

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 173 OF 2006

1. Mansing S/o Balasaheb Pawar,
Age : 44 years, Occ : Proprietor
of Ratnaprabha Motors,
Adalat Road, Aurangabad.
R/o Plot No. 406, N-1, CIDCO,
Aurangabad, Tq. & Dist. Aurangabad.
2. Jayesh S/o Dinkarrao Kulkarni,
Age : 38 years, Occ : Service,
as Branch Manager of the Ratnaprabha
Motors, Jalna.
R/o Dhoka Mill, Jawahar Baug,
Jalna, Tq. & Dist. Jalna.
3. Avinash S/o Prabhakarrao Kulkarni,
Age : 35 years, Occ : Service as Assistant
Manager, Ratnaprabha Motors, Jalna.
R/o Opps. J.E.S. College, Jalna,
Tq. & Dist. Jalna.
4. Vasantrao S/o Tulsiram Sawant.
Age : 28 years, Occ : Service
as Sales Manager of Ratnaprabha Motors,
Jalna.
R/o Bhagya Nagar, Jalna,
Tq. & Dist. Jalna.

Petitioners

VERSUS

1. The State of Maharashtra,
(Copy to be served on Public Prosecutor,

High Court of Judicature of Bombay
Bench at Aurangabad.)

2. Banderao S/o Namaji Sonovane,
Age : 45 years, Occ : Agri,
R/o. Vadi Wadi, Tq. & Dist. Jalna. Respondents

Mr. R. N. Dhorde, Senior Counsel i/b Mr. R. A. Tambe, Advocate for
the Petitioners.

Mr. S. G. Karlekar, APP for Respondent No.1/State.

Mr. V. G. Mete, Advocate for Respondent No.2.

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(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/06/2016

ORAL JUDGEMENT :

1. The petitioner is aggrieved by the impugned judgment and order dated 10.01.2006 delivered by the Revisional Court by which Criminal Revision Application No. 160 of 2005 filed by the respondent No. 2 was allowed and process was issued against the petitioners under Section 420 read with Section 34 of the Indian Penal Code. The order of the Trial Court refusing to issue process and dismissing the complaint dated 05.07.2005 was therefore quashed and set aside by the Revisional Court.

2. This petition was admitted by this Court on 22.03.2006 and

interim relief in terms of prayer Clause 'C' was granted. Prayer Clause 'C' reads as under :-

Pending hearing and final disposal of this Criminal Writ Petition, grant stay to the impugned judgment and order dated 10.01.2006 passed by the learned 4th Adhoc Additional Sessions Judge, Jalna in Criminal Revision Petition No.160/2005 allowing revision and issuing the process against the petitioners; and for that purpose issue necessary order :

3. Petitioner No.1 is the proprietor of a Proprietary firm indulging in the business of selling vehicles manufactured by Mahindra and Mahindra Company. The said firm is said to be an authorized dealer for the sale of such vehicles and for facilitating after sales service. The other petitioners are the employees of the firm.

4. Shri. Dhorde, the Learned Senior Advocate contends on behalf of the petitioners that respondent No. 2 had purchased a new Mahindra Maxx Jeep of silver colour bearing Engine No. AB44D77559 on 28.07.2004. After the said jeep was purchased, it was delivered to respondent No. 2/ Complainant, who took possession of the said vehicle. After using it for about 15 to 20 days,

since the owner / Respondent No. 2 had certain issues with regard to the vibrations being felt when the Engine of the vehicle was running, he had brought the vehicle for servicing to the petitioners. The vehicle was duly serviced and was handed over in a good condition to Respondent No.2/ owner, which he accepted by expressing satisfaction.

5. The respondent No.2 lodged a complaint dated 16.12.2004 with the Judicial Magistrate First Class and sought orders under Section 156 (3) of the Code of Criminal Procedure. It was contended that though he had purchased the vehicle on 28.07.2004, he had a reason to believe that the said vehicle was earlier sold to another person and the said vehicle was, therefore, 'RE-SOLD' to the Respondent No.2.. He further complained that whitener was applied on the service book of the vehicle so as to hide the name of the earlier owner and thereafter, the name of Respondent No. 2 was written over the whitener in order to project that he was the owner of the said vehicle. Based on the said impression, Respondent No.2 had sought an order from the learned Judicial Magistrate First Class, so as to initiate

Police Investigation in the matter.

6. The Police had carried out investigation and have recorded the statements of the Petitioners as well as the Respondent No. 2 and one Mr. Uddhavrao Madhavrao Gadekar who, according to Respondent No. 2 was the first owner of the vehicle. The report was submitted on 08.03.2005 to the Learned Judicial Magistrate First Class whereby it was indicated that there was no evidence to substantiate the contentions of the complainant that the vehicle was earlier sold to Mr. Gadekar and resold to the Complainant. It was also mentioned in the report that the vehicle is in running condition and the Complainant was using the said vehicle ever since it was registered with the R.T.O., Jalna, and was allotted the Registration No. MH-21-C-1473.

