

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

CRIMINAL WRIT PETITION NO. 927 OF 2017

Kuldip Devendrakumar Raiyat,
Age 47 years, Occu. Business,
R/o Row House No. B-1, Lotus
Residency, Opp. MIT College,
Beed bypass road, Taluka and
District Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra,
through in charge Police
Station Officer, Kranti Chowk
Police Station, Kranti Chowk,
Taluka and Dist. Aurangabad
2. Incharge Police Station Officer,
CIDCO Police Station,
Aurangabad, Taluka and
District Aurangabad
3. Assistant Regional Transport
Officer, Regional Office,
Aurangabad, station road,
Taluka and Dist.Aurangabad

.. Respondents

Mr J.K. Bansod, Advocate for petitioner
Mr S.J. Salgare, A.P.P. for respondents no.1 to 3

**CORAM : S.S. SHINDE AND
A.M. DHAVALA, JJ**

**DATE OF RESERVING
THE JUDGMENT : 16.8.2017**

**DATE OF PRONOUNCING
THE JUDGMENT :**

JUDGMENT (Per A.M. Dhavale, J.)

1. Rule. Rule returnable forthwith. With the consent of parties,
matter is taken up for final disposal at admission stage.

2. The petitioner, under Article 226 of the Constitution of India and under Section 482 of Cr.P.C. seeks quashing of F.I.R. at C.R.No.40 of 2016, registered against the petitioner at Kranti Chowk Police Station, Aurangabad, for offences punishable under Sections 420, 468, 471 read with Sec.34 of Indian Penal Code on the ground of it being second F.I.R.

3. On 11.12.2014, Advocate Prashant Shriram Rathi lodged F.I.R. at CIDCO Police Station, Aurangabad against the petitioner. As per the F.I.R. (for the sake of convenience referred as 'first F.I.R.') in April 2013, the petitioner sold to him his old Hundai I-20 car bearing registration No.MH-20-CH-7855 for Rs.6 lakhs. Prashant Rathi paid advance of Rs.2 lakhs and balance amount was to be paid after the car was transferred in his name. About four months before lodging of F.I.R., the petitioner went to him and demanded his car for one day use. Prashant Rathi gave his car to the petitioner, but the petitioner did not return it to him and evaded any telephonic talk. Advocate Prashant Rathi met him. He learnt that the petitioner had obtained loan from State Bank of Hyderabad and the same was not repaid. Hence, the Bank had taken the said car in its possession. The petitioner also told him that he had not repaid the loan of the Bank, but prepared false documents showing payment of money and those were used in R.T.O. office for getting the said car transferred in his own name. Since Advocate Prashant Rathi was cheated by the petitioner, crime was registered on such F.I.R. against the petitioner for the offences punishable under Sections 420, 406, 465, 467, 468,

469, 471, 423 of Indian Penal Code. It needs to be mentioned here that the charges under Section 465 to 471 of Indian Penal Code relate to forgery by preparation of false documents relating to Bank and R.T.O. The said offence was investigated into and during investigation, enquiry was made with R.T.O. office as well as State Bank of Hyderabad. The State Bank of Hyderabad had given statement that its loan was not repaid and the letter produced by the petitioner before the R.T.O. office was not issued by it. On the basis of said investigation, charge-sheet has been submitted against the petitioner in Court No.1 of Judicial Magistrate, First Class, Aurangabad (R.C.C.No.1823/2015).

4. On 9.1.2016, R.T.O. G.C. Gavai lodged F.I.R. at Kranti Chowk Police Station, Aurangabad (for the sake of convenience, hereinafter referred as 'second F.I.R.') against the petitioner. As per this F.I.R., the petitioner sold his car to Prashant Rathi on 21.6.2013 and submitted various documents with R.T.O. for transfer of the car. One R.T.O. agent Mushtaq Patel was given letter of authority by Advocate Prashant Rathi. Those documents included one letter of no objection certificate in Form No.35. Therefore, the request for transfer was allowed by canceling the entry about hypothecation of the vehicle. Thereafter, the Officer of State Bank of Hyderabad brought to the notice of R.T.O. that the petitioner had not repaid the loan and the letter in Form No.35 purportedly issued by the Bank was not actually issued by the Bank nor it was signed by the Officer of the Bank. Thus, the petitioner had cheated the R.T.O. as well as the Bank by forging the documents and Mushtaq Patel, R.T.O. agent had assisted him in

the matter. Accordingly, F.I.R. was lodged against both of them under Sections 420, 468, 471 read with Sec.34 of Indian Penal Code and was registered at C.R.No.40 of 2016.

5. Learned Advocate Mr J.K. Bansod for the petitioner submitted that F.I.R. at C.R.No.40 of 2016 is second F.I.R. in respect of the same incident an the same is not maintainable.

6. Learned A.P.P. Mr S.J. Salgare for respondents no.1 to 3 submitted that F.I.R. at C.R.No. 40 of 2016 is in respect of different incident of cheating of the Bank and R.T.O. Besides, there was one more accused Mushtaq Patel and, therefore, it is not second F.I.R.

