

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4818 OF 2014
WITH
CRIMINAL APPLICATION NO.227 OF 2016

1. Naresh Kapoorchand Sood,
2. Ankit Naresh Sood,
Both R/o.Mumbai.

Petitioners

versus

1. The State of Maharashtra,
2. Shyam Chhotelal Kanaujiya, Mumbai.

Respondents

Mr.R.V.Gupta for Petitioners.

Mr.J.P.Yagnik, APP, for State.

Ms.Mitali Shinde for Respondent Nos.2,3,5,6, 8 to 23.

CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.

DATE : 26th July 2016

PC :

1. Heard. On a complaint lodged by Shyam Kanaujiya on 14 September 2014, an offence came to be registered being CR No.292 of 2014 under Sections 409, 420 read with Section 34 of Indian Penal Code ('IPC') at Mahim Police Station, Mumbai against the Petitioners. Petitioner no.1 is the father of Petitioner no.2.

2. The Petitioners have submitted that the Petitioners were running dealership of Bajaj Auto Limited and were dealing in two wheelers. It is alleged that they had accepted booking amounts from various customers for sale of two wheelers. On 3 July 2014, Bajaj Auto Limited terminated the dealership of the Petitioners.

3. The grievance of the complainant is that as the complainant deposited amount towards booking of vehicle before termination of the dealership, the Petitioners ought to have delivered the vehicle or refunded the said amount intimating that the dealership was terminated.

4. The Petitioners have approached this Court in the year 2014 praying for a direction to quash and set aside CR No.292 of 2014.

5. Seventeen customers including present complainant, have filed Criminal Application No.227 of 2016 on 20 April 2016. In paragraph 6, the complainants/applicants have contended thus :

"6. We all the Respondents herein this Application submits that we have no objection to quash the case filed and pending against the Petitioners after receipts of our amounts."

6. By order dated 8 January 2015, this Court passed following order :

"At the outset, Mr.Najmi, learned counsel for the Petitioners makes a statement that total amount due to customers is Rs.7,71,136/-. He further states that the Petitioners are ready and willing to deposit an amount of Rs.2,50,000/- today in this Court and balance amount would be paid by the Petitioners in this Court within a period of four weeks from today. Statement accepted."

7. By order dated 29 January 2015, the registry was directed to accept Rs.2.50 lakhs, if deposited by the Petitioners by 30 January 2015. Accordingly, amount was deposited by the Petitioners by demand draft and endorsement to that effect was made on 30 January 2015. It is informed that so far the Petitioners have deposited Rs.11,27,213/- towards booking amounts deposited by customers of the Petitioners. The investigating officer, who is present in court, states that the total amount accepted by the Petitioners towards booking of vehicles was Rs.11,81,487/- and Petitioners have deposited Rs.11,27,213/- in this Court till today.

8. Learned counsel for the Petitioners states that within two weeks from today, the Petitioners will deposit balance amount of Rs.54,274/- with the registry of this Court. We accept this statement.

9. This Court issued notices to the customers who had booked vehicles. The registry informs that two such customers being Respondent Nos.4 and 7 are not served with notices and service is awaited. Learned counsel for Petitioners states that he had served privately all the customers who are added as Respondents to this petition.

10. Learned counsel for the Petitioners and learned counsel for Respondent nos.3,5,6,8 to 23 state that in view of the fact that booking amount has been deposited by the Petitioners and remaining amount of Rs.54,274/- will be deposited within two weeks from today, the FIR may be quashed. Learned APP, on instructions of investigating officer, submits that in view of the amount being deposited with the registry of this Court, necessary orders be passed.

11. Ms.Mitali Shinde appearing for Respondent nos.3,5,6,8 to 23 states that these Respondents may be permitted to withdraw their respective amounts from the registry of this court on proper identification of the Respondents by the registry.

12. We have perused the record. We have gone through earlier orders passed by this Court. In view of subsequent developments and in the facts of the case, we find that FIR registered against the Petitioners could be quashed and set

aside. We have also considered the fact that the dealership of the Petitioners of Bajaj Auto Limited was terminated. The explanation given by the Petitioners is that due to termination of dealership, it was not possible to hand over delivery of the vehicles to the customers, though amount towards booking was accepted by the Petitioners. The explanation given is plausible one, in the facts of this case.

13. Taking into consideration the facts and circumstances in totality, we are of the view that the petition could be disposed by following order :

(a) First Information Report No.292 of 2014 under Sections 409, 420 read with Section 34 of Indian Penal Code registered with Mahim Police Station, Mumbai against Petitioners is quashed and set aside;

(b) Applicants in Criminal Application No.227 of 2016 are entitled to seek refund of their booking amount as per list submitted under signature of Senior Police Inspector of Mahim Police Station, Mumbai today dated 26 July 2016, which is marked "X", subject to verification and identification from the registry of this Court;

(c) Respondents who are not served and not appearing before us, are also entitled to apply for refund. In case they make

application seeking refund of their booking amount, we direct the registry to refund their amount, subject to verification and proper identification;

(d) This order shall come into force on Petitioners depositing Rs.54,274/- on or before 9th August 2016;

(e) Writ Petition No.4818 of 2014 is accordingly disposed of. Criminal Application No.227 of 2016 stands disposed of in view of disposal of Writ Petition No.4818 of 2014.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

MST