IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 4091 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

Siddhartha Roy Chowdhury, J.:

1. This application under Section 482 of the Criminal Procedure Code impeaches the proceeding being B.G.R. Case No. 4235 of 2010 pending before the learned Additional Chief Judicial Magistrate, Alipore corresponding to Jadavpur P.S. Case No. 438 dated 10th August, 2010 registered under Sections 384/386/504/506 of the Indian Penal Code.

2. Briefly stated, the opposite party no. 2 filed a petition of complaint before the learned Additional Chief Judicial Magistrate, Alipore registered as Case No. C-3346 of 2010 alleging, *inter alia,* that

sometime in the year 2007 he purchased a Tata Sumo Car on hire purchase basis, duly financed by HDFC Bank Limited. A car loan agreement being 11487589 was executed by and between the parties and the petitioner was supposed to repay the loan by 36 equal monthly installments at the rate of Rs. 8677/-. He paid 26 EMIs to the banker in order to repay the loan which he incurred while purchasing the vehicle registered as WB-02R/0437. Sometime in the month of December, 2009, he received a phone call from the banker and came to know that bank wanted to present a gold card which he was to receive on 16th January, 2010 at about 5.00 p.m. from in front of Big Bazaar at Ganguly Bagan. He was requested to come by the said vehicle. Relying upon such representation the opposite party no. 2 went to such destination on 16th January, 2010 at the given time. When he got in touch with the person over phone accused no. 2, 3 and 4 came and disclosed their identity as agent of HDFC Bank Limited and another person introduced himself as manager of HDFC Bank Limited. Thereafter, the complainant was requested to get down from the car in order to collect the gold card. The complainant and his wife in good faith got down from the vehicle. Suddenly the accused persons snatched the keys of the vehicle from the complainant and fled away with the vehicle. Thereafter, he was informed by petitioner that due to non-payment of EMIs the bank had taken repossession of the vehicle and was asked to pay a sum of Rs. 1,30,000/- in order to get back the vehicle. When he went to the bank with money he was told that the vehicle was disposed of. He informed the jurisdictional Police Station as well as Superintendent of Police, South 24 Parganas but in vain. A petition of complaint was filed before the Jurisdictional Magistrate, which was forwarded to the Officer-in-charge of Jadavpur Police Station under Section 156 (3) of the Cr.P.C. and Jadavpur P.S. Case No. 38 dated 10th August, 2010 was registered under Section 384/386/506/504 of the I.P.C.

3. Admittedly the loan agreement was executed on 20th July, 2007. The bank took re-possession of vehicle on 13th January, 2010 and informed the police about the post-repossession on 13th January, 2010. The pre-sale notice was given to the borrower on 14th January, 2010 and post-sale notice was given to the borrower on 29th January, 2010, while the FIR was lodged on 2nd March, 2010.

4. According to Mr. Dipanjan Dutta, learned Counsel for the petitioner, 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 taking 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."

5. 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."*

6. 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.

7. 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. 4235 of 2010 pending before the learned Additional Chief Judicial Magistrate, Alipore to avert abuse of process of law, which I accordingly do.

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

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.)