

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.477 OF 2015

1. Sureshkumar s/o Motilalji Kankariya,
Age major, Occ. Business
(Managing Director),
R/o Sursadhana, Viraj Colony,
Near Tarak Bus Stand, Ahmednagar.
2. Kadavattoor Chacko Mathew,
Age major, Occ. Service
(Work Manager),
R/o Anajana Apartment,
Ground Floor, Flat No.1,
Near Kamal Auto Agency,
Savadi, Ahmednagar.
3. Govardhan s/o Motilal Upadhye,
Age major, Occ. Service (H.R. Manager),
R/o Kamal Kunj, Opp. B.F. Vrudhaashram,
Aurangabad Road, Ahmednagar.
4. Punohammed s/o K. Mulani,
Age major, Occ. Service (Work Manager),
R/o Naveed Complex, Govind Pura,
Ahmednagar.
5. Baswaraj Patil (Major),
Age major, Occ. Service,
(General Manager),
R/o Behind Cantonment Toll Naka,
Jamkhed Road, Ahmednagar. ... APPLICANTS

VERSUS

1. The State of Maharashtra
through R.V. Dawalar,
Bakkal No.2122, the

Investigation Officer of
Cr. No.I-07/2015, Police Station,
M.I.D.C., Ahmednagar,
Tq. & Dist. Ahmednagar.

2. Rajendra s/o Nivrutti Rajguru,
Age major, Occ. Medical Practitioner,
R/o Siddivinayak Hospital,
Shivaji Nagar, Mehkar,
Tq. Mehkar, District Buldhana ... RESPONDENTS

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Shri J.V. Deshpande, Advocate for petitioners
Shri S.B. Pulkundwar, A.P.P. for respondent No.1/ State
Shri A.L. Kundale, Advocate for respondent No.2
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CORAM: S.S. SHINDE AND
A.I.S. CHEEMA, JJ.

DATED: 9th July, 2015.

Date of reserving judgment : 2/7/2015
Date of pronouncing judgment : 9/7/2015

JUDGMENT (PER A.I.S. CHEEMA, J.) :

1. Rule. Rule made returnable forthwith and heard finally with the consent of counsel for both the sides.

2. The applicants are accused in F.I.R. No.7/2015, dated 10.1.2015, registered at M.I.D.C. Police Station, Ahmednagar for offence punishable under Sections 420, 506 read with Section 34

of the Indian Penal Code, 1860 (I.P.C. for short). The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short) for quashing the F.I.R.

3. We have heard counsel for both sides. The learned counsel for the applicants referred to the contents of the F.I.R. to submit that, even if the F.I.R. is read as a whole, it only shows a civil transaction, dragged into a criminal case. According to the counsel, the respondent No.2 – original complainant (hereinafter referred to as complainant) had met with an accident on 21.4.2015 and his fully damaged car was brought to the service centre of the applicant and the vehicle was kept there for assessment of the damages and clearance of the insurance claim before it could be decided as to what is to be done with the damaged vehicle. The respondent No.2, who is resident of Mehkar in Buldhana district, instead of paying the parking charges and other expenses, has preferred to file a false F.I.R. to avoid payment. There is no element of cheating or criminal intimidation made out.

4. Against this, the learned counsel for the complainant submitted that, after the car met with the accident, the same

was parked in the M.I.D.C. area near the workshop of the applicants and the applicants did not tell as to what were the parking charges and now excessive amounts were being claimed for parking and estimation charges. Thus, according to him, the applicants, by not telling as to what would be the parking charges, have cheated the complainant and the F.I.R. was correctly filed.

5. It would be appropriate to make reference to the contents of the F.I.R. The F.I.R. mentions as follows :

The complainant claims that, he along with others had gone to Thane on 20.4.2014 and they were returning on 21.4.2014 to come to Mehkar and at about 3.00 a.m., they were near Pandhari Pool, Taluka Newasa, and there was dash with the road divider. As the vehicle of complainant suffered heavy damages, the vehicle was brought on 21.4.2015 near Kankariya Workshop, M.I.D.C., Near Police Station and in parking area in the open it was kept. It was 11.00 a.m. at that time. Before that, offence had been registered at the police station and the vehicle was kept in parking near Police Station. He was not given any receipt regarding the parking. To them documents of the vehicle and copy of the complaint given to Police Station,

