IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1327 of 2014

Manoj Kumar & Anr.

-Vs-

The State of West Bengal

For the Petitioners : Mr. Dipanjan Dutt
Mr. Surojit Saha
Mr. Amitava Mitra
Mr. Subhadip Banerjee

For the State : Mr. N. P. Agarwal
Mr. Pratick Bose

Heard on : 28.03.2023, 07.08.2023

Judgment on : 25.09.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed by the petitioners praying for quashing of the Charge-Sheet no. 641 dated September 30, 2013 under Section 341/406/384/506/34 of the Indian Penal Code, pertaining to the proceedings of G. R. Case no. 2400 of 2013, pending before the Court of the Learned Chief Judicial Magistrate, Paschim

Midnapore, which arose out of Kharagpur (L) Police Station Case NO. 411 dated 13.07.2013 under Section 341/506/34 of the Indian Penal Code.

2. The petitioners are employees of L & T Finance Ltd., holding the post of Branch Manager and Collection Manager respectively. Both the petitioners are working for gain from the office of the aforesaid company situated at India, O.T. Road, Post Office Inda, Police Station Kharagpur (Local), District Paschim Midnapore, Pin Code – 721305, West Bengal.

3. A petition of complaint was filed by the opposite party no.2 before the Court of the Learned Chief Judicial Magistrate, Paschim Midnapore, therein alleging commission of offences punishable under Sections 341/406/384/506/34 of the Indian Penal Code and praying for a direction in terms of Section 156(3) of the Code of Criminal Procedure upon the Officer-in-Charge of Kharagpur (L) Police Station to treat the said petition of complaint as First Information Report and cause investigation thereon. The Learned Chief Judicial Magistrate, Paschim Midnapore, upon receipt of such petition of complaint, was pleased to direct the Officer-in-Charge of Kharagpur (L) Police Station to treat the said petition of complaint as First Information Report and investigate. Pursuant to such direction passed by the Learned Magistrate, Kharagpur (L) Police Station Case No. 411 dated

13.7.2013 under Sections 341/406/384/506/34 of the Indian Penal Code was registered for investigation.

The complaint aforesaid inter alia narrated the following :-

a) The accused no.1, being L&T Finance Ltd., is a finance company while the accused nos.2 and 3, being the petitioners herein, are employees of the accused no.1 company.

b) On 16.12.2010, the witness no. 1, Nirmal Utthasini, took financial assistance from the accused no. 1 company and purchased a truck bearing registration no. Wb-29/9596. Subsequently the said witness no. 1 due to financial constrained sold the said vehicle, to the complainant/opposite party no. 2 after entering into an Agreement for Sale. However, due to non-payment of installments the vehicle could not be transferred in the name of the opposite party no. 2.

c) It was decided that if the opposite party no. 2 repaid the entire loan amount, then the witness no. 1 would transfer the said vehicle bearing registration no. WB-29/9596 in the name of the opposite party no. 2. In such circumstances, the opposite party no. 2 started transportation of goods in the said truck and gradually started clearing the dues.

d) It was alleged after clearing all the dues when the opposite party no. 2 went to collect the No Objection Certificate (NOC), the accused no. 2 and 3, being the petitioners, demanded more

money from the opposite party no. 2. On protest by the opposite party no. 2, an altercation started between the opposite party no. 2 and the accused persons and as such, the opposite party no. 2 returned without collecting the NOC. Since then, the accused persons on one pretext or the other deferred the date for giving NOC to the opposite party no. 2.

e) It is alleged that on 25.5.2013 when the aforesaid truck was proceeding towards Golbazar, the petitioners along with 4/5 other miscreants stopped the said vehicle at NH-6. On query by the driver of the said vehicle, the petitioners and their associates started assaulting the driver and helper of the truck and ultimately dragged them out of the truck. Thereafter the accused no. 2 made the driver of the truck (witness no. 2) sign on certain documents at gun point and thereafter snatched the said vehicle and fled towards Chowringhee.

f) Thereafter the opposite party no. 2 lodged a complaint with the Superintendent of Police, Paschim Midnapore.

g) It was the allegation of the opposite party no. 2 that his vehicle had been illegally snatched by the accused persons and they also threatened the driver of the opposite party no. 2 with consequences of death and made him sign on certain documents.

