

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 4190 of 2009

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 : Mr. N.P. Agarwal, Adv.
Mr. Pratick Bose, 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 of Domjur P.S. Case No. 428 dated 9th November, 2009 corresponding proceeding of G.R. Case No. 3599 of 2009 pending before the learned Chief Judicial Magistrate, Howrah under Section 392 of I.P.C.
2. Briefly stated, on 9th November, 2009, Manoj Mondal, the opposite party no. 2 informed the Officer-in-charge of Domjur Police Station in writing that his wife Sudha Mondal purchased one Maruti Wagon R vehicle which was registered as WB-12A/3611, eight months prior to the incident. On 9th November, 2009 at about 9 a.m. two unknown

persons came and introducing themselves as the representatives of Maruti Company disclosed that their company was going to present a gift which was to be collected from Kolkata. Previously on 6th September, 2009 the identical information was given to his wife over phone. The informant with his friend Raju Bhunia and those two persons accordingly proceeded towards Kolkata. The informant was driving the vehicle; one of the two persons was sitting by his side while his friend and another person were on the rear seat. When the vehicle arrived near Saraswati Bridge at NH-6, the person sitting by his side requested him to stop the car as he wanted to urinate. After relieving himself that person requested the informant to allow him to drive. He gave the key. At about 12.00 p.m. when the vehicle reached at Kona Expressway the said person suddenly stopped the vehicle and requested him to bring a cigarette from the nearby shop. When he got down those persons forced his friend to leave the vehicle and whisked away with the vehicle. He informed Chatterjee Hat Fari (TOP) and he was told to go to Shibpur Police Station but police did not take his complaint.

3. The information since disclosed offence cognizable in nature Domjur P.S. Case No. 428 of 2009 was registered.
4. Mr. Sandipan Ganguly, learned Senior Counsel, drawing my attention to the document annexed to the petition stated that the informant did not disclose the fact that his wife purchased the car taking loan from HDFC bank and in terms of the agreement the borrower failed to pay the installments. Notice was given to the

borrower on 2nd November, 2009 indicating her failure to act in terms of the agreement and on 9th November, 2009 repossession intimation was given after taking possession of the vehicle to Shibpur Police Station. Even by letter dated 9th November, 2009, the borrower was intimated about the action on the part of the lender. Therefore, there is no ingredient of offence within the meaning of Section 392 of the I.P.C.

5. 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 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 financier 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 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.”

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 financier 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 I.P.C. 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.
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 G.R. Case No. 3599 of 2009 pending before the learned Chief Judicial Magistrate, Howrah 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 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.)