**(2008) 04 CAL CK 0030**

**In the Calcutta High Court**

**Case No :** C.R.R. No. 807 of 2008

ING Vysya Bank Ltd. and Another APPELLANT

Vs

State of West Bengal and Others RESPONDENT

**Date of Decision :** 09-04-2008

**Acts Referred:**
Penal Code, 1860 (IPC) — Section 120B, 403, 409, 411, 414

**Citation :** (2008) 4 JCR 176

**Hon'ble Judges :** Ashim Kumar Roy, J

**Bench :** Single Bench

**Advocate :** Mujibar Rahaman, for the Appellant;Joy Sengupta and Rajarshi Chatterjee, for the Respondent

**Final Decision :** Allowed

## Judgement

Ashim Kumar Roy, J.—Seeking quashing of the first information report relating to the Singur Police Station Case No. 178/2007 dated September 8, 2007 under Sections 403/409/411/414/120-B of the Indian Penal Code, the petitioner invoking inherent jurisdiction of this Court moved the instant criminal revisional application.

2. The foundation of the impugned FIR are as follows:

(a) The complainant who happened to be the registered owner of the truck bearing No. W.B.-15-A-1788 purchased the said vehicle by obtaining a loan of Rs. 6.50 lakhs from the opposite party No. 1 ING Vyasya Bank Ltd. under a hire purchase agreement. The terms of repayment of the loan was by 47 equal instalments @ Rs. 16,457/- per instalment. The complainant out of total loan amount paid back Rs. 2,61.500/- to the accused-Banker and in addition to that spent Rs. 3 lakhs for making body and cabin of the driver and also paid the seed money of Rs. 56,200/- and further a sum of Rs. 10,000/- and Rs. 7,000/-to the accused- banker. All such payments were made against-proper and valid receipts. The said loan was taken by the complainant on December 28, 2004.

However, on August 7, 2006 the said truck was snatched away by the accused persons with the help of some unknown miscreants. The complainant then and there informed about the same to the respective authorities and after sometime approached the bank for return of the truck in question. As the complainant did not concede to his request the complainant moved the District Consumer Forum for necessary relief. However, his petition before the District Consumer Forum was dismissed on June 26, 2007. Thereafter, the accused-bank assured the complainant that he will be sufficiently compensated however without compensating him and without his consent the accused-bank sold out the said truck in question to a third party in spite of the fact that a major portion of the loan amount has been liquidated. According to the complainant the accused-bank by taking away the vehicle forcibly from his possession and then disposing the same to a third party by way of sale has criminally misappropriated the entire consideration amount and thereby committed an offence of criminal breach of trust.

3. The learned Counsel Mr. Mujibar Rahaman submitted before this Court in le facts and circumstances of the instant case and more particularly when in terms the default clause contained in the hire purchase agreement the financier repossess the vehicle after fulfilling all the obligations rising out of such hire purchase agreement no offence of criminal breach of trust can be said to have been committed by the financier. He further submitted that the allegations contained in the petition of complaint at its highest may tends to make out a case of a dispute in Civil Nature. Mr. Rahaman further produced before this Court a copy of the aforesaid hire purchase agreement and the learned Counsel appearing on behalf of the opposite party after examining the same raised no dispute as to the authenticity thereof.

4. On the other hand, Mr. Joy Sengupta, the learned Advocate appearing on behalf of the State submitted that the case is at a early stage of investigation and at this stage the prayer for quashing of the complaint cannot be sustained.

5. Mr. Rajarshi Chatterjee, the learned Counsel appearing on behalf of the defacto-complainant submitted that the complainant is the registered owner of the vehicle and even in spite of default of payment of instalment money when the substantial portion of the loan amount has been repaid repossession of the vehicle and selling it to a third party without taking recourse to law clearly constitute an offence of criminal breach of trust. Accordingly, he prays for dismissal of the instant criminal revision.

6. The short point involved in the instant case is this whether repossession of a vehicle by the financier from the hirer on his failure and default to pay instalment amounts within the stipulated period and in terms of hire purchase agreement at all constitutes any criminal offence or not. In the case of Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, , the Apex Court held that a financier is well within his legal right to seize a vehicle which was purchased by the hirer at the finance provided by it if the instalment amounts are not paid within the stipulated time

and when hire purchase scheme contained a specific default clause permitting the financier to re-possess such vehicle on such default. The aforesaid view of Trilok Singh and Ors. v. Satya Deo Tripathi, (supra) has been reiterated and re-affirmed by the Apex Court in the case of K. A. Mathai alias Babu v. Kora Bibbikutty, (1996) 7 SCC 212 . as well as in the case of Charanjit Singh Chadha and Others Vs. Sudhir Mehra, .

7. The legal proposition as laid down in the aforesaid decisions squarely applicable in the facts and circumstances of the present case and as such in my opinion there cannot be any offence of criminal breach of trust or criminal misappropriation. When no offence either of criminal misappropriation or of criminal breach of trust has been made out there cannot be any offence punishable under Sections 411/414 read with Section 120-B of the Indian Penal Code in respect of the selfsame property i.e. the truck in question. Thus, as on the face value of the allegations made in the first information report no offence for which the FIR was recorded has been made out the impugned FIR is liable to be quashed. In the result the instant criminal revision succeeds and the impugned FIR and all the consequent action taken thereupon stands quashed.

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

 