4. After completion of a purported investigation, the Investigation Agency submitted its report in final form vide Charge Sheet No. 641 dated 30.9.2013 wherein it was stated that a prima facie case had been made out under Sections 341/406/384/506/34 of the Indian Penal Code against the petitioners.

5. The Learned Advocate for the petitioners submitted as follows :-

   a) L & T Finance Ltd. is a non banking company providing financial assistance to individuals as well as to corporate bodies.

   b) In such usual course of business, one Nirmal Utthasini, son of Sasanka Utthasini, of Village Brojolal Chowk, Post office – Dakshin Chowk, District – Purba Midnapore, Pin – 721654, had approached L & T Finance Ltd. for financial assistance for purchase of a vehicle of model AL2516, having Chassis No. MNA088668 and Engine No. MNA518053. On the basis of the representations made by Nirmal Utthasini, L & T Finance Ltd. had provided the said vehicle on a Loan-cum-Hypothecation basis to Nirmal Utthasini. As per the terms and conditions contained in the Loan-cum-Hypothecation Agreement dated 25.3.2008, Nirmal Utthasini stood at the borrower while Mrs. Radharani Utthasini (wife of Nirmal Utthasini) and Durga Charan Jana stood as guarantors. The said vehicle, bearing

registration No. WB-29/9596, stood hypothecated under the said Agreement in favour of L & T Finance Ltd.

c) As per the terms of the said Agreement, Nirmal Utthasini agreed to repay the loan amount in 53 monthly installments of which the 1st installment consisted of an amount of Rs. 17,255/- and remaining 52 installments consisted of an amount of Rs. 27,495/- each.

d) Clause 12 of the said Agreement provides for "Events of Default", which includes non-payment of the monthly installments by the borrower within the time specified under the Agreement. Thus, failure to pay monthly installments within the period mentioned in the said Agreement clearly constitute an event of default and clause 13 of the said Agreement provides for consequence for arising of "Event of Default", whereby L & T Finance Ltd. was entitled to take re-possession of the said vehicle.

e) However, after obtaining the loan amount, Nirmal Utthasini failed to pay his dues in terms of the repayment Schedule under the said Loan-cum-Hypothecation Agreement dated 25.03.2008 and thus, became a defaulter in terms of the condition of the said Agreement. Despite having knowledge of such default, the borrower did not repay the loan amount. Consequently the Learned Advocate for L & T Finance Ltd. issued a notice dated

June 01, 2012 to Nirmal Utthasini, inter alia terminating the said agreement. By the said notice, the disputes between the parties had been referred to the sole arbitrator in terms of the said agreement as provided under Section 21 of the Arbitration & Conciliation Act, 1996 for adjudication of said disputes in accordance with the provision of the Arbitration & Conciliation Act, 1996.

f) Subsequently notices were sent to Nirmal Utthasini, therein informing him about the commencement of arbitration proceeding before the Learned Arbitrator Sri Bharat B. Jain, but the said borrower did not appear. Subsequently an Award was passed by Sri Bharat B. Jain, Learned Arbitrator on October 22, 2012 against the borrower and his guarantor to the said loan agreement.

g) From a perusal of the aforesaid Award dated 22.10.2012 passed by the Learned Arbitrator, it would transpire that it was held in favour of L & T Finance Ltd. that they were entitled to possess the vehicle bearing registration no. WB-29/9596 and Nirmal Utthasini was directed to forthwith surrender possession of the said vehicle to L & T Finance Ltd.

h) Despite passing of the Award in favour of L & T Finance Ltd., Nirmal Utthasini failed to hand over the vehicle in favour of L & T Finance Ltd. Under such circumstances, L & T Finance Ltd.

