

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC. APPLICATION No. 6205 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE Mr. JUSTICE B.N. KARIA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

MAHESHBHAI GANESHBHAI VEKARIYA

Versus

STATE OF GUJARAT

Appearance :

Mr VIRAT G POPAT(3710) for the PETITIONER(s) No. 1

Mr RITVIJ OZA, APP for the RESPONDENT(s) No. 1

RULE SERVED(64) for the RESPONDENT(s) No. 2

CORAM: HONOURABLE Mr. JUSTICE B.N. KARIA

29th June 2018

CAV JUDGMENT

The present petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 {“CrPC” for brevity} to *quash* and set aside complaint, being C. R. No. I-179/2012 registered with Thorala Police Station, District:

Rajkot for an offence punishable under Sections 406, 420, 120B and 114 of the Indian Penal Code [**“IPC”** for short].

Brief facts of the case are that the applicant had purchased a vehicle, being Hyundai Verna Car from the respondent no.2-Company, through a broker. The price of the said vehicle was quoted at Rs. 10,85,615/- and as per the policy of the company, if any customer wants to purchase a car then he has to come personally or through broker and provide relevant documents and make signatures. In this connection, the applicant approached the accused no.3 who being a car broker, and therefore, he had come with brother of the accused no.1 and stated that he intends to purchase a car on behalf of the accused no.1. At that time, the accused no.3 provided details regarding the car on the name of the accused no.1 and while asking the complainant to accused no.3 that as to how you will make payment of car then accused no. 3 stated that the purchaser will make payment through RTGS and cash. Thereafter, company received payment of Rs. 7,62,000/- on 01.08.2012 from the accused no.2 and at that time, the company asked him that the car is booked on the name of accused no.1 then as to why the RTGS has been made on the

name of Bharatbhai Manjibhai and at that time, it was informed that accused no.1 and 2 are the friends the car delivery payment can be considered on the name of the accused no.1 whether the payment will be come on the name of anyone. Thereafter, on 11.08.2012, the accused no.1 informed the company that the amount of Rs. 7,62,000/- has been sent through RTGS on the name of Bharatbhai and remaining amount has been paid through cheque and therefore, the complainant received the remaining amount through cheque and accepting the required documents, the delivery of car was given to the accused no.1. Thereafter, on 13.09.2012, learned advocate for the accused no.2 sent notice under the Consumer Protection Act alleging the fact that the company received the amount from the accused no.2 etc., and therefore, the company made contact to Bharatbhai but at that time, he told that the company had received amount through RTGS from him and therefore, Bharatbhai is considered to be consumer and thus, car should be given to him. Thus, there is allegation to the effect amount of Rs. 7,62,000/-was paid through RTGS by some other person on behalf of the applicant [accused no.1] and subsequently, the said person has also

asked the car from the respondent no.2-Company and on account of such transaction, the *impugned* complainant has been lodged.

Heard learned advocate Mr. Virat G Popat for the petitioner, learned advocate Mr. Ashish M. Dagli for the respondent no.2 and learned APP Mr. Rutvij Oza for the respondent no.1-State.

It is submitted by learned advocate Mr. Virat G. Popat for the petitioner that the petitioner is falsely involved in the offence punishable under Sections 406, 420, 120B and 114 of the Indian Penal Code by the respondent no.2 lodging a complaint against the present petitioner, being C. R. No. I-179/2012 registered with Thorala Police Station, District: Rajkot. That, the present petitioner has purchased a motor vehicle from the respondent no.2 Company and initial payment of Rs. 6,89,000/- was made by him through cheques and such cheques have been debited from the account of the present petitioner. That, the amount of cheques, as deposited by the present petitioner, was withdrawn and credited in the account of the respondent no. 2. That, the price of the motor vehicle car was fixed at Rs. 11,01,000/- and remaining

