IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Application No.951 of 2018

* Anurag Mehrotra Son of
Mr. Gopalji Mehrotra,
Age 44 years,
Managing Director and President
Ford India Private Ltd.
DLF Cyber City, Phase - II,
Building No. 10 C, 3rd Floor,
Gurgaon - 122 002. .. **Applicant.**

Versus

1) The State of Maharashtra
Through the Secretary,
Home Department,
Mantralaya, Mumbai.

2) The Superintendent of Police,
Ahmednagar.

3) The Police Station Officer,
MIDC Police Station,
Ahmednagar.

4) Dilip Mansukhlal Gandhi,
Age 66 years,
Member of Parliament,
R/o Devendra Bungalow,
Acharya Anand Rushiji Marg,
Ahmednagar. .. **Respondents.**

Shri. R.R. Mantri, Advocate, for applicant.

Shri. S.B. Pulkundwar, Additional Public Prosecutor, for respondent Nos.1 to 3.

Shri. P.M. Shah, Senior Counsel instructed by Shri M.P. Shinde, Advocate, for respondent no.4.

With

Criminal Application No.994 of 2018

* Akshay Govardhan Bihani,
Age Major,
Occupation : Chartered Accountant
R/o 12/13, Moti Mahal,
Maheshnagar,
Near RTO Office, Ahmednagar. .. **Applicant.**

Versus

1) The State of Maharashtra
Through the Secretary,
Home Department,
Mantralaya, Mumbai.

2) The Superintendent of Police,
Ahmednagar.

3) The Police Station.
MIDC Ahmednagar.

4) Dilip Mansukhlal Gandhi,
Age Major,
Occu: Member of Parliament,
R/o Devendra Bungalow,
Acharya Anand Rushiji Marg,
Ahmednagar. .. **Respondents.**

Shri. R.R. Mantri, Advocate, holding for R.R. Kakani, Advocate, for applicant.

Shri. S.B. Pulkundwar, Additional Public Prosecutor, for respondent Nos.1 to 3.

Shri. P.M. Shah, Senior Counsel instructed by Shri N.V. Gaware, Advocate, for respondent No.4.

With

Criminal Application No.1004 of 2018

* Govardhan Motilal Bihani,
Age 60 years
Occupation : Nil,
R/o 12/13, Moti Mahal,
Maheshnagar,
Near RTO Office,Ahmednagar. .. **Applicant.**

Versus

1) The State of Maharashtra
Through the Secretary,
Home Department,
Mantralaya, Mumbai.

2) The Superintendent of Police,
Ahmednagar.

3) The Police Station.
MIDC Ahmednagar.

4) Dilip Gandhi,
Age Major,
Occu: Member of Parliament,
R/o Devendra Bungalow,
Acharya Anand Rushiji Marg,
Ahmednagar. .. **Respondents.**

Shri. K.C. Sant, Advocate, for applicant.

Shri. S.B. Pulkundwar, Additional Public Prosecutor, for respondent Nos.1 to 3.

Shri. P.M. Shah, Senior Counsel instructed by Shri N.V. Gaware, Advocate, for respondent No.4.

Coram: T.V. NALAWADE &
K.L. WADANE, JJ.

Date: 27 JUNE 2018

JUDGMENT (Per T.V. Nalawade, J.):

1) Rule. Rule made returnable forthwith. By consent, heard all the sides for final disposal.

2) All the three proceedings are filed under section 482 of the Code of Criminal Procedure for relief of quashing of F.I.R.No.I-91/2018 registered with MIDC Police Station, Ahmednagar for offences punishable under sections 120(B), 406, 420, 467, 468, 471, 34 of the Indian Penal Code. The crime is registered on the basis of report given by respondent No.4 - Dilip Gandhi, who is a sitting Member of Parliament.

3) In the F.I.R. allegations are made by the first informant that he is fond of using four wheeler like Ford Endeavour. It is his contention that he had friendly relations with owners of Salasar Wheels Private Limited viz. Bihani family and he had already purchased one Ford vehicle from this Dealer. He was also using the services given by this Dealer for four wheelers.

4) It is the contention of the first informant that on 24-12-2014 he and his son visited the office of the aforesaid Dealer and there, persons like Bhushan Govardhan Bihani, Govardhan Motilal Bihani, Abhishek Govardhan Bihani and the employees of the Dealer were present. In the F.I.R. name of one accused is mentioned as Abhishek but it is informed that his correct name is Akshay and he has filed proceeding No.994/2018. It is the contention of the first informant that all the aforesaid persons made representation to him in respect of new Ford Endeavour vehicle of which they were Dealer and they gave information about the features of the vehicle. It is his contention that they insisted that the first informant needs to purchase such Ford Endeavour vehicle and the

vehicle was having price of Rs.24,87,750/- as on road price of the vehicle.