took possession of the said vehicle from a third party, namely Sk. Nizammuddin (opposite party no. 2).

i) The petitioners have no knowledge till date as to whether the said award has been challenged either by the said borrower & his guarantor before the appropriate court of law in terms of the provision of the Arbitration & Conciliation Act, 1996 and therefore the said award stands binding upon the parties thereto being a decree passed by a competent Civil Court in terms of the provisions of the Code of Civil Procedure.

j) Subsequently from a perusal of the First Information Report of the proceeding impugned, it transpired that an illegal sale had taken place in respect of the Hypothecated vehicle between Nirmal Utthasini and the opposite party no. 2, which was completely contrary to the terms of the Loan-cum-Hypothecation Agreement. The opposite party no. 2 was not the person entitled to possession of the vehicle in question and thus, continuance of his possession of the said vehicle was contrary to the terms of the said Agreement.

k) As a retaliatory measure, the proceeding has been initiated by the complainant/opposite party no. 2.

6. Learned Advocate for the petitioners further submitted that the right of a financier and/or hire purchase owner to take repossession of his vehicle due to non-payment of the hire charges by the hirer has been well

established by various decisions of the Hon'ble Supreme Court as also by this Hon'ble Court. The Agreement of Loan executed between the accused company and the opposite party no. 2 also clearly state that in the event of failure on the part of the opposite party no. 2 to pay monthly installments, the Agreement would stand terminated and the accused no. 1 company would be entitled to take repossession of the vehicle. In the instance case, it is apparent that the opposite party no. 2 had failed to pay the equal monthly installments as agreed to be paid by him in the Loan-cum-Hypothecation Agreement, thereby forcing the accused no. 1 company, to take repossession of the said vehicle. The said Act of the financier, in such circumstances, cannot be termed to be illegal and as such the impugned proceeding is liable to be quashed.

7. It was further contended that initiation of a proceeding before a criminal court with regard to a dispute arising out of a hire purchase agreement between the hirer and the financier, whosoever has initiated the proceedings, is not maintainable in the eye of law in as much as the dispute is purely civil in nature.

8. From a perusal of the documents relied upon by the petitioners, it would transpire that the act of repossession was conducted by L & T Finance Ltd. on the strength of the order/Award passed by the Arbitrator and as such, was in exercise of legitimate right of the said Company. In such circumstances, the offences as alleged, cannot be said to have been made

out. In such premise, the proceeding impugned is liable to be quashed forthwith.

9. Learned Advocate for the State submitted that the proceedings should not be quashed at a nascent stage without adjudication through trial.

10. In **Sardar Trilok Singh & Ors. V. Satya Deo Tripathi**[1], the Hon'ble Supreme Court observed as follows:

> *"5. We are clearly of the view that it was not a case where any processes ought to have been directed to be issued against any of the accused. On the well-settled principles of law if was very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct. Money must have been advanced to him and his partner by the financier on the basis of some terms settled between the parties. Even assuming that the agreement entered on 29th March, 1973 was not duly filled up and the signature of the complainant was obtained on a blank form, it is to be noticed that the amount of the two monthly installments admittedly paid by him was to the tune of Rs. 3, 566/- exactly @ Rs. 1,783/- per month. The complaint does not say as to when these two monthly installments were paid. In the First Information Report which he had lodged he had not, stated that the third monthly installment was payable on July 31, 1973. Rather, from the statement in the First Information Report it appears that the installment had already become due on 28-7-1973 when the complainant went out of Kanpur according to his case. The question as to what were the terms of the settlement and whether they were duly incorporated In the printed agreement or not were all questions which could be properly and adequately decided in a civil court. Obtaining signature of a person on blank sheet of paper by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of the Penal Code making it an offence or when such a documents is used as a genuine document. Even assuming*