amount of Rs. 4,12,000/- was to be paid by the petitioner in cash. That, combined receipt of Rs. 7,62,000/- was also issued by the respondent no.2 and car was delivered to him. Learned advocate has drawn attention of this court to the copies of relevant receipts, delivery challan and insurance etc. showing that the petitioner became owner of the car after paying the amount to the company. That, Rs. 6,89,000/- was paid by the petitioner upto 25.07.2012 and thereafter, Rs. 4,12,000/- was paid. That, there was no occasion for the respondent no.2 to accept the amount of Rs. 7,62,000/- ostensibly on 01.08.2012 claiming to have been transferred for the purchase of car by the present petitioner. Therefore, the respondent no.2 in collusion with the accused no.3-Broker have not credited the amount Rs. 3,50,000/- which was paid by the present petitioner by cheque and said amount is reflected in the account of the present applicant. Ledger of the respondent no.2-Company is not reliable. That, the FIR lodged against the present petitioner attracts no provisions; as alleged and there is no averment in the entire FIR to make out any offence against the present petitioner. That, the petitioner has made no false representations to the respondent no.2 Company and in

absence of any averments and allegations in the FIR, charge under Section 420 IPC would not be sustain. That the dispute between the parties is absolutely of civil nature. The petitioner has paid an amount through cheque and it was deposited in the account of respondent no.2's Company. However, the respondent no.2 and the Director are in collusion with each other, the amount of Rs. 3,50,000/- paid by the petitioner was not disclosed in the ledger maintained by the respondent no.2 and not shown. That, there is no entrustment or element of cheating involved in the present FIR, and therefore, it requires to be *quashed* and set aside. Ultimately, it was requested by him to *quash* and set aside the *impugned* complaint by allowing this petition.

On the other side, learned APP Mr. Rutvij Oza for the respondent no.1 strongly opposed the submissions made by the learned advocate for the petitioner and submitted that there was no justification much less legal justification on the part of this Court to *quash* the FIR, as sufficient material is available with the prosecution to involve the present petitioner in the offence. That, during the course of investigation, as permitted by this Court, it is found that present petitioner and accused

no.2 are friends and upon instructions issued by the present petitioner to the accused no.2, an amount of Rs. 7,62,000/- was paid by the accused no.2 through RTGS in the account of the respondent no.2 and on further instructions given by the petitioner, the same amount was credited in the account of the petitioner. That, Mr. Kishor K. Sudani has given an amount of Rs. 3,50,000/- *vide* cheque No. 638477 and the same was deposited in the account of the respondent No. 2-company. The delivery of Verna Car was made available to the petitioner as well as Mr. Kishor Sudani. That, without recording the evidence, during the trial, no true facts would be find out by the Court. By relying upon the averments made in the complaint, no proper conclusion can be arrived by the Court accepting the prayer to *quash* the FIR. The Statement of the present petitioner as well as other co-accused were recorded during the course of investigation and it is found that present petitioner is involved in the offence. It was requested by him to dismiss the present petition.

Learned advocate Mr. Ashish M. Dagli for the respondent no. 2 has also supported the arguments advanced by the learned APP Mr. Rutvij Oza for the respondent no.1- State and

submitted that petitioner and other co-accused are in collusion and section 120B and 114 of the Indian Penal Code are clearly applicable to the facts of the present case. He has also drawn attention towards the affidavit filed by the complainant, who is General Manager of the company and submitted that all the accused were known to each other. It is submitted that in terms of Section 405 of the Indian Penal Code, whoever, being in any manner entrusted with property, or with any dominion over property, the Section does not require that trust should be in furtherance of any lawful object. That, the offence of cheating is *prima facie* constituted by the petitioner. For the purpose of quashing the complaint, it is necessary to consider whether allegations in the complaint, *prima facie* make out any offence or not. It is further submitted that it is not necessary to scrutinize allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. That, without recording evidence in the trial, no question arises to *quash* the FIR, as prayed by the petitioner, and then it was requested by him to dismiss the petition.

Having considered the facts of the case, submissions made by the learned advocates for the respective parties as well as

learned APP for the State, it appears that the respondent no. 2 is the complainant who has lodged the complaint before the police stating that the petitioner purchased Hyundai Verna car from the company of the respondent no. 2 and price of the motor vehicle was fixed at Rs. 11,01,000/-. This car was booked by the petitioner through accused no. 3 and delivery of the car was handed over to the petitioner. It is alleged in the complaint that the amount of Rs. 7,62,000/- was paid through RTGS by some other person on behalf of the present petitioner, and thereafter, the said person also demanded the car from the respondent no. 2. On account of this transaction, the impugned complaint was registered against the present petitioner and other co-accused alleging that all the accused have colluded each other, paid for the car which was purchased by the present petitioner, and however, demanded another car for which, legal notice was issued to the respondent no. 2 and consumer case was filed and thereby accused have cheated the respondent no. 2.

