



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1183 OF 2022

Ashok Kumar Gautam,
Age-64 years, Occu: Business,
Residing at Raunak City,
Adharwali Jail Road, Kalyan (W),
Taluka Kalyan, Dist. Thane, Pin 421301.Petitioner

Vs.

1. Bhagwan Kashinath Narsale,
Age-67 years, Flat No.603,
Royal Plaza, Gauripada, Kalyan (W),
Dist: Thane.
2. State Of Maharashtra,
(At the instance of Khadakpada
Police Station, Kalyan.Respondents

Mr. Rajeev N. Kumar, for the Petitioner.
Mr. V. N. Sagare, APP, for Respondent No.2-State.
Mr. Punaji Sable, Khadakpada Police Station is present.

CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.

RESERVED ON : 12th JULY, 2024.

PRONOUNCED ON : 18th JULY, 2024.

JUDGMENT (Per Dr. Neela Gokhale) :-

- 1) Rule. Rule made returnable forthwith and with consent of the parties, the Petition is taken up for final hearing.
- 2) The Petitioner seeks quashing of criminal proceedings bearing R.C.C.No.4649 of 2022, pending before the Judicial Magistrate First Class, Kalyan arising out of F.I.R. bearing C.R.No.318 of 2021 dated 21st October

2021 registered at Khadakpada Police station, Kalyan for offence under Section 420 of the Indian Penal Code.

3) Vide Order dated 6th July 2022, notice was issued to Respondent No.2. Notice is duly served. Thereafter, by Order dated 23rd January 2024, this Court had directed that the trial Court shall not proceed with the criminal proceedings impugned herein.

4) The Petitioner claims to be the owner of one shop known as RGCO Makers Pvt. Ltd. situated at Khadakpada Circle, Kalyan. The Respondent No.2 (complainant) is a auto driver and was desirous of purchasing a new E-Auto rickshaw. It is the case of the complainant that, in January 2019, he went to the Petitioner's shop and expressed his desire to purchase an E-rickshaw. The Petitioner showed him the E-rickshaw and also gave him a test drive. He convinced the complainant that the E-rickshaw would be suitable for his requirement and undertook the responsibility of insuring the vehicle and getting it registered with the appropriate authority. He accepted an amount of Rs.2,08,000/- for the same. He also assisted complainant in preparing the loan papers necessary to avail the same from the State Bank of India. The complainant specifically avers in the F.I.R. that the Petitioner promised to get the E-rickshaw insured and registered at the time of giving possession of the same. The complainant made the necessary payment to the Petitioner. Since the Petitioner had not registered the same, he accepted possession

with a promise that, the Petitioner would get registration of the E-rickshaw within a period of two to four days. However till date, the registration of the E-rickshaw has not been done by the Petitioner. In fact, once the complainant took possession of E-rickshaw, the Petitioner categorically refused to procure registration and told the Petitioner to get the same done himself. The complainant states that since his livelihood depended on the income from driving the E-rickshaw, he was compelled to take the rickshaw to the R.T.O. Kalyan to get it registered. He was shocked to learn that the said rickshaw could not be registered in the MMRDA area and could not be plied in the Kalyan-Dombivali area. Petitioner has thus duped the complainant. Thus it is his allegation that the Petitioner dishonestly induced him to purchase the said rickshaw for the valuable consideration knowing right from the beginning that the rickshaw could not be registered within the area of operation where the complainant intended to ply the same. Hence, the complainant filed the F.I.R.

5) Mr. Rajeev Kumar, learned counsel appears for the Petitioner and Mr. V. N. Sagare, learned APP represents the State. None appears for the Respondent No.2 despite service.

6) At the outset, we indicated our prima facie view to Mr. Kumar that, as the police have filed charge sheet, the Petitioner has an alternate statutory remedy under the Cr.P.C. before the trial Court. We gave him the opportunity to consider availing the alternate remedy. However, Mr. Kumar

was not amenable to any suggestion made by the Court. He persisted and insisted that this Court must exercise its jurisdiction under Article 226 of the Constitution of India and Section 482 of the Code to grant relief to the Petitioner. He in fact continued his diatribe relentlessly and vehemently and avoided to answer any pertinent question posed to him. On this backdrop, we proceeded to hear the matter on merits.

7) Mr. Kumar submitted that mere failure of non-registration of vehicle due to Government restrictions/regulations of E-vehicle in MMRDA area does not give rise to the presumption that the Petitioner had any culpable intention. He also submitted that even if the allegations were true, no criminal offence is made out and the matter was purely of a civil nature. He further argued that the Petitioner had no knowledge of Government Regulations and no offence of cheating was made out. Shockingly, Mr. Kumar accused the police officials for taking cognizance of such a frivolous complaint. It is his submission that, the F.I.R. does not disclose commission of a cognizable offence and hence no offence is made out. He further pointed to a document titled 'Trade Certificate', which according to him, itself is a 'Registration Certificate'. In direct contrast to this submission, the Petitioner stated that, he has also made efforts to get the registration by making various complaints to the Commissioner of Police and other authorities demonstrating his intention to get the same done. He thus urged the Court to allow the Petition and quash the F.I.R.

