
(2022) 02 CAL CK 0026
In the Calcutta High Court
Case No : CRR No. 3193 Of 2017

Indusind Bank Limited

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 10-02-2022

Acts Referred:

Indian Penal Code, 1860 — Section 24, 34, 378, 379, 406, 506
Code Of Criminal Procedure, 1973 — Section 94, 200, 202, 203

Citation : (2022) 02 CAL CK 0026

Hon'ble Judges : Tirthankar Ghosh, J

Bench : Single Bench

Advocate : Sayak Ranjan Ganguly, Asha Mehta, Imran Ali, Debjani Sahu,
Shyamal Chakraborty

Final Decision : Allowed

Judgement

The present revisional application has been preferred challenging the proceeding relating to C.R. case no. 530 of 2012 pending before the learned

Judicial Magistrate, 1st Court, Berhampore, Murshidabad under Sections 379/506 of the Indian Penal Code, 1860.

The allegations made in the petition of complaint are as follows:-

The complainant purchased a truck bearing no.WB 23 C 2949 with the aid of finance from Indusind Bank Limited. The complainant was regular in

paying monthly instalment, however, on 12.04.2012 when the vehicle was proceeding towards Guwahati from Kolkata, when it reached at

Berhampore near Panchanantala rail gate at about 08.00/08.30 am 4-5 unknown persons blocked the said vehicle and thereafter assaulted the driver

and his assistant. The accused persons took away all the documents of the vehicle, forced the driver and his assistant to sign on a blank paper

assaulted them with fists and blows, forced them to come down from the car and drove the vehicle away. The said vehicle thereafter was in custody

of the accused persons and the complainant at the relevant point of time being out of State could not communicate. On 07.05.2012 when the

complainant approached the Manager, Indusind Bank Limited he was thrown out from his Office and having no other alternative a GD Entry was

lodged at Berhampore Police Station, i.e., GDE no. 683 dated 08.05.2012. The complainant alleges that the manager of the bank is attempting to sell

of the said vehicle and is threatening him. It has further been alleged that the driver of the vehicle at the relevant point of time was carrying

Rs.11,732/- which was also snatched away by the accused persons.

On the basis of the complaint so filed, the learned Magistrate was pleased to take cognizance of the offence and examined the complainant under

Section 200 of the Code of Criminal Procedure. By an order dated 10.05.2012 the learned Magistrate was pleased to hold that as one of the accused

person resides outside the jurisdiction of the Court, an enquiry/investigation under Section 202 of the Code of Criminal Procedure is required to be

conducted and as such directed the Officer-in-charge of Berhampore Police Station to investigate into the matter either himself or through an Officer

subordinate to him under Section 202 of the Code of Criminal Procedure and submit a report before the Court. Accordingly a report was submitted

before the learned Magistrate by the concerned Officer of Berhampore Police Station which, inter alia states as follows:-

On 15.09.2012 at about 9.30 am the concerned Officer went to Panchanantala and inquired from the local people who stated that on 13.04.2012 at

about 12.00 pm in the afternoon the agents of the financier had blocked a vehicle being a 14 wheeler truck numbered as WB 23 C 2949 which was

loaded with goods. It has been subsequently contended that at the time of possessing the said vehicle there was neither any scuffle nor any hue and

cry or tension in the locality. It has also been reported that the driver of the said vehicle accompanied the agents of the Financier and parked the

vehicle at Trisha Parking Agency. The manager of Trisha Parking Agency which is situated at Bhatpara, Kashimbazar showed the

documents of the vehicle as also the vehicle and informed that on 13.04.2012 the Finance Authority of Indusind Bank and on behalf of the them one

Manowar Hossain seized the said vehicle along with the documents. The Officer also inquired from the complainant who represented that he was the owner of the said vehicle who had paid one lakh rupees on 29.02.2012 and a sum of Rs.5,000/- on 13.03.2012. The documents which were seized also reflected that the complainant happens to be the owner. It was also reported that there was no order of any Court of law for seizing the vehicle. The order dated 29.02.2012 reflects that the learned Magistrate on receipt of such report was pleased to dismiss the complaint under Section 203 of the Code of Criminal Procedure.

Being aggrieved by the said order the complainant preferred a Revisional Application before the learned District Judge, Murshidabad being Criminal

Revision no. 152 of 2012 which was finally heard by the learned Additional District Judge, 3rd Court, Murshidabad and the said Court was pleased to

set aside the order of dismissal dated 29.05.2012 passed by the learned Judicial Magistrate remanding the complaint petition with a direction to

consider the matter afresh as to whether process should be issued or not. In spite of the said direction the complainant preferred a revisional

application being CRR 74 of 2014 before the Honâ??ble High Court wherein in CRR 74 of 2014 it was directed that the learned Magistrate

should expeditiously arrive at its finding preferably within a period of 30 days from the date of communication of the order and with a specific

observation â??I make it clear that this Court had no occasion to go into the merit of this case and that the parties are at liberty to take their

respective stand in the Court below according to law.â??

