

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3874 of 2011

Paromita Sengupta

-Vs-

The State of West Bengal & Anr.

For the Petitioner : Mr. Santanu Talukdar
(*Amicus Curiae*)

For the O.P. No. 2 : Mr. Arkadeb Bhattacharya
(*Amicus Curiae*)

Heard on : 09.10.2023

Judgment on : 08.01.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by petitioner praying for quashing of the proceeding of Complaint Case No. 39C of 2011 under Section 347 of the Indian Penal Code pending before the Court of the Learned Chief Judicial Magistrate at Howrah.
2. The petitioner's grievance is against a complaint filed by the opposite party no. 2 which inter alia stated as follows :-
 - a) The complainant/opposite party no. 2 availed a loan of Rs. 11,35,000/- from Tata Motors Finance Limited which was sanctioned on 28.02.2009 for a period of 46 months.

- b) The complainant/opposite party no. 2 returned a sum of Rs. 3,54,950/- against the outstanding dues till the date of filing of the complaint case. The last date of such payment was on 29.11.2010.
 - c) Thereafter the complainant/opposite party no. 2 proposed to settle the issue with the company amicably and the same was placed before the Lok Adalat held at the Judges' Court at Hooghly on 11.12.2010 vide (PLC No. 4415/12/2010) for its settlement. However, the Advocate appearing for the company did not settle the matter declaring her incapacity.
 - d) Thereafter, on 18.12.2010 the company seized the complainant/opposite party no. 2's truck bearing registration no. WB 15 A 6693, chassis no. 444027LSZ 744590, Engine No. 697TC57LSZ8A3766 at Dankuni and has parked the seized truck at Chamriel within Liluah P. S. and issued a receipt gleaning the signature of the driver.
3. Petitioner stated that the complainant/opposite party no. 2 approached the Court of the Learned Chief Judicial Magistrate at Howrah to register a complaint under the provisions of Section 156 (3) of the Code of Criminal Procedure, 1973 alleging commission of offences punishable under Sections 347/392/34 of the Indian Penal Code.
4. Subsequently the Learned Chief Judicial Magistrate at Howrah after taking cognizance issued summons in the aforesaid complaint case.
5. Apparently that the complainant/opposite party no. 2 and Tata Motors Finance Limited had entered into a Loan Agreement for financing the commercial vehicle purchased by the complainant/opposite party no. 2 under certain terms and conditions more fully described in the Agreement.

6. Heard the submissions of Learned Amicus Curiae for both the parties.
7. The Learned Amicus Curiae appearing for the petitioner submitted that the principle of vicarious liability cannot be applicable to offences under the Indian Penal Code. It is only when an officer of a company is personally liable for commission of an offence done in exercise of his official duties that such officer of the erring company can also be responsible for commission of such offence.
8. In the instant case it is apparent that there is no participation of the petitioner in her capacity as the Branch Manager of Tata Motors Finance and in such circumstances, issuance of process against the petitioner is palpably erroneous. In such circumstances, the proceeding impugned, so far as it relates to the present petitioner, is liable to be quashed forthwith by this Hon'ble Court.
9. Section 347 of the Indian Penal Code provides punishment for wrongful confinement to extort property or constrain to illegal act. The primary ingredients of the offence under Section 347 of the Indian Penal Code are (a) the accused confined a certain person; (b) such confinement was wrongful; and (c) such confinement was for the purpose (a) extorting from the confined person or any other person interested in his property or valuable security or (b) constraining the doing of an illegal act by the confine or any person interested in him; or (c) giving any information facilitating the commission of any offence.
10. It is apparent that unless either of the above requirements are met through the act of the petitioner, the offence under Section 347 of the Indian Penal

Code cannot be said to be made out. In the instant case, the allegations leveled in the complaint petition, as made by the complainant/opposite party no. 2, regarding the act of the petitioner, do not meet the requirement of wrongfully confining the opposite party no. 2 to extort the property from the custody of the opposite party no. 2. In the instant case, it is alleged that the petitioner had purportedly and wrongfully confined the opposite party no. 2 to extort property from his custody. Such action cannot make out the offence under Section 347 of the Indian Penal Code. In such circumstances, the charge under Section 347 of the Indian Penal Code is clearly misconceived and the proceeding impugned is thus liable to be quashed.