8) Mr. Sagare, learned APP drew our attention to the Notification dated 2nd September 2016 issued by the Home Department of the State of Maharashtra. The Government decision specifically prohibits plying of E-rickshaw in the subject area without registration. He argued that ignorance of the Government Notification is not an excuse. He also placed reliance on the statement of the informant reiterating the contents of the F.I.R. He rebutted the submission of Mr. Kumar pertaining to the 'Trade Certificate' by relying on Clause 42 of the Central Motor Vehicle Rules, 1989 which provide that no holder of a 'Trade Certificate' shall deliver a motor vehicle to a purchaser without registration, whether temporary or permanent. Learned APP thus urged the Court to dismiss the Petition.

9) We have heard both the counsel and perused the record with their assistance.

10) A plain but careful reading of the F.I.R clearly indicates that the Petitioner had promised to deliver possession of the E-rickshaw to the complainant, complete with insurance and registration of the vehicle. It is admitted by the Petitioner that, the complainant has paid the entire purchase price of the E-rickshaw together with charges of insurance and registration to the Petitioner. The thrust of Mr. Kumar's arguments hinges on his defence that, the Petitioner was wholly unaware of the requirement of registration. It is highly improbable that, the Petitioner who is engaged in the business of selling vehicles and owns a shop was unaware of the

Government Rules requiring registration of vehicle before selling the same. This argument is noted only to be rejected. It is a settled position of law that, ignorance of law is no excuse. This is one of the essential principles of jurisprudence. The rationale behind this is that, if ignorance was an excuse, every person who is charged for any offence or involved in a crime would merely claim that he was unaware of the law in question in order to avoid liability, even though he was well aware of the consequences of breaking the law. The law enforcement machinery will come to a grinding halt if ignorance of law is accepted as a defense. Also it can lead to mishandling of law on the part of law breakers and this can never be the intention of the legislature to enrich the law breakers by providing a shield of ignorance.

11) The second limb of Mr. Kumar's argument in fact contradicts itself. If Mr. Kumar is to be believed that the Petitioner was totally unaware of the Government Notification regarding requirement of registration of vehicle, there was no need for the Petitioner to make the promise of getting registration of vehicle to the complainant. Moreover, the Petitioner has even accepted additional charges for the same. This promise of registering the vehicle upon payment of additional charges by the complainant clearly belies the first limb of the arguments regarding ignorance of law as a defence. It is well demonstrated from the F.I.R. that, the Petitioner has clearly induced the Petitioner to part with valuable consideration for the E-rickshaw upon a promise to register the vehicle knowing fully well that the

complainant would not be able to ply the same in the area of operation as per his requirement. We find that all the ingredients of the offence of cheating are prima facie made out in the F.I.R.

12) Mr. Kumar made an attempt to convince the Court that, the Petitioner made efforts to procure the necessary registration for the vehicle by even writing complaints to the Police Commissioner, the Deputy Chief Minister and other authorities. We are not impressed by these submissions, since these efforts were too little too late in the day. This purported effort by the Petitioner is neither here nor there since the promises have not been fulfilled till date. In any case, in our jurisdiction under Article 226 of the Constitution of India, we are not required to hold a mini trial to examine the defense of the Petitioner regarding his intentions.

13) The Supreme Court in its decision in the case of *Central Bureau of Investigation v. Aryan Singh*,¹ has observed as under:

“4.1..... As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini-trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on

¹ 2023 SCC OnLine (SC) 379.

the basis of the evidence led by the prosecution/ investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.PC., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not.”

- 14) In another decision of the Supreme Court in the case of *State of Andhra Pradesh v. Vangaveeti Nagaiah*,² it is observed as under:

“6..... When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a

² (2009) 12 SCC 466.

prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335].”

15) In yet another decision in the case of *Manik v. Kadapala Sreyes Reddy & Anr.*,³ the Apex Court has clearly held as under:

“4. The least we can say is that the High Court in the impugned order, while exercising jurisdiction under Section 482 Cr.PC., has almost conducted a mini trial and quashed the proceedings.

5. Learned Single Judge of the High Court has elaborately discussed the statements of the witnesses recorded under Section 161 of the Cr.PC.

6. Whether the testimony of the witnesses is trustworthy or not has to be found out from the examination-in-chief and the cross-examination of the witnesses when they stand in the box at the stage of such trial.

7. Such an exercise, in our considered view, is not permissible while exercising the jurisdiction under Section 482 Cr.PC.

8. The scope of interference, while quashing the proceedings under Section 482 Cr.PC. and that too for a

³ Judgment dated 7th August 2023 in SLP (Cri.) No.2924 of 2023.

serious offence like Section 302 of Indian Penal Code is very limited. The Court would exercise its power to quash the proceedings only if it finds that taking the case at its face value, no case is made out at all.”

16) The Hon’ble Supreme Court in the case of *Priyanka Jaiswal v. the State of Jharkhand and Ors.*,⁴ while dealing with the similar issue, has held as follows:

“13.This Court in catena of judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the Court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini-trial, nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside.....”

17) Considering the facts in the present matter and the settled legal position as noted above, we are not inclined to quash the criminal proceeding arising from the F.I.R. impugned herein. The Petition is thus dismissed.

18) Rule is accordingly discharged.

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)

4 Criminal Appeal No. 2344 of 2024 dated 30th April 2024 (neutral citation 2024 INSC 357).