IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 2357 OF 2023

CHIRANJIB PAL CHOWDHURY

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioner	:	**Mr. Sabir Ahmed, Adv.** **Mr. Sayak Ranjan Ganguly, Adv.** **Ms. Srijanni Ghosh, Adv.**
For the State	:	**Mr. Sandip Chakrabory, Adv.**
Reserved on	:	**07.05.2026**
Judgement on	:	**17.07.2026**
Uploaded on	:	**17.07.2026**

CHAITALI CHATTERJEE DAS, J.:-

1. This is an application under Section 482 of the Code of Criminal Procedure 1973 filed by the petitioner for quashing of the proceeding being G.R. case no. 11338 of 2022 pending before the Court of Learned Additional Chief Judicial Magistrate, at Barrackpore arising out of Belgharia Police Station case no. 594 of 2022 dated November 23, 2022 under Section 34/149/323/379/384/506 of the Indian Penal Code 1860.

Brief Fact of the Case

2. The case of the petitioner in brief is that the petitioner was working for gain as a Manager on the Axis Bank India, having its Branch Office at AC market 3rd Floor, 1 Shakespear Sarani, Kolkata-700 071, West Bengal. Your petitioner is presently looking after day to day business collection for Axis Bank Limited for extending financial assistance for the purchase of vehicle. The bank was approached by the Opposite Party no. 2 sometimes in the month of June 18, with a request for credit facility to the tune of Rs.7, 08,000/- in order to purchase a Maruti Dezire vehicle. It was represented that the Opposite Party no. 2 would pay an amount of Rs. 1, 25,328/- as down payment and borrower was required to an amount of Rs. 11,427 towards a monthly instalment commencing from August 1, 2018 for a period of 84 months. The application was filed on June 17, 2018 and the proposal was accepted by the bank and accordingly the agreement was entered upon on July 5, 2018.The borrower paid 43 instalments and then failed and neglected to pay any further instalments and after various request and reminder by the bank did not surrender the vehicle as per written agreement as the borrower was liable for due performance and observance of the said loan agreement.

3. In view of default committed in terms of the agreement the said agreement dated July 5, 2018 stood terminated *ipso facto* and the bank became entitled to the entire balance amount which was payable by the said borrower. Consequently to such termination of the loan amount the due balance amount made due and payable immediately and borrower were no longer entitled to retain possession of the said vehicle. A notice was issued on May 19, 2021 upon the borrowers to make payment of outstanding dues but the borrower failed to pay any heed to such demand. After that the dispute was referred to the learned arbitrator for adjudication in terms of the agreement dated July, 5, 2018.

4. After commencement of arbitral tribunal the borrower were given liberty to participate in the proceeding and also liberty was given to file his pleadings before the tribunal but despite receiving notice the borrower chose not to participate in the proceeding. Accordingly an award was passed on June 5, 2022 declaring the said bank as the owner of the hypothecated vehicle, in view of the default committed by the borrower.

5. The borrower not only failed and neglected to make over any further amount to the bank but represented his inability to make over any payment and thereafter it was stated that borrower would be under obligation to make over the said vehicle to the bank in the event of further default and it will be under the custody of the bank for a period of fortnight and in the event any amount is paid as on date, the vehicle would be returned to the borrower again.

6. The borrower after that surrendered the said vehicle and the bank took its possession of the same on August 19, 2022 and made over the repossession list to the borrower. After the bank took possession of the vehicle after complying with the rules framed by the Reserve Bank of India,and an inventory list was prepared and the vehicle was parked at its authorised parking yard where inventory list was issued by such parking yard .Consequently on the basis of the change of custody the authorised representative of the bank gave intimation to the Officer-in-Charge, Belghoria Police Station and a notice of intimation was issued on August 20, 2022 requesting the borrower to make payment for the dues and to take back the possession of the vehicle in default the bank would sale the said vehicle.

7. After having such chequered history of non-payment by the borrower the petitioner was surprised to receive information from Belghoria Police Station that the Opposite Party no. 2 had filed an FIR under Section 156 (3) of the Code of Criminal Procedure and pursuant to such application the FIR was registered with Belghoria Police Station case no. 594/22 dated November 23, 2022 under Sections 34/149/323/474/384/506 of the Indian Penal Code, 1860.