7. After going through the papers and record and carefully considering the arguments advanced by the parties, we find that the petitioner is involved in making false documents showing a letter of repayment of the entire Bank loan when the loan was not repaid and the letter was not issued by the Bank. He submitted the said letter to the R.T.O. and cheated the R.T.O. office so as to effect transfer of the vehicle in the name of Advocate Prashant Rathi. We find that all these acts are interconnected. The petitioner could not have effected transfer and could not have cheated Advocate Prashant Rathi unless the vehicle was transferred first in the name of the petitioner. This transfer could have been effected by the R.T.O. only if no objection certificate from the Bank was obtained. Thus, forgery of the documents and cheating the R.T.O. to get the entry of Bank loan and getting the hypothecation cancelled were the acts committed by the petitioner to achieve the ultimate object of selling his car having Bank

loan to Advocate Prashant Rathi for Rs.6 lakhs. Advocate Prashant Rathi would not have purchased it for Rs.6 lakhs, if he was knowing that there was Bank loan of Rs.4 lakhs on the said car. We find that all these acts are closely connected with each other and form part of the same transaction.

8. In fact, the first F.I.R. dated 11.12.2014 lodged by Advocate Prashant Rathi refers to the cheating by the petitioner to the R.T.O. by forgery of documents to make a show that the entire car loan was repaid and the Bank had issued no objection certificate. In view of these facts, when acts are committed in the same transaction, there could not have been second F.I.R.

9. In **Amit Shah Vs. C.B.I., 2013 (6) SCC 348**, there were three murders committed on three different dates and they were inter-connected. After considering in detail the case law on subject, the Apex Court held that those acts were committed in the same transaction and the consequence test was applied. In paragraph 37, it is observed :

“ 37 In Swamirathnam (supra), the following conclusion in para 7 is relevant:

“7. On behalf of the appellant Abu Bucker it was contended that there has been misjoinder of charges on the ground that several conspiracies, distinct from each other, had been lumped together and tried at one trial. The Advocate for Swamirathnam, however, did not put forward this submission. We have examined the charge carefully and find no ground for accepting the contention raised. The charge as framed, discloses one single conspiracy, although spread over several years. There was only one object of the

conspiracy and that was to cheat members of the public. The fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy did not change the conspiracy and did not split up a single conspiracy into several conspiracies. It was suggested that although the modus operandi may have been the same, the several instances of cheating were not part of the same transaction. Reliance was placed on the cast of [Sharpurji Sorabji v. Emperor](#), AIR 1936 Bom 154 (A) and on the cast of Choragudi Venkatadari, In re. ILR 33 Mad 502 (B). These cases are not in point.

In the Bombay case, no charge of conspiracy had been framed and the decision in the Madras case was given before [Section 120-B](#) was introduced into [the Indian Penal Code](#). In the present case, the instances of cheating were in pursuance of the conspiracy and were therefore parts of the same transaction. **This Court has consistently laid down the law on the issue interpreting [the Code](#), that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates [Article 21 of the Constitution](#)."**

10. In **T.T. Antony Vs. State of Kerala, AIR 2001 SC 2637**, in paragraph 21, it is held :

" 21. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of Criminal Procedure Code only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no

second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Criminal Procedure Code."

11. In **Pawan Ranjithmal Lodha Vs. The State of Maharashtra and anr., Criminal Writ Petition No. 1388 of 2015**, the Division Bench of this Court to which one of us (Justice A.M. Dhavale) was a party in similar circumstances held that second F.I.R. relating to matters referred in the first F.I.R. will not be maintainable.

12. Though the offence of cheating and forgery are against R.T.O. and State Bank of Hyderabad respectively, since the offences are committed in the course of same transactions and since those were referred in the first F.I.R. lodged by Prashant Rathi, the petitioner can be charged for those offences and can be convicted if the charges are proved.

13. It is also claimed that one Mushtaq Patel was also involved in the act of cheating. In that case, the material collected in the investigation of the second F.I.R. can be produced in the case arising

out of the first F.I.R. and the supplementary charge-sheet or application under Section 319 Cr.P.C. can be moved to add Mushtaq Patel as a co-accused. But, it can't be entertained as grounds for justifying the lodging of second F.I.R. We, therefore, find that the F.I.R. registered at C.R.No.40 of 2016 at Kranti Chowk Police Station, Aurangabad is not maintainable and is abuse of process of Court. We hasten to clarify that this is not our view that petitioner has not committed offences shown therein but the offences shown therein are already covered in the first F.I.R. lodged by Advocate Prashant Rathi at CIDCO Police Station, Aurangabad.

13. Hence, with the above observations, we allow this petition. The second F.I.R. at C.R.No.40 of 2016 lodged against the petitioner at Kranti Chowk Police Station, Aurangabad for the offences punishable under Sections 420, 468 and 471 read with Sec.34 of Indian Penal Code is hereby quashed.

14. Rule is made absolute in above terms. There shall be no order as to costs.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

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