IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 3447 of 2010

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

For the Petitioner	: Mr. Debasish Roy, Sr. Adv. Mr. Kaushik Chatterjee, Adv. Mr. Tirthankar Dey, Adv.
For the State	: Mr. Abhra Mukherjee, Adv. Mr. Gautam Banerjee, Adv.
Hearing concluded on	: 20th April, 2023
Judgement on	: 12th May, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 482 of the Code of Criminal Procedure challenges the proceeding being B.G.R. Case No. 5914 of 2008 in connection with Behela P.S. Case No. 529 of 2008 dated 17th December, 2008 pending before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas under Section 323/379/384/386/504/34 of the Indian Penal Code.

2. Briefly stated, the opposite party no. 2, Subhash Chakrborty filed a petition of complaint before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas alleging, *inter alia,* that Gopal Banerjee purchased the vehicle registered as WB-20H-6845 taking loan from HDFC Bank Gillander House Branch, N.S. Bose Road,

Kolkata-700001 and he was supposed to liquidate the loan by paying EMI of Rs. 9325/-. In the month of October a sum of Rs. 15,000/- was demanded by Ram Prosad Ghosh authorized representative of HDFC Bank from the complainant and also threatened him that if such amount is not paid he would take the vehicle from the complainant. On 21st April, 2008 at about 10.00/10.30 a.m. The complainant came from Thakurpukur to Behala Simultala Bazar when accused person stopped the vehicle and demanded money which the complainant failed to meet. He was assaulted by the accused persons and they snatched the vehicle. The complainant informed Behala Police Station but no action was taken by the police against the accused persons. Police recorded G.D. Entry No. 2252 of 2008. Thereafter, the complainant filed the petition of complaint. Learned Additional Chief Judicial Magistrate forwarded the petition of compliant under Section 156 (3) of the Code of Criminal Procedure to the Jurisdictional Police Station and Behala Police Station Case No. 529 of 2008 was registered against the HDFC Bank and others.

3. Mr. Debasish Roy, learned Senior Counsel adverted that sometime in the month of April, 2008 one Gopal Banerjee approached the bank for financial assistance as he wanted to purchase a motor vehicle. Bank agreed to finance a sum of Rs. 2,70,000/- and it was agreed that hirer would clear off financial liability by paying a sum of Rs. 9325/- per month for 36 months commencing from 5th April, 2008 and accordingly an agreement was executed. The borrower, however, failed to discharge his obligation, as a result, on 3rd October, 2008 the

bank recalled with the loan and informed the borrower accordingly calling upon him to pay a sum of Rs. 2,73,956.60/- within 7 days. But no action was taken on the part of the borrower in terms of said notice and bank was constrained to take repossession of the said vehicle. Subsequently, the vehicle was disposed of and the matter was informed to the hirer. Subsequently, this case was registered through the driver of the borrower.

4. My attention is drawn to the loan agreement and the notice dated 3rd October, 2008 addressed to Gopal Banerjee, and notice dated 21st November, 2008 informing the Officer-in-charge of Jadavpur Police Station about repossession of the vehicle. Factum of post repossession was also brought to the notice of Jadavpur Police Station by letter dated 11th November, 2008. Gopal Banerjee, the borrower was also informed about the repossession of the vehicle. On 3rd December Gopal Banerjee was informed about the disposal of the vehicle by the HDFC bank and this petition of complaint was filed before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas on 12th December, 2008 subsequent to the disposal of the vehicle. According to Mr. Roy, since the borrower failed to perform his part of contract and did not pay the money back to the bank, following the terms of agreement and due process bank took possession of the vehicle. There is no ingredient of offence within the meaning of Section 323/379/384/386/506/504/34 of the I.P.C.

5. 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.*
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> *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."*

6. 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."*

7. 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. B.G.R. Case No. 5914 of 2008 in my view is attended with malafide.

8. 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. 5914 of 2008 pending before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas to avert abuse of process of law, which I accordingly do. 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 photostat 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.)