7. Shri. Dhorde, therefore, submits that considering the report of the concerned Police Station submitted on the investigation carried out under orders of the learned Judicial Magistrate First Class, the Learned Judicial Magistrate First Class, passed an order dated

05.07.2005, concluding that there was no evidence on record and there was no reasonable ground to issue process against the Petitioners. The Complaint was therefore, dismissed.

8. Shri. Dhorde, submits that the complainant then preferred Criminal Revision Petition No. 160 of 2005. After hearing the parties, the Revisional Court set aside the order of the learned Judicial Magistrate First Class and directed issuance of process against the petitioners under Section 420 read with 34 of the Indian Penal Code.

9. Shri. Dhorde, submits that the thrust of the second Respondent No2/Complainant is that the vehicle which was already sold to Mr. Gadekar, has been resold to him by applying whitener on the service book so as to conceal the name of the first owner.

10. He submits that this apprehension of the Complainant / owner is totally misplaced. The Petitioners have disclosed all factual details to the Investigating Agency. It was specifically brought to the notice of the Investigating Agency as well as the Learned Judicial Magistrate

First Class, that Mr. Gadekar, had earlier placed an order for purchasing the same Mahindra Maxx Jeep in May 2004. Since 20 per cent of the ex – showroom price was paid by Mr. Gadekar, his name was entered in the service book which is in fact the Operator's Manual Book which contains free service coupons and is commonly called as service Book. An insurance cover note was also prepared since Mr. Gadekar made the Petitioners believe that he would deposit the remaining 80 percent ex-showroom price and would then take the delivery of the vehicle. Since Mr. Gadekar was unable to deposit the remainder amount of 80 percent, the transaction was cancelled and the vehicle was, therefore, not delivered to Mr. Gadekar.

11. Shri. Dhorde, categorically submits that to establish an earlier sale of a vehicle or the resale of a vehicle, the said vehicle needs to be registered with the concerned R.T.O. of the said District and the vehicle has to be delivered to the customer so as to be taken to the R.T.O. for registration. He submits that there was no evidence before the Trial Court and factually the said vehicle was never registered with any R.T.O., much less in the name of Mr. Gadekar. The

documentation was kept ready considering the fact that Mr. Gadekar, was to pay the remainder 80 per cent amount, which is a usual practice in the automobile industry as the Petitioners had received 20 percent of the amount. Once it was realized that Mr. Gadekar, did not have the financial strength to proceed to purchase the vehicle, the vehicle was therefore, retained by the Petitioners in their showroom and which was available for inspection and test drive to the Complainant.

12. Shri Dhorde further submits that the Complainant had taken the test drive of the vehicle and is the first owner of the said vehicle after it was sold to him on 28.07.2004. He had made the down payment and had obtained financial assistance from a financial company and the vehicle was delivered to him along with the Operator's Manual. It was in this backdrop that the whitener was used on the Operator's Manual so as to write the name of the Complainant as he became the first owner of the vehicle.

13. Shri Dhorde further submits that the scope of interference of

the Revisional Court was limited. Merely because a second view was possible, the Revisional Court could not have interfered with the findings of the Learned Judicial Magistrate First Class. The concerned Police authorities had investigated into the matter and had recorded the statements of the petitioners as well as the Complainant / owner, had specifically recorded the statement of Mr. Gadekar, who had stated that he had not purchased the vehicle, that he had paid 20 percent of the ex-showroom price which is in fact the invoice amount and since he was unable to make the further payment of 80 percent, he had aborted his intention to purchase the said vehicle. He specifically stated in his statement to the Police concerned that he had not taken the custody of the vehicle, and had not used it, much less ever registered the said vehicle with the R.T.O. These statements were totally disregarded by the Revisional Court which was impressed only by the fact that whitener was applied on the Operator's Manual and which would, therefore, mean that the vehicle was earlier sold to another person. He therefore, prays that the impugned Judgment be set aside and the order of the learned Judicial Magistrate First Class, be sustained.

14. Shri Mete learned Advocate for Respondent No. 2/ Owner /Complainant, has strenuously defended the impugned order. He submits that he had developed an apprehension that the vehicle was earlier sold to another person for two reasons. Firstly, that there were vibrations felt from the engine of the vehicle and secondly, whitener was applied on the Operator's Manual. He concedes that the vehicle showed 240 kilometers on the odometer when the vehicle was purchased on 28.07.2004.