5) It is the case of the first informant that he was already using one Ford Endeavour model but it was old and so he felt that the features of new vehicle told by the accused persons were attractive. He agreed to pay the aforesaid amount for purchasing Ford Endeavour and, according to him, on that date he gave Rs. one lakh by cheque drawn on one bank. It is his contention that he made loan proposal to Union Bank of India, Branch Chitale Road of Rs.23,87,750 and after getting sanction of that amount from his account of loan, he made payment of Rs.20 lakh to aforesaid Dealer and he gave cash amount of Rs.3,87,750/-. According to him, cash amount was paid as representation was made that R.T.O. tax was to be paid and some amount was required for sundry expenses. It is the contention of the first informant that after completing formalities of registration, the vehicle was handed over to him on 30-3-2015 and the vehicle was given No.MH-16-BL-2121. In the registration record year of manufacture was mentioned as 1/2015.

6) It is the case of the first informant that when he started using the vehicle he had no feeling that it was a brand new vehicle. It is his contention that performance of the vehicle was also not good and he was required to take the vehicle for repairs frequently. According to him, he decided to take the vehicle to a big show room for check up and so he took it to Talera Ford, Wagholi Pune. According to him, one Nilesh was working as mechanic and while doing repair work Nilesh disclosed that the vehicle was of Model 2012. It is the contention of the first informant that he realised only on that date that he was deceived and the model of the year 2012 was sold to him by representing that it was model of the year 2015. It is the contention of the first informant that he also realised that the vehicle had running of 80 to 90 thousand kilometers. He realised that there were suspicious circumstances with regard to the initial ownership and the registration.

7) It is the contention of the first informant that after getting information of the aforesaid things he contacted the accused persons and asked explanation but

they gave evasive answers. It is his contention that he then made correspondence with the company office situated at Chennai, Tamil Nadu and also the R.T.O. office and he realised that the model of the year 2012 was sold to him by representing that it was the model of 2015 and it was old vehicle. According to the first informant to deceive him, some false record was prepared by the accused persons and that was used for registration of the vehicle. It is his contention that he was required to pay Rs.24,87,750/- under the transaction and he paid such amount only due to false representation made by the accused persons.

8) It is not disputed that the applicant Govardhan Bihani from proceeding No.1004/2018 is the Director of the aforesaid private company. The applicant from proceeding No.994/2018, Akshay is son of Govardhan. It was submitted by his counsel that he is Chartered Accountant and he has no connection with the aforesaid company. The applicant from proceeding No.951/2018 is the Managing Director and President of the company, Ford India Private Limited and it his contention that he

has no concern with the transaction which took place between the first informant and the aforesaid dealer company. Argument was advanced for the applicant on one more circumstance that order of investigation is made by this Court in a proceeding like Criminal Writ Petition No.1286/2017 which was filed for direction by some of the accused persons as police were avoiding to make investigation into the allegation of accused that the first informant was a politician and his men were harassing the dealer and they were virtually extracting money as ransom from them. Investigation of that crime is to be made by C.I.D. as per the order made by this Court. The said order was made on 23-2-2018 and the present F.I.R. came to be given on 4-3-2018. This Court is avoiding to discuss the material which was produced before this Court in Criminal Writ Petition No.1286/2017 as the material of the present case needs to be considered separately to ascertain as to whether there is substance in the allegations made by the first informant of the present matter or whether the allegations do not constitute any offence. Only after that as an additional circumstance, the aforesaid direction given by this Court in Criminal Writ Petition No.1286/2017 can be considered in the matter like the present one. The inference can be drawn on the basis of material available as to whether allegations are false or there is some substance in the allegations.

9) The applicant of Criminal Application No.951 of 2018 is admittedly the Managing Director and President of Ford India Private Limited. His counsel took this Court through various clauses of dealership agreement. The agreement was made in the year 2011. Part of the agreement having title as "Dealer Sales and Service Agreement Standard Provisions" and particularly clause 2(b) runs as under :-

> " **2. Responsibility with respect to Company Products.**
>
> (b) Orders: To enable the Company to schedule production efficiently, the Dealer shall furnish to the Company each month, on the date or dates and in the manner designated by the Company, an order or orders for Company Products that the Dealer will purchase during such subsequent months as shall be designated by the Company and in connection therewith, or separately, as requested by the Company, estimates of the Dealer's requirements for Company Products for such succeeding months as the Company from time to time may request. Each order shall indicate the quantity, models,

> specifications and desired time of shipment of Company Products, and each Company Vehicle order shall include any optional equipment available from the Company which may be required under applicable motor vehicle laws and regulations of the state or national government or in the Dealer's Locality and, as the case may be, to permit the importation and sale of Company Vehicles therein. Each such order or estimate also shall be placed in accordance with the requirements fixed from time to time by the Company as to the minimum number of Company Products that may be ordered at any one time by the Dealer."