11. From a perusal of the petition of complaint of the proceeding impugned as also the statement of the complainant/opposite party no. 2 recorded on solemn affirmation it would appear that the opposite party no. 2 had admitted his default in making payment of the monthly installments in consonance with the terms of the Agreement executed with Tata Motors Finance, on the basis of which credit facility has been provided to the opposite party no. 2. The said Agreement clearly provided that failure on the part of the borrower to pay his dues in consonance with the terms and conditions provided under the Agreement would entitle Tata Motors Finance to take repossession of the vehicle. In such circumstances, where failure to subscribe payment of the monthly installments stand admitted by the opposite party no. 2/complainant/borrower, seizure of the vehicle in question by Tata Motors Finance cannot be termed to be an illegal act and on the contrary, is an act which is in consonance with the terms of the

Agreement executed by the opposite party no. 2. In such circumstances, no offence under Section 347 of the Indian Penal Code can be said to be made out as no repossession can be done without stopping the vehicle.

12. Reliance was placed by the Learned Amicus Curiae for opposite party in the case of **National Bank of Oman vs. Barakara Abdul Aziz and Another**¹, the Hon'ble Supreme Court observed as follows :-

“7. The High Court took [Barakara Abdul Aziz v. National Bank of Oman, Criminal Application No. 3146 of 2012, decided on 3-10-2012 (Bom)] the view that prima facie the bare allegation of cheating did not make out a case against the accused for issuance of process under Sections 418 or 420 IPC. Further, it was held that the CJM did not follow the procedure laid down under Section 202 CrPC. The High Court held that the Magistrate was obliged to postpone the process against the accused and either enquire into the case himself or direct an investigation to be made by a police officer or by such other officer as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding in a case where the accused is residing beyond the area in which the Magistrate exercises his jurisdiction. The High Court noticed that the accused is a resident of District Dakshin Kannada, Karnataka and hence, the CJM should have followed the procedure laid down in Section 202 CrPC. The High Court, therefore, set aside the order dated 25-2-2011 issuing the process under Sections 418 and 420 IPC by the CJM, Ahmednagar. Aggrieved by the said order the Bank has come up with this special leave petition.

8. We find no error in the view taken by the High Court that the CJM, Ahmednagar had not carried out any enquiry or ordered investigation as contemplated under Section 202 CrPC before issuing the process, considering the fact that the respondent is a

¹ (2013) 2 SCC 488

resident of District Dakshin Kannada, which does not fall within the jurisdiction of the CJM, Ahmednagar. It was, therefore, incumbent upon him to carry out an enquiry or order investigation as contemplated under Section 202 CrPC before issuing the process.

9. *The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:*

- (i) on the materials placed by the complainant before the court;*
- (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and*
- (iii) for deciding the question purely from the point of view of the complainant without at all advertting to any defence that the accused may have.*

10. *Section 202 CrPC was amended by the Code of Criminal Procedure (Amendment) Act, 2005 and the following words were inserted:*

“and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,”

The notes on clauses for the abovementioned amendment read as follows:

“False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this

clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.”

The amendment has come into force w.e.f. 23-6-2006 vide Notification No. S.O. 923(E) dated 21-6-2006.

12. *All the same, the High Court instead of quashing the complaint, should have directed the Magistrate to pass fresh orders following the provisions of Section 202 CrPC. Hence, we remit the matter to the Magistrate for passing fresh orders uninfluenced by the prima facie conclusion reached by the High Court that the bare allegations of cheating do not make out a case against the accused for issuance of process under Section 418 or 420 IPC. The CJM will pass fresh orders after complying with the procedure laid down in Section 202 CrPC, within two months from the date of receipt of this order.”*