<u>Submission</u>

8. The Learned Advocate representing the petitioner argued that on bare reading of the said FIR it can be found that no case has been made out for commission of any offence by the petitioner or any of the employees of the said bank and the Opposite Party no. 2 with an attempt to use the said FIR against the bank to prevent the bank from taking action under the contract. It is further argued that the disputes of the parties are civil in nature and the said FIR is liable to be quashed which has been proceeded on the basis of false averment made by the Opposite Party no. 2 with a sole intention to coerce the bank to hand over the vehicle to the Opposite Party no. 2 . It is further submitted that FIR does not disclose any offence being committed by the petitioner and in terms of the loan agreement it was specifically agreed that in default of making monthly instalments the bank it right to enforce the security interest. Therefore, the complaint lodged by the petitioner is liable to be quashed.

9. The Learned Advocate as relied upon a decision reported in ***Chiranjinb Sing Chadha and Ors. Vs Sudhir Mehra***[1] , ***Anup Sharma vs. Bholanath Sharma and Ors.***[2] and a decision passed by the Learned Co-ordinate Bench in CRR 1288 of 2023 ***Sukanta Saha Chowdhury vs. State of West Bengal and Anr.***

10. None appears on behalf of the Opposite Party no. 2. The Learned Advocate representing the prosecution on the other hand argued that the complaint was lodged by the present opposite Party no. 2 against the present petitioner and another and also the documents were found in course of evidence that the letter was addressed to the Commissioner of Police before lodging such written complaint to take legal and stern action against the FIR named accused persons and he was threatened while moving towards Dahkhineswar to Baguihati at his residential place and also assaulted him and his son and the vehicle was taken away. The traffic police was reported and the he went to Baranagar Police Station to lodge GD to trace out his vehicle but nothing was done. It is further submitted that since the charge sheet has been submitted in this case and sufficient materials exists to support the case of the prosecution the petitioner should face the trial and accordingly prayed for dismissal of this revisional application.

<u>Analysis</u>

11. Having heard both the Learned Counsel and going through the materials on record it appears that the proceeding originated out of a complaint ,lodged by the petitioner in respect of an incident occurred on 19th August,2022 at about

[1] (2001) 7 SCC 417
[2] (2013) 1 SCC 400

1:30 P.M. at Dunlop More lodged on 13th September,2022 that is after a delay of more than one month. The allegation prima facie disclose that the two accused persons with criminal conspiracy and intimidation and with a view to snatch the vehicle attacked and make signal to stop the car being Maruti Dezire VDI WB64S8199 and the complainant was dragged out from the vehicle and on being protest by the witness no. 1 the accused jointly assaulted the complainant as well as witness no. 1 as a result he sustained injury . He was further abused with filthy languages. It was also alleged that there was no relation or connection with accused no. 1 though admitted accused no. 2 being known to the complainant but other ten persons were present who forcibly dragged him out for the purpose of extortion and for taking away the valuable goods and documents. According to him the accused failed to show that he was an Officer or is anyway authorised to take the said vehicle. He further assailed that though he rushed to the Baranagar P.S. he was advised that it will be started after a written complaint is submitted and when he submitted such complaint no action was taken. Later on he sent complaint through registered Post to higher Authority for taking legal action but no action was taken and then filed the complaint before the Court. Apparently it appears that he did not annex any such document along with his written complaint nor gave any date or time when he lodged the complaint initially or sent such complaint to the higher authority. The complainant did not utter anything about any loan obtained by him to purchase the said vehicle or receiving of any notice to return the vehicle or that he was a defaulter in making payment of any amount .

