

Criminal Revision

Present:

The Hon'ble Justice Ashim Kumar Roy

Judgment on 03.09.2010

*C.R.R. No. 1623 of 2010*

*HDFC Bank Ltd.*

*versus*

*State of West Bengal & Anr.*

Points:

**Possession-** Taking possession the vehicle by the bank in terms of the default clause whether bring the case within the realm of criminal offence.-

Indian Penal Code –S. 392

Facts:

The complainant purchased the vehicle being financed by the HDFC Bank under the Auto Loan Agreement. It further appears that the said Auto Loan Agreement contained a default clause whereby the bank who financed for purchase of the vehicle has been authorized to take over the possession of the vehicle, in other words to repossess the vehicle if there is any default in making of payment of installments by the hirer. The persons obtained a finance of more than Rs. 4 lakhs for purchasing the vehicle but after payment of first installment he started defaulting. It is not disputed that after payment of first installment no further installment was paid and the default was continuing and the outstanding dues at the present moment is more than Rs. 4 lakhs. In such circumstances, the financier re-possessed the vehicle.

Held:

The allegations made in the alleged first Information Report together with the materials collected during preliminary investigation, no offence

punishable under Section 392 of the Indian Penal Code can said to have been made out against the financier for re-possessing of a particular vehicle when such re-possession is supported by the terms of agreement, namely, the default clause empowering the financier to re-possess the vehicle and when admittedly in this case there is default in making payment of loan by hirer. Accordingly, this criminal revisional application stands allowed and the impugned FIR stands quashed. Para 5

Cases cited:

Sardar Triloke singh & Ors. Vs. Satyo Deo Tripathi, AIR 1979 SC 850.

For Petitioner : Mr. Debasish Roy

Mr. Kaushik Chatterjee

For State : Mr. Swapan Kumar Mullick

The Court: Invoking Section 482 of the Code of Criminal Procedure, the petitioner has approached this Court for quashing of a First Information Report relating to the offence punishable under Section 392 of the Indian Penal Code.

2. Heard Mr. Debasish Roy for the petitioner as well as Mr. Swapan Kumar Mullick for the State. Perused the Case Diary and other materials on record.

In spite of service of notice none appeared on behalf of the private opposite party. Affidavit of service filed in Court be kept with the records.

3. Having gone through the materials available from the Case Diary collected during the preliminary investigation, it appears that the complainant purchased the vehicle being financed by the HDFC Bank under the Auto Loan Agreement. It further appears that the said Auto Loan Agreement contained a default clause whereby the bank who financed for

purchase of the vehicle has been authorized to take over the possession of the vehicle, in other words to repossess the vehicle if there is any default in making of payment of instalments by the hirer. I found from the materials on record that although the accused persons obtained a finance of more than Rs. 4 lakhs for purchasing the vehicle but after payment of first instalment he started defaulting. It is not disputed that after payment of first instalment no further instalment was paid and the default was continuing and the outstanding dues at the present moment is more than Rs. 4 lakhs. In such circumstances, the financier re-possessed the vehicle. Whether after failure of the borrower to repay the loan, the bank has rightly invoke the default clause and enforce its right provided thereunder and re-possess the vehicle rightly or legally, is a matter which can properly and adequately be decided by the competent civil Court. But the action of the bank in re-possessing the vehicle in terms of the default clause in my opinion does not bring the case within the realm of criminal offence far less the alleged offence of dacoity. It may be noted that nobody was alleged to have received any hurt. It appears from the materials on record the bank took possession of the vehicle with the aid of his agents invoking its right as enjoined by it by virtue of the default clause due to the failure of complainant to pay the instalment amount. It cannot thus be said any offence of theft and that too, with the requisite mens rea and dishonest intention, has been committed far less an offence of dacoity. The assertion of right and obligations, accruing to the bank under the aforesaid agreement, wiped out any dishonest pretence in that regard, from which it can be inferred they had done so with the guilty intention.

4. Now, it is a settled legal position that if a financier invoking default clause, re-possesses any vehicle in respect of which the finance was provided under

hire purchased scheme, no offence either or criminal breach of trust or of theft or of dacoity can said to have been committed.

5. I am fully satisfied that the allegations made in the alleged first Information Report together with the materials collected during preliminary investigation, no offence punishable under Section 392 of the Indian Penal Code can said to have been made out against the financier for re-possessing of a particular vehicle when such re-possession is supported by the terms of agreement, namely, the default clause empowering the financier to re-possess the vehicle and when admittedly in this case there is default in making payment of loan by hirer. In this connection it would be apposite to refer to the decision of the Hon'ble Supreme Court in the case of Sardar Triloke singh & Ors. Vs. Satyo Deo Tripathi, reported in AIR 1979 SC 850. Accordingly, this criminal revisional application stands allowed and the impugned FIR stands quashed. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

( Ashim Kumar Roy, J. )

