

**CRR 1255 of 2024
With
CRAN 4 of 2025**

**Prantik Chakraborty
Vs.
The State of West Bengal & Anr.**

Mr. Prabhat Kr. Srivastava
Ms. Ankita Singh ...for the Petitioner

Mr. Saibal Bapuli, Ld. APP
Mr. Rahul Ganguly ...for the State

In spite of service, the private opposite party is not represented.

This is an application wherein the petitioner has prayed for quashing the proceeding being G.R case no. 369 of 2024 arising out of Kakdwip Police Station case no. 33 of 2024, presently pending before the learned Additional Chief Judicial Magistrate, Kakdwip, South 24 Parganas.

The petitioner's contention is that on or about March-2023, the opposite party no. 2 approached the petitioner for a loan in order to purchase a vehicle. Accordingly, the petitioner at the behest of Indusind Bank Ltd. was agreed to sanction a loan to the tune of Rs. 27,98,943/- along with accrued interest therein and in total the opposite party no. 2 had to repay Rs. 36,13,435/- upon which execution of loan cum Hypothecation agreement dated 21.3.2023 was executed. By virtue of the said agreement, the opposite party no. 2 agreed to repay the aforesaid loan amount through 58 EMI (equated monthly installment) @ Rs.

62,310/- for the first and rest 57 EMI @ Rs. 61,766/- commencing from 21st May, 2023. Subsequently, the opposite party no. 2 defaulted in paying the monthly installments and therefore, a notice was issued to the opposite party no. 2 on 11.12.2023. In spite of service of notice, the opposite party no. 2 deliberately neglected to pay the amount, as a result of which the concerned company decided to act in terms of the Clause-8 of the said agreement to take possession over the vehicle and accordingly, it was repossessed on 27th January, 2024 and it was again informed to the opposite party through a notice.

As a counter blast, the opposite party herein has lodged instant complaint but save and except some vague and omnibus allegations, the complaint does not make out the ingredients of the offences of theft as alleged in the FIR. Moreover, under hypothecation agreement, unless and until the borrower pay the full amount, the lender deemed to be the owner of the vehicle and therefore, subsequent repossession of the vehicle does not make out any offence at all specially when despite several reminders, opposite party had deliberately failed to pay the installment amount, Pursuant to which the petitioner acted in terms of the guidelines as stipulated in the agreement and had repossessed the vehicle and therefore, continuance of instant proceeding any further will be a mere abuse of process of the court.

Learned counsel for the State placed the case diary and he also submits that during investigation, police had

recorded statement of some witnesses who has stated that the opposite party defaulted in payment of five EMIs and for which the agents of Indusind Bank has taken possession of the vehicle. Therefore, he leaves the prayer made by the petitioner to the discretion of the court.

Having heard learned counsel for both the parties, it appears that the opposite party/complainant has entered into a loan cum hypothecation agreement with the bank and he agreed to pay EMI. It is trite law that unless the entire payment has been made in terms of the agreement entered into by and between the parties, the borrower cannot claim ownership in respect of the property. Furthermore, I find from Clause 12(ii) of the agreement that the lender has reserved the right to take possession of the vehicle and to make a public auction in case of default in payment of loan amount.

Therefore, the short point which falls for consideration in this case is whether repossessing of the vehicle by the financier from the possession of the hirer on failure and default of payment of EMI within stipulated period amounts to commission of offence of theft or not, specially when the hire purchase agreement contains specific agreed condition that in case of default of payment of installment amount, the financier is entitled to repossess the vehicle.

In Charanjit Singh Chadda & others Vs. Sudhir Mehra, reported in (2001) 7 SCC 417 on a similar circumstances, Supreme Court held if the hirer himself has

committed default by not paying the installments and under the agreement and the petitioner has taken repossession of the vehicle, the opposite party cannot have any grievance and opposite party cannot be permitted to say that the owner of the vehicle has committed theft of the vehicle as alleged in the complaint, specially when the agreement specifically states that the owner has got a right to repossess the vehicle.

Therefore, in view of settled proposition of law that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier and ownership remains with the later unless conditions are fulfilled and therefore, if due to non-fulfillment of the conditions mentioned in the agreement, the vehicle is repossessed by the owner/financier, no criminal action can be taken against him as he is repossessing the vehicle owned by him.

Therefore, the law laid down by Apex court in the said decision and also subsequent decisions squarely applicable in the facts and circumstances of the present case and as such, instant impugned proceeding is liable to be quashed.

Having considered the aforesaid facts and circumstances of the case, the applications being CRR 1255 of 2024 along with the connected application being CRAN 4 of 2025 are allowed.

The impugned proceeding being G.R case no. 369 of 2024 arising out of Kakdwip Police Station case no. 33 of 2024, presently pending before the learned Additional Chief

Judicial Magistrate, Kakdwip, South 24 Parganas. is hereby quashed.

Urgent Photostat certified of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)

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