02.12.2025
Sl. No.13.
D/L.
Mithun.
Ct.No.29.

CRR/2467/2025

Tata Motors Finance Limited
Vs.
Rajesh Sinha

Mr. Sabir Ahmed,
Mr. Hillol Saha Podder,
Mr. Dhiman Banerjee,
Mr. Quazi Ezaz Ahmed

...for the petitioner

In spite of service opposite party is not represented.

Being aggrieved and dissatisfied with the order regarding issuance of process under Section 204 Cr.P.C. dated 16.07.2024 and all subsequent orders passed by the Court below, the petitioner has preferred the instant application.

The petitioner's contention is that the opposite party/complainant entered into a loan agreement with the petitioner company on 21st March, 2018 amounting to Rs.4,74,146/- to be repaid in 54 equal monthly installments for purchasing a vehicle. Thereafter, the opposite party defaulted in payment of EMI (Equated Monthly Installment) and entered into loan structure agreement for restructure of his loan and entered into a fast track loan agreement on 18.12.2020 with an undertaking cum declaration.

Thereafter, opposite party took another loan from the petitioner's company. The opposite party defaulted in repaying the installments in the aforesaid loan cum hypothecation cum guarantee agreement and pursuant to such default a sum of Rs.3,28,736.73/- became due and payable to the petitioner/company by the opposite party. The petitioner sent loan recall notice for termination of the loan agreement. In spite of receipt of notice, opposite party did not repay the loan and for which an arbitration proceeding was initiated by the petitioner herein and on 17.11.2022 an interim order under Section 17 was passed and thereby on 30.01.2023 petitioner has taken possession of the said vehicle. Thereafter petitioner issued another notice calling upon opposite party to make payment of the due amount within 7 days on 03.02.2023 but he failed to make payment and as such petitioner retained possession.

As a counter blast opposite party filed the instant complaint case and the Court below after examining complainant's witness took cognizance and had issued process against the petitioner under Sections 420/406 of the Indian Penal Code, by the impugned order.

The petitioner earlier challenged the order taking cognizance on the ground of non-compliance of Section 202 Cr.P.C. before Session Judge being Criminal Revision No.35/2023, wherein Revisional Court set aside the initial order taking cognizance and remanded the case back for inquiry under Section 202 Cr.P.C. Subsequently learned Court below by the impugned order issued process afresh.

Being aggrieved by the said proceeding, learned Counsel for petitioner Mr. Ahmed submits that there was a loan-cum-hypothecation-cum-guarantee agreement entered into by and between the parties on 21st March, 2018 and under Clause 11 of the said agreement, the parties have agreed about the eventualities of default and it has also been mentioned in Paragraph 12 of the said agreement that the petitioner/company shall have right to re-possess the vehicle within 48 hours if the borrower failed to pay the dues.

Mr. Ahmed further argued that there was outstanding dues and for which the petitioner followed the due process and has taken possession of the said vehicle on 30.01.2023 by making inventory after informing local police station as is evident from inventory list. Petitioner took possession of vehicle on 30.01.2023 and the instant complaint was lodged on 12.04.2023. The ingredients of alleged offences have not been fulfilled as the dispute as alleged has arisen due to violation of hire purchase agreement and cannot be designed as an offence. Opposite party even failed to disclose name of any specific person who has allegedly committed offence. Therefore, further continuance of such proceeding will be mere abuse of the process of the Court.

I have considered submissions made by the petitioner. Needless to reiterate that under hire-purchase agreement, the hirer is simply paying for the use of the goods and for the option to purchase them. In the instant case petitioner's claim of making default in paying EMI by the opposite party herein remains unchallenged. Therefore, when the hirer has committed default by not paying the installments and matter was referred to arbitrator as per agreement, who passed interim award and thereby the petitioner has taken possession of the vehicle, there cannot be any scope to say that the petitioner has committed cheating or criminal breach of trust.

On perusal of aforesaid loan cum hypothecation cum guarantee agreement, it is clear that agreement specifically gave authority to the petitioner /company and his agents to repossess the vehicle in case of default of loan amount under hire purchase agreement. Generally the financer continued to be owner of the vehicle until the conditions for transfer of the vehicle as per terms of agreement has been fulfilled. Therefore, repossession of vehicle in default of payment of EMI in terms of agreement and in terms of interim order passed by Arbitrator neither constitute offence of cheating or criminal breach of trust.

In ***Trilok Singh & Ors. Vs. Satya Deo Tripathy***, reported in ***1979 SCC (Cri) 987*** Apex Court held that it is within the right of the financer to seize and repossess a vehicle which was purchased by the hirer at the finance provided by the financer, if the installment amounts are not paid within the stipulated time, more particularly when the hire purchase agreement contain a specific default clause permitting the financer to repossess the vehicle in such default and no criminal offence can said to have been committed by the financer on taking repossession of the vehicle on such circumstances and the same has also been reiterated in ***Charanjit Singh Chaddya Vs. Sudhir Mehera***, reported in ***2001 SCC (Cri) 1557*** and ***K.A.Mathai Vs. Kora Bibbikutty*** reported in ***(1996) 7 SCC 212.***

Since from the Judicial Pronouncements, law has been clearly laid down that in a hire purchase agreement, the purchaser remains merely a trustee/bailee on behalf of the financer and since ownership remains with the financer, so long conditions of agreement be not fulfilled. So even if financer/petitioner has seized/repossessed the vehicle, in terms of agreement as well as in terms of interim award, it does not constitute criminal offence either under Section 420 or 406 of IPC, in respect of which cognizance has been taken by the Court and therefore continuance of further proceeding will be a mere abuse of process of Court.

In such circumstances, CRR 2467 of 2025 is allowed. Impugned proceeding being CR Case No.135 of 2023 pending before learned Additional Chief Judicial Magistrate (2) at Haldia is hereby quashed.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

(Dr. Ajoy Kumar Mukherjee, J.)