[1] (1979) 4 SCC 396

that the appellants either by themselves or in the company of some others went and seized the truck on 30-7-1973 from the house of the respondent they could and did claim to have done so in exercise of their bonafide right of seizing the truck on the respondent's failure to pay the third monthly installment in time. It was therefore, a bona fide civil dispute which led to the seizure of the truck. On the face of the complaint petition itself the highly exaggerated rated version given by the respondent that the appellants went to his house with a mob aimed with deadly weapons and committed the offence of dacoity in taking away the truck was so very unnatural and untrustworthy that it could not sake the matter out of the realm of civil dispute. Nobody on the side of the respondent was hurt. Even a scratch was cot given to anybody."

11. In **K.A. Mathai Alias Babu And Anr. V. Kora Bibbikutty and Anr.[2],** the Hon'ble Supreme Court observed as follows:

"3. It is more than clear that the hire-purchase agreement with the financier was entered into much prior in time, whereafter the agreement of sale between A-2 and the complainant took place, and which was subject to the rights of the financier. It is even otherwise understandable that A-2 could not have passed a better title of the bus to the complainant than that she had acquired for herself under the hire-purchase agreement. Though we do not have the advantage of reading the hire-purchase agreement, but as normally drawn it would have contained the clause that in the event of the failure to make payment of installment/s the financier had the right to resume possession of the vehicle. Since the financier's agreement with A-2 contained that clause of resumption of possession, that has to be read, if not specifically provided in the agreement, as part of the sale agreement between A-2 and the complainant. It is, is there circumstances, the financier took possession of the bus from the complainant with the aid of the appellants. It cannot thus be said that the appellants, in any way, had committed the offence of theft and that too, with the requisite mens rea and requisite dishonest intention. The ascertain of rights and obligations, accruing to the appellants under the aforesaid two agreements, wiped out any dishonest pretence in that regard from which it could be inferred that they had done so with a guilty intention. In this view of the

[2] (1996) 7 SCC 212

matter, we think that the High Court was in error in upsetting the well-considered judgment of the Court of Session. We thus set aside the impugned judgment and order of High Court and acquit the appellants of the charges. They are on bail. Their bail bonds stand cancelled. Fine if already paid, be refunded to the appellants. The appeal is, thus allowed."

12. In **Charanjit Singh Chadha and Ors. V. Sudhir Mehra**[3], the Hon'ble Supreme Court observed as follows:

"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 installments 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 installments.

6. Though in India the Parliament has passed a Hire Purchase Act, 1972, the same has not been notified in the official gazette by the Central Govt. so far. An initial notification was issued and the same was withdrawn later. The rules relating to hire purchase agreements are delineated by the decisions of higher courts. There are series of decisions of this Court explaining the nature of the hire purchase agreement and mostly these decisions were rendered when the question arose whether there was a sale so as to attract payment of tax under the Sales Tax Act.

[3] (2001) 7 SCC 417

7. In M/s Damodar Valley Corporation vs. State of Bihar, this Court took the view that a mere contract of hiring, without more, is a species of the contract of bailment, which does not create a title in the bailee, but the law of hire purchase has undergone considerable development during the last half a century or more and has introduced a number of variations, thus leading to categories and it becomes a question of some nicety as to which category a particular contract between the parties comes under. Ordinarily, a contract of hire purchase confers no title on the hirer, but a mere option to purchase on fulfilment of certain conditions. But a contract of hire purchase may also provide for the agreement to purchase the thing hired by deferred payments subject to the condition that title to the thing shall not pass until all the installments have been paid. There may be other variations of a contract of hire purchase depending upon the terms agreed between the parties. When rights in third parties have been created by acts of parties or by operation of law, the question may arise as to what exactly were the rights and obligations of the parties to the original contract.

8. In K.L. Johar & Co. vs. The Deputy Commercial Tax Officer,this Court took the view that a hire purchase agreement has two elements: (1) element of bailment; and (2) element of sale, in the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then had been hired.