The learned counsel for the applicant of this proceeding submitted that under the aforesaid clause the Dealer was required to purchase vehicle from the manufacturer and then he had the absolute power to sell the vehicle to any customer and for all subsequent transactions made by the Dealer in respect of such vehicle the Company cannot be held responsible. There is force in this submission in view of the wording of the aforesaid clause. As per the trade practice also when a customer purchases a vehicle from a Dealer, that transaction is between the Dealer and the customer. Whenever there is dispute about amount taken etc. by the Dealer or the dispute of the present nature like the Dealer has deceived the customer, the Company cannot be roped in as an accused or defendant in that matter. Only when the manufacturer is liable due to some manufacturing defect in the vehicle action can be taken against the manufacturer. Similarly when there is false representation in the advertisement of the Company (manufacturer) or in the broacher of the manufacturer, action is possible against the manufacturer.

10) The learned Senior Counsel for the first informant-respondent submitted that there are other clauses in dealership agreement and they show that without the permission of the Ford Company it was not possible for the Dealer to sell used vehicles. It is true that under clause 4(b) of the same part, without written consent of the company the dealer cannot deal in used vehicles. Even if this clause is read as it is that cannot help the first informant or the prosecution in future. It is not the case of the first informant and it does not appear from the papers of investigation that such consent was obtained from the Company by the Dealer. There is record to show that such consent was not obtained and behind the back of the Manufacturer, the transaction in question was made. The Court is expected to go with presumption

that the things happened in usual course of business, as per trade practice also and that needs to be done by Court as provided in section 114 of Evidence Act.

11) The record is produced to show that on 17-9-2013 present Dealer had purchased the vehicle involved in the present matter from Sequel Motors Pvt. Ltd. Nagpur, a Ford Dealer. On the date of the sale its price was shown as Rs.14,58,860/- and some amount was charged as VAT and as destination charges. This record is not disputed by the applicants from proceeding Nos.1004/2018 and 994/2018. This record further shows that the value of the vehicle of 2012 Model was not Rs.20,54,667/-. The brochure of Model 2014 shows that the model of 2014 was having basic price of Rs.20,54,667. In the proforma invoice supplied to the first informant the show room price of the vehicle sold is shown as Rs.20,86,415/-. Amount of Rs.29,651/- is shown as amount of extended warranty and the amount of R.T.O. tax is shown as Rs.2,71,233/-. Thus, the model of the year 2012 of which apparently value was not fixed by the Company as Rs.20 lakh and when it was much below Rs.20 lakh, the

Dealer showed the price of Model 2014. All these things were done by the Dealer, applicants from other two proceedings and not by the applicant of proceeding No.951/2018.

12) It was submitted for the applicants that the first informant had taken the papers from the Dealer for registration and the Dealer had not informed that it was 2015 Model. On this point, the learned Senior Counsel for the first informant took this Court through Form No.20 prepared under Rule 47 of the Central Motor Vehicle Rules. This rule shows that it is the responsibility of the Dealer to see that before handing over the vehicle to the purchaser, the vehicle is duly registered. Admittedly the vehicle was registered as 2015 Model. Information was supplied that, the model was of the year 2015 and the tax was collected from that year for the period of 15 years. This record, the provision of law and the papers of investigation show that information was supplied by Salasar Wheels Pvt. Ltd., the Dealer to the RTO office that the model was of the year 2015. Specific date was informed like 10-1-2015 as the date of manufacture. The

colour mentioned in the information was also different than the colour which was there when the vehicle was collected by this Dealer from the Nagpur Dealer. Thus, the colour was also changed before selling the vehicle to present first informant. Actually, the vehicle was manufactured on 8-8-2012 as per the record. The papers of investigation contain the correspondence made by the RTO office with Ford Company and it also shows that it was of model of 2012 and it was sold by the manufacturer to the aforesaid Dealer from Nagpur and not to Salasar Dealer, Ahmednagar. These circumstances are supporting the contentions of the first informant that Salasar Dealer, its Directors, owners made false representation to him, they created false record to show that it was the model of 2015 and that was done to get more amount from the first informant. As per the record Salasar Dealer did get more amount from the first informant than the Company price and that could happen due to the aforesaid record created and used by Salasar Dealer. This record is sufficient to show that there is substance in the allegations made by the first informant against the Dealer. The allegations are directly against the applicant of Criminal Application

No.1004/2018 and the the applicant from proceeding No.994/2018. In addition to that, there is record showed to the Court to show that the applicant of Proceeding No.994/2018 was actually participating in the business of Salasar Wheels Private Limited. It was submitted for the applicant from proceeding No.994/2018 that he is a Chartered Accountant and so he was not expected to do the business and so the allegations made against him cannot be accepted. This submission is not acceptable. It is true that persons involved in the profession like Chartered Accountant are not expected to do the other business but that does not mean that the Court should go with the presumption that the present applicant is not doing other business. In the present matter there are specific allegations against the applicant of Proceeding No.994/2018 that he made false representation and further there is record including many photographs to show his participation in the said business.

