IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 4074 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. Mr. Subham Bhakat, Adv.
Hearing concluded on	: 1st March, 2023
Judgement on	: 1st March, 2023

<u>Siddhartha Roy Chowdhury, J.:</u>

1. This application under Section 482 of the Criminal Procedure Code has been filed for quashing of the proceeding being G.R. Case No. 189 of 2010 pending before the learned Additional Chief Judicial Magistrate, Serampore corresponding to Serampore P.S. Case No. 65 dated 2nd March, 2010 registered under Section 384/386/387 of the Indian Penal Code.

2. Briefly stated, the opposite party no. 2 on 4th February, 2010 filed a petition of complaint before the learned Additional Chief Judicial Magistrate, Serampore, registered as Complaint Case No. 7 of 2010

stating, *inter alia,* that he was the registered owner of vehicle bearing no. WB 20H3006. On 13th January, 2010 at about 4.30 p.m. when he was plying the vehicle which is where five unknown persons riding TATA Indica car, stopped him near Moods Bar & Restaurant under Police Station Serampore. They snatched the key of the vehicle, sum of Rs. 5000/- and fled away with the vehicle. They were armed with weapons. At about 5.30 p.m. he informed the duty officer of Serampore P.S. who refused to accept any complaint. On 14th January, he sent his complaint to the Superintendent of Police Hooghly SDPO, Serampore and I.C. Serampore but in vain. Learned A.C.J.M., Serampore, however, forwarded the petition under Section 156 (3) to the jurisdictional police station and Serampore P.S. Case No. 65 of 2010 was registered on 2nd March, 2010.

3. It is contended by Mr. Dipanjan Dutta, learned Counsel for the petitioner that the opposite party no. 2, at whose instance the criminal proceeding was set into motion, purchased the vehicle in question after obtaining car loan to the tune of Rs. 2,99,000/-. An agreement was entered into by and between the banker and the borrower and in terms of the said agreement the borrower was supposed to repay the loan by 60 equal monthly installments of Rs. 6985/- and first of which was to be paid on 7th August, 2008. But the borrower failed to act in terms of the agreement, he paid only 30 installments out of 60. The banker gave notice to the borrower requesting him to act in terms of the agreement and ultimately was compelled to take re-possession of the vehicle on 13th January, 2010

and thereby informed the jurisdictional Police Station. Thereafter, borrower was informed about such re-possession on 14th January, 2010. The borrower since failed to repay the loan. The pre-sale notice of the vehicle was given on 14th January, 2010 and post-sale notice was given on 29th January, 2010.

4. In support of such contention Mr. Dutta, learned Counsel representing the petitioner makes me go through the copy of the loan agreement and copy of the documents he was referring to, as annexed to the petition under consideration. It is further contended that FIR was registered on 2nd March, 2010 on false pretext by suppression of material facts.

5. According to 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. It is adverted by 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.*
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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 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.

8. 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 G.R. Case No. 189 of 2010 pending before the learned Additional Chief Judicial Magistrate, Serampore to avert abuse of process of law, which I accordingly do.

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

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

11. 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.)