9. Similar views were expressed earlier in Installment Supply (Pvt.) Ltd. & Anr. vs. Union of India & Ors. and reiterated in Sundaram Finance Ltd. vs. State of Kerala.

10. The agreement executed by the parties in this case also is to the effect that the hirer would not become the owner of the property until he pays the entire installments. A copy of the agreement is produced as Annexure P-1 wherein the appellants are referred to as the first party and the respondent as the second party and it is specifically stated that the first party would be the absolute owner of the vehicle and the respondent-second party agreed to pay all the installments punctually. Clause 7 of the agreement says that the hirer may at any time before the final payment under the hire purchase agreement falls

due and after giving the owners not less than fourteen days notice in writing of his intention to do so and re-delivering the vehicle to the owners at their office, terminate the hire purchase agreement. Clause 8(viii) gives a right to the owner to re-possess the vehicle in case of default by the hirer. Clause 9(ii) gives the owner an irrevocable licence to enter any building, premises or place where the vehicle may be or supposed to be for the purpose of inspection, re-possession or attempt to repossess the vehicle and the owner of the vehicle will not be liable for any civil or criminal action at the instance of the hirer. It is also made clear that the hirer would be liable for all the expenses of the owner in obtaining re-possession or attempting to obtain re-possession of the vehicle.

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 installments 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.

12. Before the learned Single Judge, the respondent had contended that the vehicle was in the possession of the respondent and it was taken out of his custody without his consent and therefore, the offence of theft is made out. This plea is also without any basis as the appellants have taken re-possession of the vehicle in exercise of their right under the agreement. There may be instances where the owner of the goods may commit theft of his own goods. The illustration (k) of Section 378 IPC, which is an instance of such a theft, is to the following effect:

> *"(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property in as much as he takes it dishonestly."*

13. But in the instant case, the owner re-possessing the vehicle delivered to the hirer under the hire purchase agreement will not

amount to theft as the vital element of 'dishonest intention' is lacking. The element of 'dishonest intention' which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer. It is appropriate to note that the term 'dishonestly' is defined under Section 24 of the IPC as follows:

> *"24. 'Dishonestly'--Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'.*

14. It is also to be noticed that learned author R.M. Goode, in his book Hire Purchase Law & Practice (2nd Edn.) has observed as follows at page 846:-

> *"It would seem that so long as the hirer is in possession of the goods they belong to him for the purpose of the Act [The Theft Act, 1968] even though his possession is unlawful, e.g. because the hire-purchase agreement has come to an end. If the owner has an enforceable right to possession then he will not be guilty of theft in seizing the goods if he knew of his legal rights since he will not be acting dishonestly but will have taken the goods in the well founded belief that he has a right to resume possession."*

15. This Court also had occasion to consider this question. One of the earlier decisions is Sardar Trilok Singh & Ors. vs. Satya Deo Tripathi. In that case, the parties had entered into a hire purchase agreement. The complainant alleged that the accused, in a high handed manner during his absence came to his house and forcibly removed the truck and thereby committed the offence of dacoity. The police investigated the case and filed a final report. The accused filed his objection before the Magistrate, but the objection was not considered. The accused filed a revision before the session court which was dismissed. Thereafter the accused filed a petition under section 482 Cr.P.C. to quash the proceedings. That was summarily dismissed by the High Court and the matter reached up to this Court

at the instance of the accused. In paragraph 5 of the judgment, this Court observed:

> *"5. We are clearly of the view that it was not a case where any processes ought to have been directed to be issued against any of the accused. On the well-settled principles of law it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct. Money must have been advanced to him and his partner by the financier on the basis of some terms settled between the parties… Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on July 30, 1973 from the house of the respondent they could and did claim to have done so in exercise of their bona fide right seizing the truck on the respondent's failure to play the third monthly installment in time. It was, therefore, a bona fide civil dispute which led to the seizure of the truck."*