were given. However, they asked for his identity card and the complainant had said that he will bring the same in two days, and having parked the vehicle there and having signed their papers, he had gone and informed his insurance agent. At that time, the employees and Managers of Kankariya Workshop told him that the vehicle may be kept in the parking till formalities of insurance are completed and they also told him that his papers were yet not complete and so on 31.5.2014 he again went along with documents of his vehicle and his address and deposited the documents. Thereafter, thrice he went there and the Manager told him that the parking charges of his vehicle have become Rs.90,000/-. At that time, he asked him as to how so much amount has mounted and the Manager asked him to meet the owner. In spite of his efforts, the owner could not be met and the Mobile Number of the owner was not given to him. Again in September he was told that the amount is Rs.60,000/- regarding parking. He was continuously calling up on phone and even coming to Ahmednagar and when he came on 9.1.2015 at about 11.00 a.m., he could not meet the owner, but the Manager Patil (applicant No.5), Upadhye (applicant No.3), Mulani (applicant No.4) and Mathew (applicant No.2) told him that the car parking charges were Rs.1,22,000/-, which will have to be given. The F.I.R. claims that, he was not allowed to meet the owner and in

spite of asking, the vehicle from parking is not returned. Thus, the complainant claims that, his vehicle is not being released for the amount of Rs.1,22,000/- as parking charges and thus, he has been cheated and he was told as to do whatever he wants to do and thus, the offence.

6. The above are the contents of the F.I.R., which is in Marathi. Now, if the application is perused, it gives various details as to how the vehicle was brought to the service centre. It is also claimed that the towing charges of Rs.3000/- were paid by the applicants which shows that the fully damaged vehicle was brought to the service centre of the applicants. The application refers to job cards Exhibit C as well as Exhibit D. It is claimed that, Exhibit D has been signed by the original complainant. The application refers to further copies of the F.I.R. of accident and other documents which were submitted by the complainant to the service centre and according to the application, the amounts were outstanding and the complainant, instead of making payment, has wrongly filed complaint as if he has been cheated although there are no elements of cheating involved.

7. The complainant/ respondent No.2 has also filed affidavit-in-reply and he has referred to the various paragraphs

of the application and denied each and every averment like in civil matter and in the further submissions the complainant claims that, the complainant had parked the said Car with the applicant No.1 at M.I.D.C. area, which is authorised dealer of Maruti Suzuki. According to him, the applicants had assured the complainant that they will take well care and parked the said car properly. There was no specific mention of parking charges. The affidavit claims that, it was rather the complainant who paid the crane charges of Rs.3000/-. It is claimed that, there is no legal document to show actual parking charges of Rs.300/- per day and estimation charges as alleged by the applicants. Complainant claims in his affidavit that, after 15 days he had himself contacted the applicant No.2 and they demanded further documents, R.C. Book, Insurance particulars etc. and as per demand, the complainant had personally visited the applicants' workshop documents asked, were submitted by the complainant. The affidavit of complainant claims that, the applicants' intentionally did not inform about the "progress" of the car although he visited the applicants many times. The complainant enquired about the charges and bill, but the applicants intentionally and willfully avoided. The affidavit gives further details and ultimately claims that the complainant was issued bill, copy of which is annexed, showing parking charges of

Rs.77,700/- and estimation charges of Rs.31,357/-. The complainant has also filed copy of Exhibit D - job card No.171 which bears his signature.

8. One glance at the application and the affidavit-in-reply makes it abundantly clear that it is a civil transaction, regarding which criminal offence has been registered. The F.I.R., the contents of which have been reproduced above, clearly shows that, the fully damaged vehicle was taken to the service centre and kept there pending assessment of insurance and subsequently, the complainant has raised dispute regarding the parking charges claimed by the service centre and has filed the F.I.R. claiming that he has been cheated. At the time of arguments, the learned counsel for the complainant was asked if the complainant had, while leaving the vehicle at the service centre, asked as to what would be the parking charges. The learned counsel was unable to say that any such query was made. It prima facie appears to be a matter of bailment and lien being asserted by the service centre for payment of dues. Prima facie Section 170 of the Indian Contract Act, 1872 appears to be relevant. We are not entering into the question as to which of these rival parties is justified in its stand. What is material here is that there is no element of criminality involved from the facts

as appearing from the record.

9. In view of the above, maintaining of such an F.I.R. would be an abuse of criminal process and the F.I.R. deserves to be quashed.

10. For the above reasons, the criminal application is allowed. F.I.R. in Crime No.I-7/2015, dated 10.1.2015, registered at M.I.D.C. Police Station, Ahmednagar for offence punishable under Sections 420, 506 read with Section 34 of the Indian Penal Code is quashed and set aside.

(A.I.S. CHEEMA, J.)

(S.S. SHINDE, J.)