13. The complaint filed by the opposite party no. 2 precisely stated that the Tata Motors Finance Ltd. had granted him a loan of Rs.11,35,000/- on 28.02.2009 to be repaid in 46 months. The complainant-opposite party no. 2 repaid an amount of Rs. 3,54,950/- against the aforesaid loan amount and there was a dispute concerning the payment of the balance amount. In order to resolve the issue resort to the Lok Adalat at Judge’s Court, Hooghly on 11.12.2010 was exercised. However, the same did not materialize. Subsequently, on 18.12.2010, the Tata Motors Finance Ltd. seized the complainant’s truck bearing Registration No. W.B. 15-A 6693, Chasis No. 444027LSZ-744590, Engine No. 697TC57LSZ8A3766 at Dankuni which was

parked at Chamriel within the jurisdiction of Liluah P.S. and a receipt was issued with signature of the driver. The complaint did not specifically denote the role of the present petitioner in commission of the alleged offence. Moreover, till the repayment of loan with regard to the hypothecated truck the finance company namely Tata Motors Finance Ltd. was the owner of the vehicle. Repossession of the said vehicle in case of a default on the part of the finance company as aforesaid does not constitute an offence in any manner.

14. The complaint did not categorize the overt act of the petitioner to be implicated in the alleged offence which is cognizable in nature.
15. In view of the decision cited in the case of **State of Haryana and Others v. Bhajan Lal and Others**² the Hon'ble Supreme Court has held as follows :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in

² 1992 Supp (1) SCC 335

their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

16. In **Suryapal Singh V. Siddha Vinayak Motors And Anr.**³, the Hon’ble Supreme Court observed as follows:

³ (2012) 12 SCC 355

“2. Under the Hire Purchase Agreement, it is the financier who is the owner of the vehicle and the person who takes the loan retain the vehicle only as a bailee/trustee, therefore, taking possession of the vehicle on the ground of non-payment of installment has already been upheld to be a legal right of the financier. this Court vide its judgment in Trilok Singh and Ors. v. Satya Deo Tripathi 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 alias Babu and Anr. v. Kora Bibbikutty and Anr.; Jagdish Chandra Nijhawaa v. S.K. Saraf and Charanjit Singh Chadha and Ors. v. Sudhir Mehra, following the earlier judgment of this Court in Sundaram Finance Ltd. v. State of Kerala and another; Smt. Lalmuni Devi v. State of Bihar and Ors. and Balwinder Singh v. Asstt. Commissioner, C.C.E.

3. In view of the above, prima facie we are of the view that the courts below has committed an error in granting compensation to the present Petitioner and which appears to be non-sustainable in law.”

17. In **Tata Motors Finance Limited V. State of West Bengal**⁴, the Hon’ble Calcutta High Court observed as follows:

“Now from records, it appears that before repossessing the vehicle the notice was issued to the de facto complainant of the case, opposite party no. 2 and both the pre-repossession intimation and post repossession intimation were sent to the concerned police station. The position has not been disputed by the learned counsel of the opposite party except that relying on a decision of the Hon’ble Apex Court in the case of Manager, ICICI Bank Limited v. Prokash Kaur reported in AIR 2007 Supreme Court 1349, he contended the recovery of bank loans and seizure of vehicle can only be done only through legal means and not in the way resort to by the petitioner.

Thus from the rival submissions of the parties and materials available from the records, I find this is a case where the financier repossessed a vehicle invoking the default clause contained in the hire purchase

⁴ 2013 SCC OnLine Cal 18655

agreement for non-payment of the instalments amount. Having regard to that no criminal offence can said to have been committed. In this regard reliance may be placed in the case of Trilok Singh v. Satya Deo Tripathi reported in AIR 1979 SC 850. The view taken by the Hon'ble Apex Court in the said case has been reaffirmed in the case of K.A. Mathai @ Babu v. Kora Bibbikutty reported in (1996) 7 SCC 212 as well as in the case of Charanjit Singh Chaddya v. Sudir Mehera reported in (2001) 7 SCC 417.

This criminal revision accordingly succeeds and the impugned complaint is quashed.”

18. Under the facts and circumstances of the case and the decisions cited above, the instant revisional application is allowed.
19. Under such facts and circumstances, the proceeding of Complaint Case No. 39C of 2011 under Section 347 of the Indian Penal Code pending before the Court of the Learned Chief Judicial Magistrate at Howrah is quashed.
20. There is no order as to cost.
21. I record my appreciation for the able assistance rendered by Learned Advocates, Mr. Santanu Talukdar, and Mr. Arkadeb Bhattacharya as *Amicus Curiae* in disposing of the criminal revisional application.
22. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
23. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)