16. In K.A. Mathai & Anr. vs . Kora Dibbikutty & Anr., the bus was obtained by the complainant on a hire purchase agreement. The complainant paid only part of the consideration and defaulted in paying the installments and the vehicle was taken possession of by the financial and at that time, both the first accused who had derived away the bus from the possession of the complainant and the second accused were present in the bus. They were prosecuted for the offence punishable under Section 379 read with Section 114 IPC. This Court holding that the bus was taken away at the instance of the financier and the accused had not committed any offence observed as under: (SCC pp. 212 – 13, para 3)

> *"Though we do not have the advantage of reading the hire-purchase agreement, but as normally drawn it would have contained the clause that in the event of the failure to make payment of installments the financier had the right to resume possession of the vehicle. Since the financier's agreement with A-2 contained that clause of resumption of possession, that has to be read, if not specifically provided in the agreement, as part of the sale agreement between A-2 and the*

complainant. It is in these circumstances, the financier took possession of the bus from the complainant with the aid of the appellants. It cannot thus be said that the appellants, in any way, had committed the offence of theft and that too, with the requisite mens rea and requisite dishonest intention."

17. The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on hire until the conditions for transfer of the property to him have been fulfilled. Therefore, the re-possession of goods as per the term of the agreement may not amount to any criminal offence. The agreement [Annexure P-1] specifically gave authority to the appellants to re-possess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire purchase agreement, the appellants have continued to be the owner of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. We, therefore, allow this appeal and set aside the impugned judgment. The complaint and any other proceedings initiated pursuant to such complaint are quashed."

13. In **Anup Sarmah V. Bhola Nath Sharma And Ors.[4],** the Hon'ble Supreme Court observed as follows:

"4. In Trilok Singh and Ors. v. Satya Deo Tripathi, this Court examined the similar case wherein the truck had been taken in possession by the financier in terms of hire purchase agreement, as there was a default in making the payment of installments. A criminal case had been lodged against the financier under Sections 395, 468, 465, 471, 12B/34, Indian Penal Code. The Court refused to exercise its power under Section 482, Code of Criminal Procedure and did not quash the criminal proceedings on the ground that the financier had committed an offence. However, reversing the said judgment, this Court held that proceedings initiated were clearly an abuse of process of the Court. The dispute involved was purely of civil nature, even if the allegations made by the complainant were substantially correct. Under the hire purchase agreement, the

[4] (2013) 1 SCC 400

financier had made the payment of huge money and he was in fact the owner of the vehicle. The terms and conditions incorporated in the agreement gave rise in case of dispute only to civil rights and in such a case, the Civil Court must decide as what was the meaning of those terms and conditions.

5. In K.A. Mathai alias Babu and Anr. v. Kora Bibbikutty and Anr., this Court had taken a similar view holding that in case of default to make payment of installments financier had a right to resume possession even if the hire purchase agreement does not contain a clause of resumption of possession for the reason that such a condition is to be read in the agreement. In such an eventuality, it cannot be held that the financier had committed an offence of theft and that too, with the requisite mens rea and requisite dishonest intention. The assertions of rights and obligations accruing to the parties under the hire purchase agreement wipes out any dishonest pretence in that regard from which it cannot be inferred that financier had resumed the possession of the vehicle with a guilty intention.

6. In Charanjit Singh Chadha and Ors. v. Sudhir Mehra, this Court held that recovery of possession of the vehicle by financier-owner as per terms of the hire purchase agreement, does not amount to a criminal offence. Such an agreement is an executory contract of sale conferring no right in rem on the hirer until the transfer of the property to him has been fulfilled and in case the default is committed by the hirer and possession of the vehicle is resumed by the financier, it does not constitute any offence for the reason that such a case/dispute is required to be resolved on the basis of terms incorporated in the agreement. The Court elaborately dealt with the nature of the hire purchase agreement observing that in a case of mere contract of hiring, it is a contract of bailment which does not create a title in the bailee. However, there may be variations in the terms and conditions of the agreement as created between the parties and the rights of the parties have to be determined on the basis of the said agreement. The Court further held that in such a contract, element of bailment and element of sale are involved in the sense that it contemplates an eventual sale.