12. In course of investigation it was revealed that he purchased the Maruti Dezire from Axis Bank and was a defaulter in making his EMI for sometimes. Further some of the statements found contrary to the averments made in the written complaint. The petitioner before this Court is a bank official and in the month of January5,2022 an award was passed by the Learned Arbitrator and on August 19,2022 the vehicle has been repossessed by the financial bank with due publication of inventory list . On August 20,2020 a pre-sale notice was sent to the opposite Party no. 2 and even it is assumed that the petitioner did not receive any notice but a borrower must be arare about the terms of agreement and that he is a defaulter for a considerable period and the consequences of such terms and condition . Prima facie the document annexed with the revisional application suggests that on the date of occurrence as alleged in the petition of complaint is the date when the vehicle was repossessed by the financing bank with publication of inventory list. The annexure P7 the document of Axis Bank shows a letter addressed to the Police Station before initiating repossession of 18.08.2022 whereby the bank expressed that the vehicle will be repossessed through their agency and in terms of the subsequent letter dated 20th August, 2022 it is visible that the custody of the said vehicle was taken by the bank through their agency M/S. Bharat repossession unit and intimated the opposite party no .2 on 20th August, 2022 as a pre-sale notice.

13. In terms of the decision as relied upon by the petitioner in ***Chiranjinb Sing Chadha and Ors. (Supra)*** it was categorically mentioned that recovery of possession of goods by owner/ financer as per terms of the Hire purchase agreement does not amount to a criminal offence. It was further observed that complaint of theft, cheating, and criminal breach of trust in case of recovery to possession by financer in Hire purchase contract the petition under Section 482 by financer ought to have been allowed. It was held by the Hon'ble Supreme Court that where an agreement is executed by the parties to the effect that hirer would not became the owner of the property until he pays the entire instalment and therefore confers no right of rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore the repossession of goods as per the terms of the agreement may not amount to any criminal offence.

14. In the decision passed in ***Sukanta Saha Chowdhury (Supra)*** by the Learned Co-Ordinate Bench also the similar nature of facts were dealt with where the petitioner was an employee of Tata Motors Finance Limited and a loan cum hypothecation cum guarantee agreement was executed by Opposite Party no. 2 and the dispute arose was referred to the arbitrator ,the award was published and a receiver was appointed for the purpose of taking possession of the vehicle , after which the criminal complaint was filed. The Learned Co-Ordinate Bench found no materials to make out a criminal offence transaction being prima facie civil in nature in covered by an arbitration clause in an agreement for Hire purchase. Accordingly quashed the proceeding against the said petitioner. In the decision of ***Anup Sharma (Supra)*** a truck was taken in possession by the financer in terms of higher purchase agreement there was a default in making of instalment. A criminal had been lodged against the financer and the Court, High Court refuse to exercise under Section 482 Cr.P.C which travelled up to Hon'ble Supreme Court it was held that there was a default to make payment of instalment hence the financer had a right to resume possession even if the higher purchase agreement does not contain a clause of presumption of possession.

15. In the instant case on close scrutiny of the fact it transpires that an allegation of threat and assault was made in the complaint against some unknown persons and the present petitioner along with one Loknath Pramanick but no specific role was attributed against the present petitioner. The time of occurrence is tallying with the alleged vehicle was repossessed and the failure on the part of the complainant to lodge an immediate complaint further suggest that it was a result of afterthought in order to get rid of the situation prevaikling at that point of time as the notice of sale of the repossessed vehicle was already served upon him. It goes without saying that even though the power lies on the financial institution to repossess the vehicle after there is default and an arbitration award is passed in favour of the bank there should not be any such action on the part of authorised agent of the bank which can attract any such offence to be constituted under Indian Penal Code or corresponding to BNS at present. But in this case the petitioner being an employee of the bank has come before the court and annexed relevant document and on perusal of the same and the silence on the part of the complainant in making any averment regarding the hypothecation agreement coupled with the statement recorded in course of investigation supporting the said default this court is of the view that no material exits against the present petitioner for which this reviisional application should be allowed to be continued as otherwise it would be clear abuse of the process of Court.

Conclusion

16. Accordingly the CRR no 2357 of 2023 stands allowed. All connected applications are hereby disposed of. Case diary be returned.

17. The proceeding pending before the Court of Learned Additional Chief Judicial Magistrate, at Barrackpore arising out of Belgharia Police Station case no. 594 of 2022 dated November 23, 2022 under Section 34/149/323/379/384/506 of the Indian Penal Code 1860 is hereby quashed qua the petitioner.

18. Urgent certified copy Urgent of the order if applied for be provided to the parties upon observance of all necessary requirements.

[CHAITALI CHATTERJEE (DAS), J.]