

Amitava Saha and ors. Vs. State of West Bengal and anr.

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Court : Kolkata

Decided On : Dec-20-2006

Reported in : 2007(4)CHN1029

Judge : Ashim Kumar Roy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154, 156(3) and 482;
;[Indian Penal Code \(IPC\), 1860](#) - Sections 323, 379 and 384

Appeal No. : C.R.R. No. 55 of 2006

Appellant : Amitava Saha and ors.

Respondent : State of West Bengal and anr.

Advocate for Def. : Rabi Sankar Chatterjee and ;Tamal Nag, Advs.

Advocate for Pet/Ap. : Sutapa Sanyal, Adv.

Disposition : Application allowed

Judgement :

Ashim Kumar Roy, J.

1. In this application under Section 482 of the Code of Criminal Procedure, the petitioner sought for quashing of the FIR relating to Krishnanagar Sadar Police Station Case No. 57/06, under Section 323/379/384 of the Indian Penal Code and

the investigational proceedings commenced thereupon.

2. Heard, Miss Sutapa Sanyal, Advocate appearing on behalf of the petitioners and Mr. Rabi Sankar Chatterjee, Advocate appearing on behalf of the State. None appeared on behalf of the opposite party, although the learned Advocate of the opposite party has already entered appearance. No affidavit in opposition has been filed by the opposite party No. 2 herein, which they sought to file.

3. Miss Sutapa Sanyal, Advocate appearing on behalf of the petitioners submitted before this Court that in terms of a hire purchase agreement executed on October 30, 2004, and entered into between financier A. J. Finance Private Limited and the hirer the opposite party No. 2 herein, the said hirer obtained a loan to the tune of Rs. 4.2 lakhs from the said financier for purchasing the vehicle and purchased a brand new Toyota Qualis Jeep. As per the said hire purchase agreement the opposite party No. 2 was obliged to liquidate the entire amount of loan by 60 equal monthly instalments. However, only after making a payment of Rs. 9,360/- as first instalment, the opposite party No. 2 became defaulter. The said agreement contained a specific default clause in terms whereof in the event of failure of the opposite party, the hirer, in making payment of instalment money within the stipulated period the financier shall have every right to recover and re-possess the vehicle. Since the hirer was in default, only after making payment of a single instalment, the financier company with the help of his representatives, the petitioners herein, recovered and repossessed the vehicle and such recovery of the vehicle was duly intimated to the local police station. Before taking over the custody of the said vehicle, the financier also availed the remedy available to him under the agreement and raised his claim by referring the matter for arbitration. In arbitration the financier also obtained an award in his favour that the financier is entitled to the custody of the said vehicle.

4. However, after the financier re-possess the vehicle by the petitioners herein, being its authorised representative the opposite party made a complaint in writing to the learned Chief Judicial Magistrate, Krishnanagar, alleging commission of offence punishable under Section 379/384/323 of the Indian Penal Code against the petitioners. When the learned Magistrate in exercise of his power conferred

under Section 156(3) of the Code of Criminal Procedure forwarded the said complaint to the Officer-in-Charge, Krishnanagar Sadar Police Station, directing him to treat the same as FIR and to cause investigation. Whereupon the Krishnanagar Police Station Case No. 57/06, under Section 379/384/323 of the Indian Penal Code was registered.

5. Miss Sutapa Sanyal, Advocate appearing on behalf of the petitioners submits that the proceeding so is initiated is clearly an abuse of process of Court and the allegation accepted in his face value no case of theft or extortion and other offence can said to have been made out and the allegations if at all, only tends to make out a case of bona fide civil dispute. Mr. Rabi Sankar Chatterjee, Advocate appearing for the State vehemently opposed the prayer for quashing and submitted when the FIR has been lodged and investigation is in progress the instant case cannot be quashed without a decision in trial.

6. In this case the only short question fails for consideration whether repossessing a vehicle by the financier from the possession of the hirer on the failure and default of the hirer to pay the instalment amounts within the stipulated time constitutes any criminal offence or not.

7. In the case of Trilok Singh and Ors. v. Satyadeo Tripathi reported in : 1980 CriLJ822 , the Apex Court held that a financier is within his right to seize a vehicle which was purchased by the hirer at the finance provided by the financier, if the instalment amounts are not paid within the stipulated time more particularly when the hire purchase scheme contained a specific default clause permitting the financier to re-possess the vehicle in such default. The same view was reiterated by the Apex Court in the case of Charanjit Singh Chadha v. Sudhir Mehra reported in : 2001 CriLJ4255 , it may be mentioned by Miss. Sutapa Sanyal in support of her case relied on the decisions of Charanjit Singh Chaddya (supra).

8. The ratio laid down in the aforesaid decisions as above in my opinion squarely applicable in the facts and circumstances of the present case. I am of the view, on the facts and circumstances alleged in the FIR in hand no case of offence punishable under Section 379/384 of the Indian Penal Code has been made out in respect of the vehicle in question. So far as the offence of Section 323 is

concerned same being a non-cognizable offence on the sole allegation of commission of such offence neither can a first information be recorded under Section 154 of the Code of Criminal Procedure, the police is legally authorised to undertake any investigation thereupon pursuant to an order passed under Section 156(3) of the Code of Criminal Procedure. I have gone through the allegations made in the complaint and of the further view that no case under Section 323 of the Indian Penal Code has been made out.

9. The revisional application stands allowed and the FIR relating to the Krishnanagar Police Station Case No. 57/06, under Section 323/379/384 of the Indian Penal Code and all investigation done pursuant thereto stands quashed.

10. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.

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