

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3047 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAIMAL BUDHARAM

Versus

STATE OF GUJARAT

NOTICE TO BE SERVED THROUGH

Appearance:

MR RM PARMAR for Petitioner

MR MAULIN RAWAL ADDL PUBLIC PROSECUTOR for
Respondent No.1 & 5

MR JM PANCHAL for Respondent No. 2 & 3

NOTICE UNSERVED for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/07/1999

ORAL JUDGEMENT

#. Heard Mr.Parmar, learned advocate for the petitioner,
Mr.J.M.Panchal for respondents No.2 & 3 and Mr.Maulin
Rawal for respondent No.1 & 5.

#. Mr.Parmar's case is that respondent No.2 has falsely implicated the petitioner in a complaint lodged by the respondent No.2 before the learned JMFC, Ankleshwar vide Pre-Inquiry Case No:90/98 under Section 406, 417 and 420 of IPC alleging that the petitioner cheated the complainant by inducing him by parting with the Jeep car No : RJ-21/C 4227, Engine No : D.W.110936. In fact, the petitioner is the owner of the vehicle. He has purchased this vehicle by paying cash to the agent of the complaint. The registration is also stand in his name. The complaint is false and frivolous. The ingredients for the allegations levelled are not made out. It is civil transactions and therefore complaint may be quashed. Mr.Parmar has also produced on record one affidavit sworn in by the petitioner on 29th June, 1999 before a Notary at Merta City (Nagaur) stating that he has paid cash towards the price of the jeep car to the General Manager - Mr.K.K.Sheth and therefore urged that the petition may be allowed.

#. On the other hand, Mr.Panchal, learned advocate for the respondent No. 2 & 3 submits that this is a clear case of cheating. Trust was created and vehicle was taken possession of. The petitioner has produced affidavit which is question of evidence. He has not been able to show any receipt for the money paid towards the price. Ordinarily such big amount are not supposed to be paid in cash and therefore, this Court may not entertain this petition at all. He has also pressed into service decisions of the Hon'ble Apex Court in the case of RAJESH BAJAJ VS. STATE NCT OF DELHI & OTHERS CR.L.R.[SC] 1999 235 (Supra) and SACHIDA NAND SINGH AND ANOTHER VS. STATE OF BIHAR AND ANOTHERS (1998) 2 SUPREME COURT CASES 493 to emphasis that at this stage the court has not to evaluate the evidence. The complaint has to be seen prima facie and the Court has to be slow in exercise of powers. The Court may not interfere otherwise which may hamper ordinary course of investigation. In the instant case, investigation is ordered by the Magistrate and it is in progress.

#. Mr.Rawal, learned APP stated that petition merits dismissal. He ventilated his grievance against the petitioner upon instructions of the investigating officer who is present in the Court. According to the instructions, the petitioner was not available even for the interrogation at his given address at Rajasthan even for 4 times and he is nowhere located. This reflects his conduct. According to Mr.Rawal,the petition may not be entertained.

#. Having regard to the submission made by the parties concerned, first foremost fact is that the complaint in itself clearly indicates the ingredients of the offence alleged. It is not expected that the complainant must ad verbatim reproduce the ingredients of the offence. Broadly speaking, if the offence is made out, the Court may not enter into the matter at this stage when the investigation is directed by the learned Magistrate and cognizance is not taken. Further, in the instant case, the petitioner's case is that he has paid the price in terms of hard cash. Prosecution did not produce any receipt thereof. Mere filing of affidavit would be only word against word as against the say of the complainant and therefore, it would be disputed question of fact. The Apex Court in its decisions has constantly made it clear that the High Court may exercise powers under Section 482 of CrPC very sparingly and that too in rarest of rare case. The Court would not be justified in embarking upon the inquiry. Merely because a civil transaction is involved, it cannot be said that it would indicate absence of material ingredients when it is specifically alleged. Under these circumstances, this petition merits dismissal along and the same is therefore dismissed. Rule discharged.

Date : 30-7-1999 [A.L.Dave, J.]

#kailash#