

15.5.2023

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C.R.R. 3952 of 2011

In the matter of : HDFC Bank Ltd.

Mr. Surojit Saha
Mr. Amitava Mitra
Mr. Subhadip Banerjee
...for the petitioner.

Mr. Binoy Panda
Ms. Pushpita Saha
...for the State.

. Heard Mr. Saha, learned counsel for the petitioner and Mr. Panda, learned counsel for the State.

This revisional application challenges the legality of the proceeding in B.G.R.Case No. 3138 of 2010 pending before the learned Chief Judicial Magistrate, Alipore corresponding to Jadavpur Police Station Case No. 317 dated 16.6.2010 under Section 392 of the Indian Penal Code.

Briefly stated, on 16th June, 2010, the Officer-in-Charge of Jadavpur Police Station was informed by Sanjay Prasad, the opposite party no. 2 herein, that four persons wrongfully restrained the driver of his vehicle, Indica Car registered as WB06-1918 on 15th June, 2010 at about 11-00 p.m. in the night while he was about to cross Ganguly More, snatched the Car, Mobile Phone

and the sum of Rs. 1,500/-. Since the information disclosed is an offence cognizable nature Jadavpur Police Station Case No. 317 dated 16th June, 2010 was registered. Police took up.

It was submitted by Mr. Saha on behalf of the petitioner that HDFC Bank lent money to the opposite party no. 2 as he wanted to purchase the vehicle. An agreement was entered into by and between the parties. In terms of that agreement, the borrower was supposed to liquidate the debt by 60 equal monthly instalments at the rate of Rs. 7294/- per month which he failed to pay and thereby failed to perform his obligation in terms of agreement. Subsequently, the bank took repossession of the vehicle in terms of the agreement. Suppressing the aforesaid fact FIR was filed on 16th June, 2010 and on that very day Sanjay Prasad, the opposite party no. 2 wrote a letter to the Bank Manager of HDFC, Netaji Subhas Road, Kolkata-700 001 recording the fact that a settlement was arrived at by and between the bank and the borrower and he wanted to withdraw the case.

The petitioner HDFC bank lent money and the borrower upon execution of hire purchase agreement. The opposite party/complainant

possessed the vehicle as trustee of the bank. As he fails to –repay the loan, and the bank takes the vehicle to it's possession, it does not amount to any offence within the meaning of the Indian Penal Code.

Moreover, I find that against four persons police registered a case under Section 392 of the I.P.C.

Considering as such, I am of the view that this proceeding should not be allowed to remain in force as it is attended with mala fide and in order to avert the abuse of process of law. I am inclined to quash the BGR Case No. 3138 of 2010 arising out of Jadavpur P.S.Case No. 317 dated 16.6.2010.

Affidavit of service is taken on record.

Let a copy of this order along with LCR be sent down to the trial court forthwith.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Siddhartha Roy Chowdhury, J)