

15.01.2025

Sl. No.: 10

Court No.30
BM

CRR 796 of 2023

Md. Mirajuddin Shah & Anr.

Vs.

Industrial Bank Limited Zonal

Mr. Manas Ajai Sonkar

... for the petitioners

Mr. Subhankar Chakraborty

Ms. Ruchira Manna

... for the opposite party

1. The present revisional application has been preferred praying for quashing of the proceedings being CS No.107142 of 2018 under Sections 34/120B/415/418/420 of the Indian Penal Code, pending before the learned CMM, Calcutta.
2. From the materials on record, it appears that the parties had entered into a Hire Purchase Agreement and due to default in payment of monthly instalments, the complainant company has taken possession of the vehicle in question as per the terms and conditions of the agreement.
3. The agreement of hire purchase also includes a clause for Arbitration but the complainant (company) in the present case has chosen to initiate the present criminal case against the petitioner herein who allegedly defaulted in re-payment of loan as per the Loan-cum-Hypothecation Agreement.
4. **The said nature of transaction remains in the position of hire till the hirer (petitioner herein) exercises his option of purchase by making full payment towards the goods purchased.**
5. Registration of the said vehicle in such cases may be made showing the hirer as registered owner with an endorsement of

hire purchase in favour of the owners. The terms and conditions of the said hire purchase agreement has been clearly laid down in the said agreement which includes an agreement of arbitration.

6. The present complaint filed by the opposite party/complainant is in respect of the said nonpayment of EMI in respect of the said vehicle in connection with the hire purchase agreement between the parties.
7. Herein the opposite party has initiated the proceedings against the petitioners as he is a defaulter in repayment of loan and the vehicle in question was repossessed.
8. From the documents relating to the case in the case diary placed by the State, there is no challenge as to the legality of the Hire purchase agreement and the agreement for arbitration.
9. Admittedly there has been a breach of contract (Hire purchase agreement) as prima facie the petitioner has failed to perform his part of the agreement.
10. An agreement with an arbitration clause survives/exists even after there is a breach, as **the seed of arbitration which is planted at the time of the agreement, germinates only when there is a breach of performance.** The parties right and liabilities depends on the order/award in the arbitration.
11. Admittedly, the Arbitration Clause has not been invoked by either parties in this case.

12. In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)**, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

*“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. 23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :*

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very

nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

'102. (7) Where a criminal proceeding is manifestly attended with mala fides 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.' Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

16. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :

“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 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.”

17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.**”

13. The present case falls under category 1, 3 and 7 of **Para 102 of Bhajan Lal (Supra).**

14. The Hon’ble Supreme Court in **Lalit Chaturvedi vs. State of U.P, Criminal Appeal No. of 2023 (Arising out of SLP (Crl.) No. 13485 of 2023):**

“5. This Court, in a number of judgments, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Sections 420 and 406 of the IPC. Repeated judgments of this Court, however, are somehow overlooked, and are not being applied and enforced. We will be referring to these judgments. The impugned judgment dismisses the application filed by the appellants under Section 482 of the Cr.P.C. on the ground of delay/laches and also the factum that the chargesheet had been filed on

12.12.2019. This ground and reason is also not valid.

6. In “Mohammed Ibrahim v. State of Bihar”, this Court had referred to Section 420 of the IPC, to observe that in order to constitute an offence under the said section, the following ingredients are to be satisfied:—

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows:

- (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;
- (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and
- (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

- (i) to deliver any property to any person, or
- (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).”

7. Similar elucidation by this Court in “V.Y. Jose v. State of Gujarat”, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of ‘cheating’, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the

complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in “Hira Lal Hari Lal Bhagwati v. CBI”, “Indian Oil Corporation v. NEPC India Ltd.”, “Vir Prakash Sharma v. Anil Kumar Agarwal” and “All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain”.

10. *The charge sheet also refers to Section 406 of the IPC, but without pointing out how the ingredients of said section are satisfied. No details and particulars are mentioned. There are decisions which hold that the same act or transaction cannot result in an offence of cheating and criminal breach of trust simultaneously. For the offence of cheating, dishonest intention must exist at the inception of the transaction, whereas, in case of criminal breach of trust there must exist a relationship between the parties whereby one party entrusts another with the property as per law, albeit dishonest intention comes later. In this case entrustment is missing, in fact it is not even alleged. It is a case of sale of goods. The chargesheet does refer to Section 506 of the IPC relying upon the averments in the complaint. However, no details and particulars are given, when and on which date and place the threats were given. Without the said details and particulars, it is apparent to us, that these allegations of threats etc. have been made only with an intent to activate police machinery for recovery of money.*

11. *It is for the respondent no. 2/complainant – Sanjay Garg to file a civil suit. Initiation of the criminal process for oblique purposes, is bad in law and amounts to abuse of process of law.”*

15. In the present case, the complaint before the Learned Magistrate is connected to a Hire Purchase agreement with an Arbitration clause and the vehicle in question was repossessed lawfully.

16. The facts clearly do not make out a criminal offence as made out in the written complaint, the transaction being prima facie civil in nature, covered by an arbitration clause in an agreement for hire purchase.

17. Considering all these facts and the materials on record, the present case is fit to be interfered with under Section 482 Cr.P.C.
18. Having considered the aforesaid facts and circumstances of the case, if the present proceeding is allowed to continue, it would be sheer abuse of process of court and as such this is a fit case where, invoking this court's power under Section 482 of the Code of Criminal Procedure, the present proceeding is required to be quashed in the interest of justice.
19. **CRR 796 of 2023 is thus allowed.**
20. The proceedings being CS No.107142 of 2018 under Sections 34/120B/415/418/420 of the Indian Penal Code pending before the learned CMM, Calcutta, **is hereby quashed in respect of the petitioners namely Md. Mirajuddin Shah and Shah Ali Mahammad.**
21. All connected application, if any, stands disposed of.
22. Interim order, if any, stands vacated.
23. Let a copy of the order be sent to the learned trial court at once.
24. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(**Shampa Dutt (Paul), J.)**