15. Shri Mete submits that the Revisional Court rightly appreciated that as whitener was applied on the Operator's Manual, it indicated a suspicious act and since the name of the Complainant was written upon the whitener, the Revisional Court rightly concluded that the vehicle has been resold to the Complainant. The statement of the Driver of the Complainant was also considered wherein, he stated that after about 15 to 20 days of the delivery of the vehicle, the driver sensed vibrations in the engine. The Driver, however, stated that he saw the whitener on the service book after he had used the vehicle

for 4000 kilometers. Shri Mete further submits that the Jeep has not been returned by the Complainant to the Petitioner, though he is unable to state whether, the Complainant still uses the same Jeep after a passage of about 12 years. He, therefore, prays for the dismissal of this petition.

16. I have considered the submissions of the learned Advocates.

17. It is trite law that the scope of interference of the Revisional Court is limited. The Hon'ble Apex Court has dealt with this issue in the matters of *Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil*, **(2010) 8 SCC, 329** and in the matter of *Radhey Shyam and another Vs. Chhabi Nath and others* **(2015) 5 SCC, 423 : 2015 (3) SCALE 88**. Merely because a second view or a different view is possible, interference can not be caused in the orders passed by the Trial Court. Moreover, in matters wherein an order of refusal to issue process or acquittal are concerned, unless such orders appear to be patently illegal, perverse and erroneous, no interference is called for.

18. In the back drop of the contention of the complainant that a sold vehicle was resold to him, I find that the said contention is misconceived. The Issuance of a cover note or acceptance of 20 per cent of the ex-showroom price of a vehicle would not mean that the vehicle has been delivered to the prospective owner. Unless the entire amount of the ex-showroom price of the vehicle is not paid, no dealer would, in normal or usual circumstances, hand over the custody of the vehicle to the prospective purchaser. It is not in dispute that the said vehicle was never registered with the R.T.O. Therefore, even prima facie, there was no material before the Trial Court to conclude that the vehicle was already sold to Mr. Gadekar and thereafter, surreptitiously resold to the Complainant.

19. The statement made by Mr. Gadekar, coupled with the statements of the Petitioners as well as the Complainant and his driver, would indicate that there is no evidence that the said Jeep was sold to Mr. Gadekar and he had carried away the same and/or had used it. Mr. Gadekar specifically states in his statement to the

Police that he had indeed paid 20 percent of the ex-showroom price about seven months prior to the date 28.07.2004, when the Complainant purchased the said vehicle. Since he could not pay the remaining 80 percent amount, he aborted his intention to go ahead and purchase the said vehicle. He specifically stated that the said vehicle was never handed over to him and he had not used it. The vehicle, therefore, was not a "Pre-owned" vehicle.

20. The statement of the Driver of the complainant also indicates that a test drive of the said vehicle was taken before it was purchased and after being satisfied, the Complainant/Owner selected the said vehicle / model and completed the formalities of purchasing the same. Since the Driver noticed certain vibrations, he returned with the vehicle to the Agency and voiced his complaint. Thereafter, the Agency has attended to his complaint and rectified the problem. The Jeep was then utilized for about four months and had clocked about 4000 kilometers. It was then that the Complainant felt suspicious about his purchase transaction as he noticed whitener on the Owner's Manual.

21. In my view, the Revisional Court could not have relied upon the solitary aspect of whitener being applied on the Owner's Manual as being indicative of the act of the petitioners amounting to offences under Section 420 read with Section 34 of the Indian Penal Code. It was a probable situation and the contention of the petitioners was supported by the statement of Mr. Gadekar that he had initiated the formality of purchasing the vehicle by paying 20 percent of the amount and had aborted his plan to purchase the vehicle midway through.

22. It was therefore possible in this backdrop that the Petitioners were left with no option but to apply a whitener as the Owner's Manual is the book which accompanies every vehicle. It contains free service pass/coupons and such Owner's Manual is to be handed over to the owner of the said vehicle. In my view, the Revisional Court could not have ignored the statements of Mr. Gadekar, the Driver of the Complainant, the Complainant himself and the petitioners, only to be guided by the solitary aspect of application of a whitener on the

manual.

23. Notwithstanding the above, if the vehicle was suffering from certain mechanical problems, which is quite possible with any vehicle or machine or equipment, such problems can be attended to by the Servicing Agency. Merely because vibrations were noticed in the engine would not mean that the vehicle was earlier sold to another person and resold to the Complainant. Mechanical problems are not necessarily indicative of a purported earlier sale of the vehicle.

24 In the light of the above, I find that the impugned order passed by the Revisional Court is perverse. The same has been passed merely because a second view was possible and by totally ignoring the statements recorded by the Police authorities. There was no evidence that the vehicle was earlier sold to any person. In the absence of such evidence, the conclusion of the Revisional Court that the scoring off of the name in the Service Book and the vibrations in the engine indicate that an old Jeep was sold to the Complainant, is a perverse conclusion.

25. In the light of the above, this petition succeeds. The impugned Judgment dated 10.01.2006 is quashed and set aside and Criminal Revision Petition No. 160 of 2005, is therefore, dismissed. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)