

(2011) 02 CAL CK 0025

In the Calcutta High Court

Case No : CRR No. 4382 of 2009 and CRAN No. 212 of 2011

HDFC Bank Ltd.

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 341, 379

Citation : (2011) 2 CALLT 227

Hon'ble Judges : Mrinal Kanti Sinha, J

Bench : Single Bench

Advocate : Debasis Roy, Sandipan Ganguly, Paritosh Sinha and Amitava Mitra, for the Appellant; Pushpal Satpathi, for the Respondent

Final Decision : Allowed

Judgement

Mrinal Kanti Sinha, J.—This revisional application u/s 482 of the Code of Criminal Procedure, 1973, has been initiated by the Petitioner praying for quashing of the proceedings bearing B.G.R. case No. 353 of 2009 pending before the Court of learned Additional Chief Judicial Magistrate, Alipore, and the corresponding proceeding of Jadavpore Police Station case No. 40 dated 21.01.2009 under Sections 341/323/379 of the Indian Penal Code.

2. It is the case of the Petitioner that the Petitioner being incorporated under the Companies Act, 1956, having its Office at Calcutta, is being represented by Sri Sachin Kumar Gupta, Deputy Manager (Legal). Jadavpore Police Station case No. 40 dated 21.01.2009 has been registered for investigation on the basis of a letter of complaint lodged by the opposite party No. 2 with the Inspector-in-charge of Jadavpore Police Station alleging commission of offences punishable under Sections 341/323/379 of the Indian Penal Code by unknown persons. It has been alleged therein that the vehicle of the opposite party No. 2 /complainant bearing No. WB - 02U/2790 was forcibly snatched away by five local goons while it was being driven by the driver of the opposite party No. 2 from West Wind, Ramgarh

to Palm Avenue, Ballygunj at around 8.30 p.m., and the driver of the opposite party No. 2/complainant namely Phulesh Singh was physically assaulted and thrown out of the said car after the keys of the said vehicle were snatched away at Ramgarh, and it is the suspicion of the complainant that HDFC Officials were responsible for the aforesaid act. But the present Petitioner is completely innocent and is in no way connected with the commission of the alleged offences and he has falsely been implicated in the said case. The facts disclosed in the complaint do not make out any case of contravention of the provisions of the Sections 341/323/379 of the Indian Penal Code and as such no offence under the said section can be said to have been made out. The cognizance of the proceeding under the aforesaid provisions of law is clearly misconceived and against the express provision of the statute, and so it would be just and proper to quash the impugned proceedings, and it would be gross abuse of the process of the Court and the Petitioner will have to suffer irreparable loss and injury if the said proceeding is allowed to continue and the impugned proceeding is otherwise bad in law and for the interest of justice that is liable to be quashed.

3. The opposite party No. 1, State of West Bengal has appeared in this matter, but has filed no affidavit-in-opposition. Opposite party No. 2, the complainant has neither appeared nor has filed any affidavit-in-opposition.

4. It is to be considered in this case whether the impugned proceeding is liable to be quashed or not.

5. Mr. Debasis Roy, learned Counsel for the Petitioner has submitted that Jadavpore Police Station case No. 40 dated 21.01.2009 has been registered for investigation on the basis of the complaint lodged by the opposite party No. 2. the complainant, with the Inspector-in-charge of Jadavpur Police Station alleging therein about the commission of offences punishable under Sections 341/323/379 of the Indian Penal Code by unknown persons and it has also been alleged therein that the vehicle of the opposite party No. 2 bearing No. WB-02U/2790 was forcibly snatched away by five local goons while it was being driven by the driver of the opposite party No. 2 who was proceeding from West Wind, Ramgarh to Palm Avenue, Ballygunj, at around 8.30 p.m. and the driver of the opposite party No. 2 /complainant namely Phulesh Singh was physically assaulted and thrown out of the said car after the keys of the said vehicle was snatched away at Ramgarh and it is the suspicion of the complainant that the HDFC Officials were responsible for the said act, but the Petitioner bank agreed to provide loan to the tune of Rs. 4,22,464/- to a company named M/s. Uniworth for purchasing a vehicle bearing registration No. WB-02U/2790 on the basis of an agreement between them and it was provided by Clause 14.2 of the said agreement that upon happening of any "Event of Default" as provided by Clause 11 to the said agreement, the Petitioner bank through its Officer, agent or nominee shall have right to take repossession of the hypothecated vehicle as also to sell the same by auction or private contract for satisfying the dues of the Petitioner bank, and there were such event of default and so there was no

question of forcible snatching of the said vehicle from the opposite party No. 2 or committing of theft of the said vehicle or the alleged offences by the Petitioner bank, and for that reason the impugned proceeding is liable to be quashed and the said complaint is liable to be dismissed as that is not maintainable.