From the record, it appears that present petitioner made initial payment of Rs. 6,89,000/- by way of different cheques and they were debited from the account of the petitioner. The

details of cheques are as under:

Sr.No.	Cheque No.	Date of Cheque	Amount of Cheque
1	638477	09/07/12	3,50,000/-
2	638479	12/07/12	2,00,000/-
3	667276	25/07/12	1,39,000/-

Copy of the account statement produced by the petitioner shows that this amount was deposited from the account of the present petitioner from his bank account in HDFC Bank, Yagnik Road Branch, Rajkot Prior to 25.07.2012. That, amount was paid as the price of the car was fixed to the tune of Rs. 11,01,000/-, the petitioner was obliged to pay remaining amount of Rs. 4,12,000/- and was paid by cash. As per the say of the petitioner, receipt of Rs. 7,62,000/- was issued and then delivery of the car was made available to him. The petitioner has also produced some receipts showing amount paid towards price of the car as well as insurance of the motor vehicle. There is no satisfactory explanation made by the complainant as to why the amount of Rs. 7,62,000/- was transferred into the account of the present petitioner, deposited by the accused no.2 in the account of the company on 01.08.2012. Petitioner has clearly denied that he was knowing

other accused. However, there is no allegation made by the complainant in the complaint that Mr. Kishor K. Sudani had given an amount of Rs. 3,50,000/- by cheque No. 638477 and cheque was deposited in his account maintained by M/s Equity Motors (Rajkot) Pvt. Ltd. and thereafter, the said Kishor K. Sudani made further payment of Rs. 7,67,000/- and cash amount of Rs. 3,330/- and in all, Rs. 11,20,630/- . For the first time, this facts were disclosed by Mr. Dipak N. Doshi, Accounts Manager of M/s. Equity Motors (Rajkot)Pvt. Ltd. in his affidavit-in-reply at page no. 38 of this petition. From the record produced by the petitioner, Rs. 3,50,000/- was withdrawn by cheque No. 0638477 on 9th July 2012 from the account of the present petitioner lying with the HDFC Bank and credited into the account of the complainant's company. There was no question of crediting same amount in the account of Mr. Kishor Sudani as declared in the affidavit. Mr. Kishor Sudani was not booked as an accused in the complaint lodged by the respondent no.2. Whatever explanation is made by the accountant in his affidavit-in-reply would not justify the complaint lodged by the respondent no.2. There is nothing on record that the petitioner has deposited the amount in the

account of the said Mr. Kishor Sudani and if it is admitted that there was some relation of friendship with the co-accused Bharat Manji and Mr. Kishor Sudani would not permit the company of the respondent no.2 to transfer any amount deposited by the petitioner into the account of Mr. Kishor Sudani or any amount deposited by the co-accused Mr. Bharat Manji into the account of the petitioner without their consent or information. That, this court has carefully considered the rival contentions made before this court. From the bare perusal of Section 482 CrPC, it is clear that the object of exercise of power under this section is to prevent abuse of process of law and to secure ends of justice.

In case of **Rajiv Thapar v. Madan Lal Kapoor**, reported in (2013) 3 SCC 330, the Apex Court has enumerated the steps required to be followed before invoking inherent jurisdiction by the High Court under Section 482 CrPC as under: (SCC pp 348-19 Para 30):

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:~

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

(v) If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

The ingredients of the offence in the complaint are conspicuously lacking and no case is made out by the complainant against the present petitioner. If it is believed that present petitioner and other co-accused are related to each other and knowing them since long, there are no allegations much less the averments made by the complainant against the present petitioner. From the

complaint, it is nowhere found that there was any entrustment on the part of the present petitioner or he was entrusted with any property.

In view of the above position of law and having regard to the facts and circumstances of the case on hand and after going through criminal complaint filed against the petitioner, this Court is of the opinion that it is clear case of abuse of process of law on the part of the respondent no.2, and therefore, I am of the opinion that this petition deserves to be allowed. Accordingly, the same is allowed and *impugned* complaint, being C. R. No. I-179/2012 registered with Thorala Police Station, District: Rajkot for an offence punishable under Sections 406, 420, 120B and 114 of the Indian Penal Code is hereby *quashed* and set aside *qua* the petitioner.

Rule *nisi* made absolute to the aforestated extent with no order as to costs.

[B.N Karia, J.]

Prakash