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29-03-2023
Ct. No.236
b.das

CRR No. 3444 of 2010

In the matter of : Ravi Agarwal ….petitioner.

Mr. Debasish Roy
Mr. Kaushik Chatterjee
Mr. T. Dey ….for the Petitioner.

Ms. Faria Hossain
Mr. A. Keshari …for the State.

Affidavit of service filed by the petitioner is taken on record.

This application under Section 482 of the Code of Criminal Procedure challenges the proceeding being A.C. Case No.417 of 2010 pending before the Court of Learned Additional Chief Judicial Magistrate, Alipore under Sections 341/379/352/504/506 of the Indian Penal Code.

Briefly stated, opposite party, Pawan Kumar Khemka lodged a diary with Jadavpur Police Station on 16.02.2010 and also informed the S.P. South 24 Parganas on 17th February, 2010 in writing.

On 16.02.2010 at about 5.30 p.m. Pawan Kr. Khemka being the opposite party herein was going to lawyer's chamber when some hoodlums claiming themselves as recovery/collection agents of HDFC Bank Ltd. wrongfully restrained his car having registration No.WB-20H-6893 in front of Big Bazar within the jurisdiction of Jadavpur P.S. and threatened him and his driver by showing revolver and forcibly pulled them down from the car and whisked away with the said car.

Drawing my attention to the document annexed to the petition of complaint Mr. Kaushik Chatterjee, learned counsel submits that the informant being the opposite party purchased the vehicle after obtaining loan from HDFC bank and for that loan agreement was executed by and between the parties. But the borrower failed to repay the loan in terms of the agreement. The vehicle was also sold in terms of the agreement.

In support of his contention Mr. Chatterjee 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."

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."

From the attending facts of the case when it is found that the lender or financer took repossession 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.

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 A.C. Case No.417 of 2010 pending before the Court of Learned Additional Chief Judicial Magistrate, Alipore to avert abuse of process of law, which I accordingly do. The criminal revision is thus allowed.

Application, if any, stands disposed of.

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

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

(Siddhartha Roy Chowdhury, J.)