> *"8. … The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms*

of the agreement. When all the terms of the agreement are satisfied and option is exercised a sale takes place of the goods which till then had been hired."

While deciding the said case, this Court placed reliance upon its earlier judgments in M/s. Damodar Valley Corporation v. The State of Bihar, Installment Supply (Private) Ltd. and Anr. v. Union of India and Ors., K.L. Johar and Co. v. The Deputy Commercial Tax Officer, Coimbtore III and Sundaram Finance Ltd. v. State of Kerala.

7. In view of the above, the law can be summarised that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is repossessing the goods owned by him.

8. If the case is examined in the light of the aforesaid settled legal proposition, we do not see any cogent reason to interfere with the impugned judgment and order. The petition lacks merit and, accordingly, dismissed."

14. In **Suryapal Singh V. Siddha Vinayak Motors And Anr.[5],** the Hon'ble Supreme Court observed as follows:

"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.

[5] (2012) 12 SCC 355

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."

15. In **Tata Motors Finance Limited V. State of West Bengal[6],** 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 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."

[6] 2013 SCC OnLine Cal 18655

16. Clause 12 of the Loan cum Hypothecation agreement stipulated the events of default which inter alia includes –

> *"12.1. fails to pay the Loan installments, Interest and all other monies payable or part thereof within the stipulated time whether demanded or not or any other charge or payment required hereunder within 7 days of their becoming due;……*
>
> *12.4. without the Lender's consent, sells, transfers, or attempts to sell or pledge, parts with possession or sublets or charges or encumbers or creates any lien on the Assets or the Assets or any item of the Assets is endangered in the opinion of the Lender or the interest of the Lender is jeopardised"*

17. Clause 13 and 14 of the aforesaid agreement states as follows:-

> *"**13. Consequences in the event of default***
>
> *On the occurrence of any of the events specified above, without any notice to the Borrower, the Lender shall have right to :*
>
> *13.1. Terminate this Loan agreement*
>
> *13.2. Recover from the Borrower the arrears of moneys due and unpaid upto the date of termination and such other future installments for the unexpired period, had this agreement continued*
>
> *13.3. Initiate legal action as available under applicable laws*
>
> *13.4. repossess, sell, or otherwise dispose off/ deploy the assets in such manner, as the Lender may think fit.*
>
> *13.5. Give suitable publicity and such particulars of the Borrower as the Lender may deem fit*
>
> ***14. Repossession of Assets***

14.1. In the event of Repossession, the Borrower shall, if required by the Lender, forthwith deliver or cause to deliver the Assets to the Lender at the address of the Lender stated in this Agreement or at such other addresses as the Lender may specify or if not so required, shall hold the assets in trust for the Lender so as to make it available to the Lender for collection by itself or by its employees or agents; the Lender or its employees or agents shall be entitled to enter upon any land or buildings on or in which the assets are or are believed by the Lender or its employees or agents to be situated.

14.2. In the event of the Lender taking repossession of the Asset, the Borrower hereby unconditionally and irrevocably undertakes to and agrees with the Lender that the Borrower shall sign, execute and deliver all such instruments forms applications and writings and shall do all such other acts, deeds and things as may be required by the Lender/may chose and for this purpose the Borrower hereby irrevocably and unconditionally authorizes the Lender that in the event of the Borrower refusing or being unable to or failing to sign and deliver any of the aforesaid instruments application forms of other writings as may be required by the Lender, the Lender shall be entitled without being obliged to do so to sign such instruments forms, applications papers and writings for and on behalf of the Borrower as a duly constituted attorney of the Borrower."

