. Case No. 663 dated 7th December, 2009 under Section 384/323/12B/34 of the Indian Penal Code corresponding B.G.R. Case No. 6105 of 2009 pending before the learned Additional Chief Judicial Magistrate, Alipore.

2. Briefly stated, Subrata Mondal filed a petition of complaint before the learned Additional Chief Judicial Magistrate stating, *inter alia,* that on 28th November, 2009 at about 6.00 a.m. the driver engaged by Mr. Subrata Mondal, Sri Arjun Roy took the vehicle (lorry) registered as WB-41C-6717 to 8B Bus Stand when the accused persons came to

the spot and disclosed their identity as agents of HDFC Bank who came to seize the vehicle. The driver raised objection and he was assaulted. They forcefully snatched the key of the vehicle with all relevant papers and documents including cash. The driver brought the incident to the notice of the informant over phone. He contacted the bank and banker told that no person from the bank snatched or hijacked the vehicle from the driver of the complainant. The petition of complaint was forwarded to Jadavpur Police Station under Section 156 (3) of Cr.P.C. and Jadavpur P.S. Case No. 663 dated 7th December, 2010 was registered against the accused persons. The accused persons happen to be the petitioner before this Court.

3. Drawing my attention to the loan agreement Mr. Sandipan Ganguly, learned Senior Counsel submits that the informant purchased the vehicle taking loan from HDFC Bank but failed to pay the installments in terms of the agreement. This fact was brought to the notice of the opposite party no. 2 the borrower by notice dated 1st October, 2010 and in terms of said agreement bank took repossession of the vehicle which was duly informed to the complainant opposite party no. 2 by letter dated 16th November, 2009. Therefore, the banker did not have any mens rea to commit offence within the meaning of Section 384/323/12B/34 of the Indian Penal Code as alleged by the complainant.

4. According to Mr. Ganguly, under hire purchase agreement the hirer is simply paying the money for the use of the goods and for the option to purchase the same in accordance with the terms of the

agreement. If the hirer himself causes a breach of contract by not paying the installment under the agreement and the lender takes repossession of the vehicle, the hirer or borrower cannot have any grievance at all. According to Mr. Ganguly, under the hire purchase agreement the financer is the real owner of the vehicle and, therefore, there cannot be any allegation against him for having the possession of the vehicle. In support of his contention Mr. Ganguly relies upon the judgement 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 under the 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 B.G.R. Case No. 6105 of 2009 pending before the learned Additional Chief Judicial Magistrate, Alipore to avert abuse of process of law, which I accordingly do.

8. The criminal revision is thus allowed.

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.)