

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 120 of 2017**

1. The Manager,
Air Ambulance Aviation Ambatt,
Proprietorship concern,
Kumbleri Meenangadi,
Kerla 673591
Through Mr. Paul Beenish

2. The Manager/Director
AIR AMBULANCE AVIATION
RZK4A Nanda Block,
Mahavir Enclave,
Dwarka Section – 1
K6 Block, New Delhi 45,
India 110045.

... Petitioners
(Petitioner no.2
represented by
petitioner no.1)

V e r s u s

1. State of Goa,
through the Public Prosecutor,

2. The Police Inspector,
Ponda Police Station,
Ponda Goa.

3. The Branch Manager,
State Bank of India,
Sulthan Bathery Town Branch,
Anugraha Complex,
Wayanad, Kerala,
673592.

4. The Branch Manager
ICICI Bank,
SB V/964, City Tower,
Gandhi Junction,
Sultan Bathery – 693592.

5. Shubham S. Valanju,
S/o. Satyawan Vaslanju,
major in age,
r/o H. NO.215/8,
Simpaine, Mardol,
Ponda-Goa.

..... Respondents.

Shri S. Balkrishna, Advocate for the Petitioners.

Shri M. Amonkar, Additional Public Prosecutor for the Respondent no. 1 and 2.

Shri R. P. Desai, Advocate for Respondent no.5.

**CORAM: C. V. BHADANG &
PRITHVIRAJ K. CHAVAN, J J.
DATE: 3RD AUGUST, 2017.**

ORAL JUDGMENT (PER C. V. BHANDANG, J.):

Rule, made returnable forthwith. The learned Additional Public Prosecutor waives service for the respondent nos. 1 and 2. Shri R. P. Desai, waives service for respondent no.5. Heard finally by consent of parties.

2. By this petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, the petitioner is seeking quashing of the F.I.R NO.134/2017 registered with the Police Station, Ponda, for the offence punishable under section 420 r/w section 34 of I.P.C.

3. The brief facts are that; the respondent no.5 had lodged a complaint dated 5/6/2017 with the Police Station, Ponda, stating that his father had met with an accident on 13/3/2017 and was taken to the Goa Medical College hospital for treatment. He was advised to shift his father to Bombay for further specialized treatment. The complainant had accordingly arranged for an air ambulance for shifting his father to Bombay and had paid an amount of Rs.3,50,000/- to the petitioners, who are in the business of providing air ambulance services. The gravamen of the allegations are that the petitioners failed to provide the air ambulance and thus have cheated the complainant. On the basis of such a complaint the F.I.R came to be registered in which the investigation is stated to be in progress.

4. According to the petitioner an amount of Rs.3,50,000/- for providing the air ambulance services was transferred to the account of the petitioners on 16/3/2017 at about 11.30 p.m. The air ambulance service was to be provided for the following date i.e 17/3/2017. It is contended that the petitioners had transferred an amount of Rs.2,47,523 to Flax Aviation Pvt. Ltd. towards filling of aviation fuel in the aircraft. It is thus submitted that the petitioners had no intention of cheating the 5th respondent, as they had made all arrangements for providing the air ambulance. It is contended that the on account of some technical snag, the air ambulance could not be provided. The

learned counsel for the petitioners has referred to the email correspondence between the parties in order to submit that at no point of time the petitioners had an intention not to provide the services. It is contended that unless and until the complainant shows that since inception the petitioners had no intention of honouring their obligation, an offence of cheating cannot be said to be made out. He, therefore, submits that the impugned F.I.R deserves to be quashed.

5. The learned counsel for the 5th respondent submits that the petitioner failed to refund the amount from March 2017 till the complaint was lodged and even thereafter and it was only after the order of this Court that the amount has been deposited. It is further submitted that the 5th respondent has filed a complaint against the petitioner before the State Consumer Forum, Goa seeking compensation of Rs.40.00 lakhs towards deficiency of service. The learned counsel for the 5th respondent, on instructions, states that in the event this Court is inclined to quash the F.I.R. some amount in addition to Rs.3,50,000/- may be directed to be paid. It is submitted that this shall be without prejudice to the claim of 5th respondent before the State Consumer Forum.

6. We have heard the learned counsel for the parties. We have

heard Shri Amonkar, the learned Additional Public Prosecutor who submits that this Court may pass appropriate orders in the facts and circumstances of the case.

7. We have carefully considered the circumstances and the submissions made. The distinction between a case of cheating and simplicitor breach of contract, is the intention at the inception of the entering of the contract. In other words, a person who claims that he has been cheated has to show that there was an intention not to perform the contractual obligation since inception. It appears that in this case the petitioner had transferred the amount of Rs.2,47,523/- to Flax Aviation Pvt. Ltd. for fueling the aircraft. Although it is claimed on behalf of the 5th respondent in the complaint that the petitioners were not even answering the telephonic calls, it appears that from the e-mail communication dated 17/3/2017 that it was informed to the 5th respondent that the flight was already activated and even the amount for fueling the air ambulance was transferred. It was further informed that on account of a technical snag and the safety of the members being important, the flight could not take off. Be that as it may, we find that the matter arises out of a contractual dispute, and is predominately of a civil nature, not involving elements of fraud or forgery. The Hon'ble Supreme Court in the case of **Madan Mohan Abbot Vs. State of Punjab (2008) 4**

SCC 582 has inter alia held that in a case where the dispute is purely of a personal nature, having no public law element involved, this Court can exercise jurisdiction under section 482 of Cr.P.C to quash the F.I.R.

8. It may be mentioned that as per the order of this Court dated 14/7/2017, the petitioners have deposited the amount of Rs.3,50,000/- before this Court on 21/7/2017. The learned counsel for the petitioner has no objection for the amount being paid to the respondent no.5.

9. The learned counsel for the 5th respondent has no objection for quashing of the F.I.R subject to his right to prosecute the claim before the State Consumer Forum, or to take recourse to other civil remedy if any, is left open. It is evident that we have examined the matter only in relation to the allegations of cheating and not alleged deficiency of service. In that view of the matter the following order is passed:

Order:

(i) The petition is allowed. The impugned F.I.R No.134/2017 registered with the P.S. Ponda is hereby quashed.

(ii) It is made clear that this shall not affect the right of the respondent no.5 to prosecute the proceedings before the State Consumer Forum or to pursue any other civil remedy if available in law.

(iii) We have not expressed any opinion on the availability and/or the merits of any such remedy.

(iv) The amount of Rs.3,50,000/- deposited in this court be paid to the respondent no.5 along with interest, if any.

PRITHVIRAJ K. CHAVAN, J

C. V. BHADANG, J.

Ap/