In the instant case the borrower had sold the vehicle in question to opposite party no. 2, complainant without the knowledge of the petitioner/financial institution which in itself is a cause of default along with non-payment of the installments. The financial institution is legally the owner of the vehicle till the repayment of the loan amount and to transfer the possession without the consent of the petitioner/financial institution is a breach of the Loan cum Hypothecation agreement.

18. Clause 8.8 of the aforesaid agreement states as follows:-

> *"8.8. Hereby further agree and declare that the BORROWER's liability and obligations to repay the amounts of the Loan, interest, cost, charges, expenses and all other monies as may be payable under this Agreement shall be absolute and unconditional and the BORROWER shall pay it to the LENDER the same in time regardless of any circumstances/disputes"*

19. Clause 9.1 of the aforesaid agreement states as follows:-

> *"9.1. The Borrower hereby agrees and declares that the Borrower's obligation to pay all Loan Installments, Interest and all other charges & moneys payable under or pursuant to this Agreement, shall be absolute and unconditional"*
>
> *Clause 9.6 of the aforesaid agreement states as follows:-*
>
> *"9.6. Shall not attempt to sell, dispose off or encumber in any way or part with the possession of the said Asset without the prior written consent of the LENDER".*

20. Clause 11.1 of the aforesaid agreement states as follows:-

> *"11.1. In consideration of the LENDER agreeing to lend the said loan, the BORROWER do hereby create an exclusive charge through hypothecation of the said Asset in favour of LENDER, in such form as may be acceptable to and to the satisfaction of LENDER, for the repayment to the LENDER of the said Loan, interest and other monies and all costs, charges and expenses as may become due and payable to LENDER under these presents."*

21. Clause 12.1 of the aforesaid agreement states as follows:-

> *"12.1. fails to pay the Loan Installments, Interest and all other monies payable or part thereof within the stipulated time whether demanded or not or any other charge or payment required hereunder within 7 das of their becoming due;"*

22. Clause 12.4 of the aforesaid agreement states as follows:-

> *"12.4. without the Lender's consent, sells, transfers, or attempts to sell or pledge, parts with possession or sublets or charges or encumbers or creates any lien on the Assets or the Assets or any item of the Assets is endangered in the opinion of the Lender or the interest of the Lender is jeopardised".*

23. The act of the petitioners to repossess the vehicle from the illegal possession of the opposite party no. 2 cannot be considered to be obstructive with an intention of wrongful restraint or criminal breach of trust. The financial institution did not enter into any contractual relationship with the opposite party no. 2 nor entrusted any property or the vehicle to him. On the contrary opposite party no. 2 is an intruder being aware of his status to have entered into an unlawful nexus with the borrower. The petitioners abiding by the direction of the Arbitral Award repossessed the vehicle and in terms of the Loan-cum-Hypothecation agreement. The possibility of an allegation of extortion is figmentary. The dispute between the parties is civil in nature and devoid of criminal intent on the part of the petitioners.

24. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***[7] 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*

[7] 1992 Supp (1) SCC 335

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."

25. In the instant case the facts disclosed in the complaint do not make out any contravention of the provisions of Sections 341/406/384/506/34 of the Indian Penal Code and as such no offence under the aforesaid sections of the Indian Penal Code can be said to have been made out. To allow to continue with the trial will result in abuse of process of law.

26. In view of the above discussions, Charge-Sheet no. 641 dated September 30, 2013 under Sections 341/406/384/506/34 of the Indian Penal Code, pertaining to the proceedings of G. R. Case No. 2400 of 2013, pending before the Court of the Learned Chief Judicial Magistrate, Paschim Midnapore, which arose out of the corresponding investigational proceedings of Kharagpur (L) Police Station Case No. 411 dated 13.07.2013 under Section 341/506/34 of the Indian Penal Code is quashed.

27. The criminal revisional application being no. 1327 of 2014 is allowed.

28. Accordingly, CRR 1327 of 2014 stands disposed of. Connected application if there be any, also stands disposed of.

29. There is no order as to cost.

30. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

31. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(**Ananya Bandyopadhyay, J.**)