The matter thereafter appeared before the learned Judicial Magistrate and the learned Magistrate by an order dated 25.03.2014 was pleased to issue

process under Section 379/506/34 of the Indian Penal Code against Indusind Bank, Manowar Hossain and the Manager of Indusind Bank, 41,

Shakespeare Sarani, Kolkata -700017.

Learned Advocate appearing for the petitioner Indusind Bank submitted that the present complainant had entered into a loan agreement which is a

hire purchase agreement and the Lenderâ??s Rights of the said agreement incorporates the following:

â??15.1. The occurrence of any/all of the aforesaid Events of Default shall entitle the Lender to intimate the Borrower that the entire sum of money

and all other sums and charges of whatsoever nature, including but not limited to, interests on account of default in payment of insurance premia and

on account of other taxes which would have been payable by the Borrower if the Agreement had run to its full term, have become due and payable

forthwith. The Lender shall be entitled to charge an extra percentage at a rate specified in the first Schedule on the principal outstanding and on the

other amounts due, and demand that all the aforesaid amounts be repaid to the Lender immediately. The Lender may by a notice in writing at its

discretion call upon the Borrower to rectify the event of Default within the period specified in such notice.

15.2. Upon occurrence of an Event of Default, the Borrower shall be bound to return the Asset to the Lender at such location, as the Lender may

designate, in the same condition in which it was originally delivered to the Borrower, ordinary wear and tear excepted. The Borrower shall not prevent

or obstruct the Lender from taking the possession of the Asset. For this purpose the Borrower covenants & confirms that the Lender's authorized

representatives, servants, officers and agents will have unrestricted right of entry and shall be entitled to forthwith, or at any time without notice to the

Borrower, to enter upon the premises, or garage, or godown, where the vehicle(s) are lying or kept, and to take possession or recover and receive the

same and if necessary to break open any such place. The Lender will be well within its rights to use tow-van or any carrier to carry away the Asset.

The Borrower shall be liable to pay any towing charges and other such expenses incurred by the Lender for taking the possession of the Asset, cost

of safe keeping of the asset and for its sale etc. If the Lender takes possession of the Hypothecated Asset, the Lender shall not be responsible for any

loss or deterioration of or damage to the Hypothecated Asset whether by theft, fire, rain, flood, earthquake, lighting, accident or any other cause

whatsoever.

15.7. On demand being made by the Lender, or if required by the Lender upon happening of any Events of Defaults, the Borrower shall:-

15.7.1. give immediate and actual possession of the hypothecated Asset to the Lender, its nominees or agents (as the case may be);

Learned advocate for the petitioner also referred to a judgment of the Hon'ble Supreme Court in Anup Sarmah vs. Bhol Nath Sharma

and Ors. reported in (2013) 1 SCC 400 and drew the attention of this Court to the relevant paragraph which is as follows:

¶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.¶

Learned Counsel appearing for the complainant/opposite party contradicted the submissions advanced by the learned advocate appearing for the

petitioner and emphasized on the relevant part of the complaint wherein it has been alleged that the agents of the Financer Bank had assaulted the

driver as well as his assistant with fist and blows. It was categorically stated that no financier has the power to assault, to that effect learned advocate

relied upon ICICI Bank v. Shanti Devi Sharma and Ors. reported in (2008) 7 SCC 532 and drew the attention of the Court to the relevant

guidelines formulated by the Reserve Bank of India which is as follows:

¶13. A more comprehensive version of these Guidelines was recently released on 24-4-2008. The Guidelines expressly refer to the 5-5-2003

Guidelines at (i)(x) with regard to the methods by which recovery agents collect security interests. In addition, the 24-4-2008 Guidelines further

referred Para 6 of the Code of Bank's Commitment to Customers (bcsbi Code) pertaining to collection of dues. The bcsbi Code at Para 6, inter

alia, provides:

¶6. All the members of the staff or any person authorised to represent our Bank in collection or/and security repossession would follow the

guidelines set out below:

1. You would be contacted ordinarily at the place of your choice and in the absence of any specified place at the place of your residence and if

unavailable at your residence, at the place of business/occupation.

2. Identity and authority to represent would be made known to you at the first instance.

3. Your privacy would be respected.

4. Interaction with you would be in a civil manner.

5. Normally our representatives will contact you between 0700 hrs and 1900 hrs,

unless the special circumstances of your business or occupation require otherwise.

6. Your requests to avoid calls at a particular time or at a particular place would be honoured as far as possible.

7. Time and number of calls and contents of conversation would be documented.

8. All assistance would be given to resolve disputes or differences regarding dues in a mutually acceptable and in an orderly manner.

9. During visits to your place for dues collection, decency and decorum would be maintained.

10. Inappropriate occasions such as bereavement in the family or such other calamitous occasions would be avoided for making calls/visits to collect dues.??

