

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 3445 of 2010

HDFC BANK LIMITED & ANR.
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Debasish Roy, Adv.
Mr. Kaushik Chatterjee, Adv.

For the O.P. No. 2 : Mr. Jayanta Narayan Chatterjee, Adv.

For the State : Mr. B.K. Panda, Adv.
Ms. Puspita Saha, Adv.

Hearing concluded on : 4th August, 2023

Judgement on : 18th August, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 482 of the Criminal Procedure Code challenges the proceedings in connection with Jadavpur P.S. Case No. 657 of 2009 dated 4th December, 2009 corresponding to B.G.R. Case No. 6081 of 2009 pending before the learned Additional Chief Judicial Magistrate, Alipore registered under Sections 392/323/506(II)/120B of the Indian Penal Code.
2. Briefly stated, the opposite party no. 2, Sunil Kumar Sharma filed a petition of complaint before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas stating, *inter alia*, that in the year 2005 he purchased a TATA Indica Car registered as WB-02U-

5816 from Lexus Motors with the financial assistance of HDFC Bank Auto loan bearing no. 1828547. The loan was agreed to be repaid in 60 installments for a sum of Rs. 6327/- each. The complainant accordingly issued post dated cheques. Thereafter, the Bank through its agent approached the complainant to avail personal loan to tune of Rs. 90,000/- and it was availed of on agreed terms and conditions.

3. It is further contended that for some extreme financial crisis some cheques of the complainant got dishonoured and he informed the bank. The bank assured him to co-operate in such a situation. On 21st August, 2009 at about 10 a.m. he received a phone call from a person who introduced himself as Anirban and stated that he wanted to develop a business relationship with the complainant and expressed his desire to meet him. Being requested by said Anirban the complainant sent his car by the driver to pick him up from near Siraj Restaurant. The driver, Amarjit Kumar Roy left for the destination at about 11 a.m. At about 12 noon, the accused no. 2 along with some unknown persons entered inside the said car forcibly by using muscle power, assaulted the driver, snatched the key of the car and fled away. There was a sum of Rs. 12,000/- in the Dash Board of the car. At about 12- 12.30 p.m. the driver Amarjit Kumar Roy informed the complainant about the incident. The complainant rushed to the place of occurrence and took the driver to M.R. Bangur Hospital, the complainant informed the Jadavpur Police Station and Jadavpur P.S. G.D. Entry 1790 dated 21st August, 2009 was registered. But no action was taken. On 22nd August, 2009 the

complainant received a letter from Bank admitting the factum of taking possession of the car of the complainant. On 25th August, 2009 again a letter was received from the bank.

4. The petition of complaint so filed was forwarded by learned Additional Chief Judicial Magistrate to the jurisdictional police station under Section 156(3) of the Code of Criminal Procedure and Jadavpur Police Station Case No. 657 was registered on 4th December, 2009 under Section 392/323/506(II)/120B of the Indian Penal Code.
5. Drawing my attention to the document annexed to the petition of complaint Mr. Debasish Roy, learned Senior Counsel submits that the informant being the opposite party no. 2 purchased the vehicle after obtaining loan from HDFC bank and for that loan agreement was executed by and between the parties. But the borrower failed to repay the loan in terms of the agreement. The bank being the lender drew the attention of the borrower by writing a letter dated 3rd July, 2009. Subsequently on 21st August, 2009 after taking repossession of the vehicle in terms of the agreement, the borrower was informed by the bank in writing. Pre-repossession intimation as well as post-repossession intimation was given to the police of Purba Bidhannagar. The borrower was informed that the vehicle would be sold to realize the money due to the bank. According to Mr. Roy there is no ingredient of offence within the meaning of Sections 392/323/506(II)/120B of the Indian Penal Code and the complaint borrower initiated the criminal proceeding with malafide intention.

6. In support of his contention Mr. Roy 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.”

7. 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.”

8. Mr. Jayanta Narayan Chatterjee, learned Counsel for the opposite party no. 2 refuting the contention of Mr. Roy submits that the incident took place within the jurisdiction of Jadavpur police station.

The representatives of HDFC Bank did not have list respect for the law of the land. The vehicle was forcefully taken into possession in deceitful manner which is not permissible in civilized society. According to Mr. Chatterjee, the incident took place within the jurisdiction of Jadavpur P.S. and not in Salt Lake. The investigation may be allowed to reach a logical end.

9. Learned Counsel for the State produced the copy of the case diary and from the case diary it is found that the HDFC Bank took the possession of the vehicle in question after giving information to the police station at Purba Bidhannagar and police was informed about post re-possession of the vehicle. The I.O. of the case was informed by the Bidhannagar Police Station. There is no reason to disbelieve the police officer of Bidhannagar in absence of any document to rebut the resumption that may be drawn under Section 114 (e) of the Evidence Act. The Investigating Officer failed to find out any witness to the occurrence.
10. From the attending facts of the case when it is found that the lender or financier took repossession of the vehicle, pursuant to the agreement executed by and between the parties, it cannot be said that the lender committed offence within the meaning of Penal Code with the requisite mens rea and dishonest intention. At best it could be a civil dispute which has been imbibed with the colour of criminality.
11. 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 Jadavpur P.S. Case No. 657 of 2009 pending before the learned Additional Chief Judicial Magistrate, Alipore to avert abuse of process of law, which I accordingly do. The criminal revision is thus allowed.

12. Application, if any, stands disposed of.
13. Let a copy of this judgement along with lower Court record be sent to the learned Trial Court for information and necessary action.
14. 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.)