6. Mr. Pushpal Satpathi, learned Counsel for the opposite party No. 1 State of West Bengal, has contended that the impugned proceeding has been initiated on the basis of a letter of complaint submitted by the opposite party No. 2/complainant before I.C., Jadavpore Police Station, Calcutta, on 21.01.2009 alleging therein that his car bearing No. WB-02U/2790 was snatched away by five local goons while it was being driven by his driver from West Wind, Ramgarh to Palm Avenue at Ballygunj at around 8.30 p.m., and his driver Phulesh Singh was physically assaulted and thrown out of the said car after the keys of the said car were snatched away, and the complainant suspected that the HDFC authority snatched away the said car from his driver and on the basis of that complainant Jadavpore Police Station case No. 40 dated 21.01.2009 was initiated by police, but the Inspector of Police D.E.B, Purba Medinipur, has submitted a report dated 04.02.2010 with reference to Jadavpore Police Station case No. 40 dated 21.01.2009 under Sections 341/323/379 of the Indian Penal Code that during investigation the complainant was asked to produce the driver and necessary papers of his stolen car but he did not cooperate till 31.12.2009 after 21.01.2009, and so consulting the case with the I.C., Jadavpore Police Station, he submitted F.R.T. No. 650 dated 31.12.2009 under Sections 341/323/379 of the Indian Penal Code and the learned Counsel for the State has also endorsed and submitted the same before this Court, and so the said proceeding is liable to be quashed and in view of the aforesaid report of the said police Officer necessary order in this regard may be passed.

7. It appears that on the basis of a written complaint of the opposite party No. 2 / complainant, Jadavpore Police Station case No. 40 dated 21.01.2009 under Sections 341/323/379 of the Indian Penal Code was initiated against the present Petitioner bank HDFC Ltd. on the allegation that while the complainant's car No. WB-02U/2790 was being driven by his driver from West Wind, Ramgarh to Palm Avenue, Ballygunj at around 8.30 p.m. then five hooligans snatched away the same and they physically assaulted the driver of the complainant named Phulesh Singh, thrown him out of the car after snatching away the keys at Ramgarh, and the complainant suspected HDFC bank authority or their men snatched away the car from his driver. The opposite party No. 2/complainant himself has not appeared to oppose the prayer of the present Petitioner bank for quashing of the said proceedings nor the opposite party No. 2/complainant has assisted or cooperated with the police in the investigation of the case, though he was asked to produce the driver and necessary papers of his alleged stolen car, for which the Police Officer concerned, who was probably entrusted with the investigation of the case, has been compelled to submit FRT No. 650 dated 31.12.2009 under Sections 341/323/379 of the Indian Penal Code in the said complaint case.

8. As per the provision of Section 482 of the Code of Criminal Procedure the High Court has been authorised to make such order as may be necessary to give effect to any order under this Code or to prevent abuse of process of any court or otherwise to secure the ends of justice.

9. The provision of Section 482 of the Code of Criminal Procedure reads thus:

Section 482. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure ends of justice.

10. In the instant case it appears from the report of Inspector of Police D.E.B, Purba Medinipur, dated 04.02.2010 that during investigation the Inspector of Police concerned asked the complainant to produce his driver and necessary papers of his alleged stolen car for the development of the case, but the complainant did not cooperate till 31.12.2009 after 21.01.2009, the alleged date of the said incident, for which reason the Inspector of Police concerned was compelled to submit the F.R.T No. 650 dated 31.12.2009 under Sections 341/323/379 of the Indian Penal Code consulting about the case with the I.C, Jadavpore Police Station.