Learned advocate for the complainant/opposite party also relied upon an unreported judgment of this Court in C.R.R. no. 3634 of 2009 (Mr. Rakesh

Kumar Chhualsingh ??"Vs.?" The State of West Bengal & Anr.) wherein attention was drawn to paragraphs 8 and 9 of the said judgment which are

as follows:

??8.From the allegations made in the FIR it appears that the hypothecated truck was suddenly taken back

by the petitioner company with the help of some unknown agents at the point of assault and threat on 21.08.2009 who detained the lorry at

Chowringhee while the said truck loaded with mourm was plying towards NH 6. The driver was forced to get down from the truck and to sign in a

paper and thereafter the lorry was taken towards Midnipore town with all relevant papers kept therein. On the basis of such allegation made in

paragraph 4 of the petition of complaint the learned Court below has taken cognizance of the offence since the petition of complaint discloses prima

facie offence of theft and extortion etc.

9. Therefore, it is a pure question of facts to be decided in course of trial as to whether the petitioner company has taken resort to the due process of

law for recovery of the loan by taking back the hypothecated truck. The revisional Court cannot at this stage decide the merit of such petition of

complaint which prima facie discloses the alleged offence. From this point of view learned Court below has not committed any error in issuing

process. He has also passed interlocutory order while considering application under Section 94 Cr.P.C. in his order dated 28.08.2009 to keep the vehicle after recovery at the disposal of the registered owner on furnishing bond and on condition to produce the same as and when called for without changing the nature and character of the same. This consequential interlocutory order is also legally valid because the registered owner is the appropriate person who should take care of the seized vehicle in execution of the search warrant, during pendency of trial. Otherwise the same will be damaged and left at the care of nobody at the risk of its deterioration and damage which cannot serve the ends of justice pending trial. Therefore, I also do not find any illegality or impropriety in such order to be interfered with.â??

The distinctive feature of this case happens to be the report which was submitted by the concerned Officer of Berhampore Police Station which categorically stated that there was neither any scuffle nor any hue and cry and it was in fact the driver of the vehicle who had plied the said vehicle to the parking lot namely, Trisha Parking Agency. The said report remained unchallenged and was relied upon by the learned Magistrate and that is why although the petition of complaint was filed under Section 323/406/378/34 of the Indian Penal Code inserted the learned Magistrate was pleased to issue process only under Section 379/506 of the Indian Penal Code. The foundation of issuance of process as such rules out the sole consideration on which the learned advocate for the complainant emphasized which is assault with fists and blows upon the driver and his assistant.

Having regard to such factual position, I am of the opinion that the judgment relied upon by the Learned Advocate appearing for the complainant/opposite party are not applicable to the facts of the present case. Consequently the series of judgments which have been settled by the

Honâ??ble Supreme Court in reference to hire purchase agreement and recovery of vehicle particularly in *Sardar Trilok Singh & Ors. â??Vs. â??*

Satya Deo Tripathi, (1979) 4 SCC 396; K.A. Mathai alias Babu & Anr. â??Vs. â?? *Kora Bibikutty & Anr., 1996 7 SCC 212; Chiranjit Singh Chadha & Ors. â??Vs. â??* *Sudhir Mehra, (2001) 7 SCC 417* are relevant.

In *Sardar Trilok Singh & Ors. (supra)* the following observations are made:

â??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 agreement entered on March 29, 1973 was 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 instalments admittedly paid by him was to the tune of Rs 3566 exactly at Rs 1783 per month.â??

In K.A. Mathai (supra) the following observations are made:

â??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 instalment/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, 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 mensrea and requisite dishonest intention. The assertion 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 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 the 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.â??

In Chiranjit Singh Chadha (supra) the following observations are made:

â??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 instalments and under the agreement the appellants have taken repossession 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 repossess the vehicle, there cannot be any basis for alleging that the appellants have committed criminal breach of trust or

cheating.

13. But in the instant case, the owner repossessing the vehicle delivered to the hirer under the hire-purchase agreement will not amount to theft as the

vital element of â??dishonest intentionâ? is lacking. The element of â??dishonest intentionâ? 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 â??dishonestlyâ? is defined under Section 24 IPC

as follows:

â??24. â??Dishonestlyâ?."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 â??dishonestlyâ?.

Thus, the authority in Anup Sarmah (Supra) relied upon by the learned Advocate appearing for the present petitioner aptly applies so far as the factual

foundation of the case is concerned and the law laid down therein is to be applied in the present case.

Therefore, all further proceedings relating to C.R. Case No. 530 of 2012 under Section 379/506 of the Indian Penal Code as also orders passed

therein by the Learned Judicial Magistrate, 1st Court, Berhampore, Murshidabad are hereby quashed.

Thus the revisional application being CRR 3193 of 2017 is allowed.

Pending application, if any, is consequently disposed of.

Interim order granted is made absolute.

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

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.