**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2614 OF 2023

1. Pravin Anandrao Shinde,
Age : 38 Years, Occ. Territory Collection Manager,
TVS Credit Services Limited,
R/o Rahuri, Tq. Rahru, Dist. Ahmednagar.

2. Gopal Datta Gawade,
Age : 39 Years, Occ. Area Collection Manager,
TVS Credit Services Limited
R/o. Ramauli Sankul, Zopadi Canteen,
Newasa Tq. Newasa,
Dist. Ahmednagar. ..Applicants.

VERSUS

1. The State of Maharashtra,
Through Police Station, Newasa,
Taluka Newasa, Dist. Ahmednagar.

2. Mrs. Shobha Popatrao Naik,
Age : 44 years, Occ. Household,
R/o. Savatanagar, newasa Khurd,
Tq. Newasa, Dist. Ahmednagar. .. Respondents

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Advocate for the Applicants : Mr. P.B.Kulkarni h/f
Mr. M.D. Narwadkar
A.P.P for Respondent State : Mr. S. A. Gaikwad
Advocate for Respondent No.2 : Mr. A. V. Hon

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**CORAM : SMT. VIBHA KANKANWADI AND
R. W. JOSHI, J.J.**

DATED : NOVEMBER 22, 2024

ORDER (PER SMT. VIBHA KANKANWADI J.):-

1. Present application has been filed for quashing the First Information Report vide Crime No. 665 of 2023 dated 17.06.2023 registered with Newasa Police Station, District Ahmednagar for the offences punishable under Sections 392, 363, 511 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate for the applicants. Learned A.P.P. and learned Advocate for respondent No.2.

3. The learned Advocate for the applicants submits that the applicants are the employees of TVS Credit Services Limited. Applicant No.1 is working as Territory Collection Manager and applicant No.2 is working as Area Collection Manager. The TVS Credit Services Limited is a company incorporated under the Companies Act 1956 and is non banking financial company. The Bank/ the said company is engaged in lending money for commercial purposes and also doing the business of giving various types of loans including vehicle loan. The informant was the borrower, who purchased the two wheeler vehicle from TVS Credit Services Limited. She had obtained loan of Rs. 74,300/- and agreed to pay it in 24 equal monthly installments of Rs. 3653/- each. Necessary documents to that

effect were executed by her in favour of the company. Respondent No.2 was not regular in payment of the loan amount and therefore, the company had invoked the clauses under the agreement, especially the clause which entitled it to take the possession of the vehicle in case of default. Demand notice was issued, but it was not responded by respondent No.2. Thereafter, sole arbitrator as per the agreement was appointed and proceeding under the Arbitration and Conciliation Act 1996 were undertaken. Award was passed on 28th September 2022. As per the company, respondent No.2 was liable to pay amount of Rs. 60,074/- as on 15.06.2022 with interest at the rate of 18% p.a. from 16.06.2022 till realization. When she had not paid the amount, the applicants had gone to take the possession of the vehicle, the said act on the part of the applicants is not amounting to any offence and therefore, the FIR which is lodged with concoction deserves to be set aside.

4. The learned A.P.P. as well as the learned Advocate for Respondent No.2 objected the application and submitted that the contents of the FIR disclose the offences under which the FIR has been lodged. The learned Advocate for respondent No.2 insisted that no prior notice regarding the fact that the

applicants would be coming to take possession of the vehicle was issued and further the son of the informant was in a way forcibly taken by the applicants along with them and therefore this is not a fit case where the inherent powers under Section 482 of the Code of Criminal Procedure are required to be exercised.

5. The first and foremost fact to be noted is that, it is absolutely not mentioned in the First Information Report as to what was the age of the son of respondent No.2. The learned A.P.P. after going through the police papers informs that the son had completed 18 years of age on the date of the First Information Report. In order to understand Section 363 of the Indian Penal Code, we will have to consider Section 359 of the Indian Penal Code which describes that kidnapping is of two kinds; one is kidnapping from India and second is kidnapping from lawful guardianship. Section 361 describe what is kidnapping from lawful guardianship. It states that :-

> "Whoever takes or entices any minor under 16 years of age is a male, or under 18 years of age if a female, or any person of unsound mind, etc. out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of

such guardian, is said to kidnap such minor or person from lawful guardianship."

6. Therefore, in order to attract Section 363 of the Indian Penal Code i.e. punishment provision, the boy should have been under the age of 16 years which is not a case herein therefore, the offence ought not to have been registered for the offence punishable under Section 363 of the Indian Penal Code for those who are taken away in respect of male 18 years against the wish or enforcibly then it can be said as abducting as Section 362 of the Indian Penal Code defines abduction and it uses word " person".

7. Here in the present case, if we consider the contents of the First Information Report, it is stated that the present applicants had dialogue with herself and the son wherein she had stated that her husband is in Newasa Court and therefore they should discuss with him. At that time the applicants told her that they would take her son to Court and will discuss with her husband and then she says that her son was made to sit on the vehicle which she describes as forcibly. Even the person knowing the informant and her family objected yet, the applicants took the son and then it is stated

that the son was taken to Court where all of them met the husband of the informant. This does not show, even if as stated in the FIR any ill intention of kidnapping or abduction. Therefore, it does not fall under any of the subsequent sections describing kidnapping or abduction, nor it can be taken as attempt to attract Section 511 of the Indian Penal Code.

8. As regards Section 392 of the Indian Penal Code is concerned, the documents are on record and it is not in dispute that the vehicle was taken on loan from TVS Credit Services Limited. The photocopies of the agreement, award by the Arbitrator are produced on record. The agreement is a higher purchase agreement. We would like to rely on **Charanjit Singh Chadha And Others Versus Sudhir Mehra AIR 2001 SC 3721** wherein it is held that if the higher purchase agreement is in respect of vehicle and terms of agreement stating that financer could continue to be owner till all installments are paid by the higher-er and that the default in payment of installments by higher-er, the re-possession of the vehicle can be taken by the financier then if such re-possession of the vehicle is taken by the financier as per terms of agreement then it does not amount to theft as "dishonest intention" is lacking. Similar view was taken in ***K.A. Mathai***

alias Babu and Another Vs. Kora Bibikutty And Another 1996 (7) Supreme Court of India 212 and then it was followed in ***HDFC Bank Vs. State 2009(2) Bombay C.R. (Cri.)712.*** As the ingredients for the offence under Section 392, are not been made out this is a fit case where applicants cannot be asked to face the trial. The case is within the parameters laid down in the State of ***Haryana Vs. Ch.Bhajan Lal and Others, AIR 1992 SC 604***. Hence, we proceed to pass the following order :-

ORDER

(I) The application stands allowed.

(ii) The First Information Report vide Crime No. No. 665 of 2023 dated 17.06.2023 registered with Newasa Police Station, District Ahmednagar for the offences punishable under Sections 392, 363, 511 read with Section 34 of the Indian Penal Code stands quashed and set aside as against the applicant No.1 Pravin Anandrao Shinde and Application No.2 Gopal Datta Gawade.

(**R.W. JOSHI**)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Y.S. Kulkarni