IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 4070 of 2011
CRAN 1 of 2012

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

For the Petitioner	: Mr. Dipanjan Dutta, Adv. Mr. Surojit Saha, Adv. Mr. Amitava Mitra, Adv. Mr. Subhadip Banerjee, Adv. Ms. Antara Choudhury, Adv.
For the State	: Mr. Binay Panda, Adv. Ms. Puspita Saha, Adv.
Hearing concluded on	: 1st March, 2023
Judgement on	: 1st March, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 482 of the Criminal Procedure Code impeaches the proceeding being B.G.R. Case No. 2850 of 2010 pending before the learned Additional Chief Judicial Magistrate, Alipore corresponding to Jadavpur P.S. Case No. 288 dated 3rd June, 2010 registered under Section 392/114 of the Indian Penal Code.

2. Briefly stated, on 4th June, 2010 a petition of complaint was taken out by Bhubaneswar Jadav, the opposite party no. 2 under Section 156 (3) of the Cr.P.C. before the learned Chief Judicial Magistrate, Alipore. The same was admitted and registered as Complaint Case No.

A.C. 360 of 2010. It was alleged that on 8th February, 2010, the petitioner, was coming from Dum Dum Airport to his place of work driving the vehicle registered as WB1650194. On the crossing of Ruby Hospital one Maruti Van came in front of him and restrained the complainant. Six persons alighted from the van and directed the complainant to come out of the vehicle on gun point. They were also armed with iron rods. They were looking for Ajit Kumar Shil, the employer of the complainant, disclosing their identity and further stating that they were engaged by HDFC Bank Limited. Those miscreants took the vehicle with them after physically abusing the complainant. Soon thereafter, the complainant informed the Officer-in-charge of Patuli Police Station and G.D. was registered vide G.D. No. 299 dated 8th February, 2010. The complainant, thereafter, informed his employer and the O.C. Jadavpur Police Station as well as Superintendent of Police on 10th February, 2010 and 12th February, 2010 respectively but in vain. It is adverted that the vehicle which was driven by the complainant was owned by M/s Arena Hotel Private Limited financed by HDFC Bank Limited. Learned A.C.J.M., Alipore forwarded the petition of complaint to the Jadavpur Police Station and Jadavpur Police Station Case No. 288 was registered under Section 392/114 of the I.P.C. on 3rd October, 2010.

3. Admittedly the loan agreement was executed on 19th September, 2006. The bank took re-possession of vehicle on 8th February, 2010 and informed the police about the post-repossession on 8th February, 2010. The pre-sale notice was given to the borrower on 9th February,

2010 and post-sale notice was given to the borrower on 6th March, 2010, while the FIR was lodged on 3rd June, 2010.

4. Mr. Dipanjan Dutta, learned Counsel representing the petitioner, drawing my attention to the document annexed by the petitioner adverted that the vehicle was purchased in the name of M/s Arena Hotel Private Limited with the financial assistance of HDFC Bank Limited. Ajit Kumar Shil being the Director of the Company represented the said company and car loan agreement was executed by and between the Ajit Kumar Shil and the petitioner and a sum of Rs. 4,90,000/- was lent by the bank and the borrower was supposed to repay the loan by 60 equal monthly installments by Rs. 11,090/-, first of which was payable on October, 2006. Annexure P2, the loan agreement reflects the fact. But the borrower did not repay the money in terms of the agreement despite the pre-repossession notice, and the jurisdictional police was also intimated. Subsequent thereto, petitioner took possession of the vehicle and informed the borrower accordingly on 9th February, 2010 by writing a letter, as well as informed the jurisdictional police station in writing.

5. According to Mr. Dutta the bank acted in terms of the agreement and cannot be said to have committed any offence within the meaning of Section 392/114 of the Indian Penal Code.

6. It is adverted by Mr. Dutta, 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. Dutta, 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. Dutta 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."

7. 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."*

8. 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. The criminal proceeding thus is attended with mala fide.

9. In my humble opinion, in the given facts and circumstances, this is 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. 2850 of 2010 pending before the learned Additional Chief Judicial Magistrate, Alipore to avert abuse of process of law, which I accordingly do.

10. The criminal revision is thus allowed. Application, if any pending, stands disposed of.

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

12. 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.)