

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 4444 of 2008

JOYANTA ROY & ANR.

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 Code of Criminal Procedure challenges the proceeding of G.R. Case No. 808 of 2008 pending before the learned Chief Judicial Magistrate, Purba Midnapore arose out of Tamluk P.S. Case No. 206 dated 13th September, 2008 under Section 379/411 of the Indian Penal Code.
2. Briefly stated, the opposite party no. 2 filed a petition of complaint before the learned Chief Judicial Magistrate, Purba Midnapore on 13th September, 2008, stating, *inter alia*, that he had purchased a vehicle bearing registration no. WB-29/7255 with financial assistance from L & T Finance Limited. He paid fourteen installments but failed to pay

two installments. On 28th November, 2007, the said vehicle loaded with mustard worth Rs. 5,59,000/- was stationed near the office of District Magistrate. The driver and khalasi of the truck were having food and in their absence the 'goondas' of L & T Finance Limited took away the vehicle. It was further alleged that police despite having knowledge refused to take any action despite being informed by the complainant. The said petition of complaint was forwarded to Tamluk Police Station under Section 156 (3) of the Cr.P.C. and Tamluk P.S. Case No. 206 dated 13th September, 2008 was registered. Police took up investigation of the case.

3. Mr. Sandipan Ganguly, learned Senior Counsel representing the petitioner of this case submits that admittedly the borrower purchased the vehicle with the financial assistance from the L & T Finance Limited and failed to pay installments in terms of the loan-cum-hypothecation agreement. Drawing my attention to the clause (12) which speaks of event of default, Mr. Ganguly submits that in the event of non-payment of installments by the borrower, the lender acquires the right to repossess, sell and otherwise dispose of hypothecated vehicle in question. Therefore, in terms of the agreement the company took action only after the borrower failed to honour the undertaking given by him on 5th November, 2007. The company took repossession of the vehicle and accordingly informed the local police station on that date itself about such fact. Therefore, there cannot be any reason to implicate the petitioners who were the employees of the L & T Finance Limited for committing offence under

Section 379/411 of the I.P.C. 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 is 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.”

4. 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.”

5. From the attending facts of the case when it is admitted that the lender or financier took possession of the vehicle, pursuant to the agreement executed by and between the parties, it cannot be said that the lender committed offence of theft with the requisite mens rea and dishonest intention. At best it could be a civil dispute which has been imbued with the colour of criminality.
6. 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. 808 of 2008 pending before the learned Chief Judicial Magistrate, Purba Midnapore to avert abuse of process of law, which I accordingly do. The criminal revision is thus allowed.
7. Let a copy of this judgement along with lower Court record be sent to the learned Trial Court for information and necessary action.
8. 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.)