11. Besides that it also appears that as per the revisional application of the Petitioner a company named M/s Uniworth being the borrower entered into an agreement with the Petitioner bank being the lender, and the present Petitioner agreed to provide loan to the tune of Rs. 4,22,464/-, and M/s Uniworth agreed to accept said loan for purchase of vehicle bearing registration No. WB-02U/2790, and M/s. Uniworth undertook to repay the said loan by instalments. Though the complainant has not mentioned that said M/s. Uniworth is his company, yet he has claimed himself to be the owner of the said vehicle by his written complaint sent to Jadavpore Police Station, which has been treated as First Information Report, and the defacto-complainant has claimed by his First Information Report that the car bearing No. WB-02U/2790 is his car by saying that vehicle number. It also appears from the revisional application that Clause 11 of the agreement between them provided for "Event of Default" and failure to pay any sum due under the agreement by the borrower shall constitute an "Event of Default", and Clause 14 of the said agreement provided that upon happening of any "Event of Default" as provided under Clause 11 to the said agreement the Petitioner bank through its Officer, agent or nominees shall have the right to take repossession of the hypothecated vehicle as also to sell the same thereafter by auction or private contract for satisfying the dues of the Petitioner bank.

12. In view of the aforesaid agreement between the Petitioner bank and the opposite party No. 2/complainant regarding the said loan by which the said car was allegedly purchased by the complainant and there was no repayment of that loan as per said agreement, it must be said that the said fact prima facie disclosed no offence of theft of the said vehicle and consequent to that the

offences of wrongful restraint or assault upon the driver of the complainant were not also disclosed thereby.

13. It has also been stated by the revisional application that the right of a financier or the hire purchase owner to take repossession of the vehicle due to the 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 High Court, and the Petitioner bank was entitled to take repossession of the vehicle as the opposite party No. 2/complainant has failed to pay equal monthly instalments as agreed to be paid by him in the Car Loan Agreement and thereby forcing the Petitioner to take repossession of the said vehicle, and the said act of the financier cannot be termed to be illegal in view of the agreement between them.

14. Having regard to the submissions of the learned Counsels for the parties, materials on record and other circumstances it appears that the Jadavpore Police Station case No. 40 dated 21.01.2009 under Sections 341/323/379 of the Indian Penal Code initiated on the basis of a written complaint of the opposite party No. 2/complainant submitted before Jadavpore Police Station ended in an FRT bearing No. 650 dated 31.12.2009 under Sections 341/323/379 of the Indian Penal Code, as according to the report of the Inspector of Police, D.E.B, dated 4.2.2010 during investigation complainant was asked to produce his driver and necessary papers of his alleged stolen car for the development of the case, but the complainant did not cooperate or assist the Inspector of Police or the I.O. concerned till 31.12.2009 after 21.01.2009, and the said Inspector of Police also consulted the case with the I.C., Jadavpore Police Station, as the case was unnecessarily being pending, and so he submitted said FRT which shows that the complainant himself was no longer interested to proceed further with his case nor the allegations made by him disclosed any of the alleged offences as mentioned in his written complaint in view of his agreement with the Petitioner bank. No certified copy of order of any Court has been produced in this matter to show that really cognizance was taken in any proceeding by any Court or the same is pending, but it is apparent that the proceeding initiated by the opposite party No. 2/complainant through Jadavpore Police Station case No. 40 dated 21.01.2009 under Sections 341/323/379 of the Indian Penal Code has ended in FRT No. 650 dated 31.12.2009 under Sections 341/323/379 of the Indian Penal Code, and as such the impugned proceeding is liable to be quashed for the ends of justice as otherwise it would be abuse of process of the court to continue with the same and would amount to harassment or oppression to the present Petitioner. From the discussion noted above it appears that the revisional application should be allowed and the impugned proceeding is liable to be quashed.

15. Accordingly CRR No. 4382 of 2009 with CRAN 212 of 2011 stands allowed. The impugned proceeding bearing BGR case No. 353 of 2009 pending in the Court of learned Additional Chief Judicial Magistrate, Alipore, and arising out of

Jadavpore Police Station Case No. 40 dated 21.01.2009 under Sections 341/323/379 of the Indian Penal Code is hereby quashed and the CRAN is also disposed of accordingly.

16. A copy of this judgment be sent to the learned Court below for information and necessary action.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking.