

(2008) 08 CAL CK 0010

Calcutta High Court

Case No: C.R.R. No. 1994 of 2008

Citicorp Finance (India) Limited

APPELLANT

Vs

The State of West Bengal and
Another

RESPONDENT

Date of Decision: Aug. 13, 2008

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 5, 8
- City Civil Court Act, 1953 - Section 10
- Penal Code, 1860 (IPC) - Section 323, 341, 379, 411

Citation: (2008) 4 CALLT 271

Hon'ble Judges: Ashim Kumar Roy, J

Bench: Single Bench

Advocate: Joy Sengupta, Imran Siddique and Suman De, for the Appellant; Tirthankar Ghosh and Sobhendu Sekhar Ray and Partha Chakraborty for O.P. No. 2, for the Respondent

Judgement

Ashim Kumar Roy, J.

Heard Mr. Joy Sengupta, the learned advocate appearing with Mr. Imran Siddique for the petitioner, Mr. Tirthankar Ghosh for the State and Mr. Sobhendu Sekhar Ray, the learned advocate, appearing with Mr. Partha Chakraborty on behalf of the opposite party No. 2. Perused the impugned complaint as well as the other materials on record.

2. This is a case where the petitioner invoking inherent jurisdiction of this Court sought for quashing of the FIR relating to Burdwan Police Station Case No. 230/2008 under Sections 341/323/379/411 of the Indian Penal Code corresponding to G.R. Case No. 583/2008 now pending before the learned Chief Judicial Magistrate, Burdwan.

3. The allegations contained in the impugned FIR are as follows:

A Tata Truck Registration No. WB-15A/4478 of which the petitioner is the registered owner while was proceeding from Burdwan to Kolkata on May 5, 2008 near Saktigar Bridge at around 6.30 a.m., in the morning, a group of 5/6 persons intercepted the truck with a Tata Sumo Car and having introduced them as the men of the financier, forcibly took away the vehicle leaving the driver there.

4. Mr. Sengupta, the learned Counsel, appearing on behalf of the petitioner submitted before this Court that the petitioner herein Citicorp Finance (India) Limited in terms of a hire purchase agreement entered into with the complainant i.e. the opposite party No. 2 herein, provided a loan of Rs. 9.50 lakhs to him for buying the Tata Truck in question and the defacto-complainant purchased the said truck after obtaining and utilizing the said loan amount. He further submitted as per the said hire purchase agreement the opposite party No. 2 was obliged to liquidate the entire loan amount with interest in 47 monthly instalments. The said vehicle stands hypothecated with the petitioner company, until the entire loan amount is liquidated. The said agreement contained a default clause, whereby the financier is entitled to re-possess the vehicle, in default of payment of instalment money and on breach of any other condition. The agreement also contained an arbitration clause in case of any dispute arises between the parties.

5. The Learned Advocate appearing on behalf of the complainant has not disputed or denied about the existence of such a hire purchase agreement as regards to the truck in question as well as the terms of agreement as referred by the learned advocate of the petitioner.

6. Mr. Sengupta further submitted that since the hirer failed and neglected to make payment of the instalment amounts within the schedule time and the hirer was in default in payment of several instalments in terms of the hire purchase agreement the financier company became entitled to re-possess the vehicle. It is the further case of the petitioner following the default in making payment of the instalment money the opposite party No. 2 filed a title suit being T.S. No. 2342 of 2007 before the learned Civil Judge, 13th Bench, City Civil Court, Calcutta along with an application for injunction restraining the petitioner company from re-possessing the vehicle, when the learned Court passed a restrained order which was remain valid till 27th of September, 2007.

7. The petitioner company duly appeared in the said title suit and moved an application under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996 praying for stay of the said suit and referring the same for arbitration. Subsequently, in terms of the provisions of Section 10 of the City Civil Court Act the aforesaid suit was transferred to the learned Civil Judge, 8th bench, City Civil Court, Calcutta, pursuant to an order passed on March 18, 2008 by the learned Chief Judge, City Civil Court, Calcutta. In the meantime the injunction application of the opposite party No. 2 in connection with the aforesaid suit came up for hearing before the Learned Civil Judge, 8th Bench, City Civil Court, Calcutta, and as on several

occasions, none appeared on behalf of the plaintiff i.e. the opposite party No. 2 herein, the Learned Judge dismissed the said injunction application and vacated the order of stay and thereafter the petitioner company re-possessed the vehicle through its authorized representatives.

8. So far as the aforesaid facts as regards to the filing of the suit and injunction application restraining the petitioner to re-possess the vehicle and the petitioner's application for referring the subject matter of the suit for arbitration as well as the dismissal of the injunction application has not been disputed on behalf of the opposite party No. 2.

9. Mr. Sobhendu Sekhar Roy, the learned Counsel, appearing on behalf of the opposite party No. 2/defacto-complainant submitted since the financier admittedly re-possess the vehicle without due process of law the alleged offence has certainly been committed and there is no question of quashing of the FIR.

10. Mr. Tirthankar Ghosh, the learned Counsel, appearing on behalf of the Stated submitted before this Court as the law stands in the facts and circumstances of the case the impugned FIR cannot be sustained.

11. The only short question falls for consideration in the instant criminal revisional application whether re-possessing of a vehicle by a financier from the possession of the hirer on failure and default of the hirer to pay the instalment amount within the stipulated period constitute any criminal offence or not, when the hire purchase agreement contains specific stipulations, while the hirer was obliged to pay the instalment amounts within the stipulated period, the financier is entitled to re-possess the vehicle in the event of failure of the hirer to pay the instalment amount.

12. In the case of Trilok Singh and Ors. v. Satya Deo Tripathy reported in 1979 SCC 987 the Apex Court categorically held that it is within the right of the financier to seize and re-possess 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 agreement contain a specific default clause permitting the financier to re-possess the vehicle in such default, and no criminal offence can said to have been committed by the financier on taking re-possession of the vehicle on such circumstances. The Apex Court in the case of Charanjit Singh Chaddga v. Sudir Mehera reported in 2001 SCC (Cri) 1557 reiterated and re-affirmed the said view.

13. In my opinion, the law as laid down by the Apex Court in the aforesaid decisions are squarely applicable in the facts and circumstances of the present case and as such the impugned FIR stands quashed.

14. In view of the disposal of the main criminal revision C.R.R. No. 1994 of 2008, the application for extension of interim order being CRAN No. 1744 of 2008 and the

application for vacating the interim order being CRAN No. 1768 of 2008 both stands disposed of.

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