13) Some record was shown to this Court in respect of the applicant-Govardhan from proceeding No.1004 of 2018 and it was submitted that Govardhan was virtually

paralyzed and so it cannot be presumed that he was active in the business. This Court has carefully gone through the record but on facts it is not possible to infer that Govardhan was bed-ridden. The medical papers show that for short time he was sick but he had recovered. Admittedly he is Director of the company and there are specific allegations against him that he made false representation and induced the first informant to purchase the vehicle.

14) The record collected by police and the submissions made show that on the date when the vehicle was handed over to the first informant, it had running of more than 40,000 kilometers though it is the case of the first informant that there was running of more than 80,000 kilometers. The independent record shows that it had running of more than 40,000 kilometers when the vehicle was handed over. It was submitted that vehicle was handed over 2-3 months prior to registration. The running of 40,000 kilometers is of that date. That record is sufficient to show that it was a used vehicle and it was being used from the year 2012. More observations can be

made with regard to the illegal manner in which it was used. Unfortunately other material is not collected by police to ascertain as to how for such long period the vehicle was used without getting proper registration. Ordinarily only for a short period such vehicles are used on temporary registration and they are required to be sold and after that the other vehicles are used for giving the Demo to the customers. In any case, it cannot be said in the present matter that new model of 2014 or 2015 model was sold by Salasar Dealer to the first informant. Considering the price which was taken from the first informant and the allegations and the other record, this Court holds that it is not possible to give relief in favour of the applicants from proceeding Nos.1004/2018 and 994/2018.

15) Allegations made as against the applicant from Proceeding No.951/2018 are of different nature. It was submitted for the first informant that when the Minister of Public Enterprises, Government of India, had contacted the Company to inform the grievance of the first informant, who is a sitting Member of Parliament, the

Company had informed that there was nothing wrong in the transaction and so it can be said that the applicant from the Proceeding No.951/2018 had also joined hands with the owners of Salasar Dealer. This submission is not at all acceptable. First the vehicle was purchased by Nagpur Dealer and then the vehicle was purchased by Salasar Dealer from Nagpur Dealer and the Company had no control over those transactions. Similarly the Company had no control over the representations made by Salasar Dealer with the first informant and it cannot be said that false representations were made by the Company that it was 2015 model. The offence of cheating is completed when on the basis of false representation, consideration passes. Before coming into picture of applicant from proceeding 951/2018, offence was complete and support or explanation given for Salasar by the manufacturer after the offence cannot be called as the act of abating the crime of cheating or any offence creating false record. This Court has no hesitation to hold that relief needs to be granted in favour of the applicant from Criminal Application No.951/2018. On the basis of the allegations made against this applicant and the aforesaid material, it is not possible to even frame charge against this applicant and nothing can be achieved by asking him to face trial for the aforesaid offences.

16) Both the sides placed reliance on some reported cases in the present matter. Learned Senior Counsel for the first informant placed reliance on the cases reported as :

(1) **AIR 1957 Calcutta 520 (In re Central Calcutta Bank Ltd (in Liqn.)**

(2) **(2010) 10 SCC 361 (V.P. Shrivastava v. Indian Explosives Ltd.)**

(3) **(1999) 3 SCC 259 (Rajesh Bajaj v. State NCT of Delhi.)**

(4) **(2009) 4 SCC 439 (Mahesh Chaudhary v. State of Rajasthan)**

(5) **(2013) 11 SCC 559 (C.P. Subhash v. Inspector of Police, Chennai)**

(6) **(2004) 12 SCC 336 (Damodar v. State of Rajasthan)**

(7) **(2017) 15 SCC 560 (State v. Anup Kumar Srivastava)**

(8) **(2014) 14 SCC 22 (Mosiruddin Munshi v. Mohd. Siraj)**

17) The learned counsel Shri. K.C. Sant for the applicant from Criminal Application No.1004/2018 has placed reliance on the case reported as **AIR 1992 SC 604 (State of Haryana v. Ch. Bhajan Lal)**.

18) The Apex Court has discussed the law developed on the power of this Court under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure with regard to the proceedings like the present one. In all these cases cited by both the sides, the Apex Court has laid down that when there are allegations which constitute cognizable offence, at initial stage it is never desirable to quash the F.I.R. For giving such relief, there should be the circumstances as mentioned in the case of Bhajanlal (cited supra). It is also made clear that the Court needs to keep in mind the statutory power given to police of investigation into cognizable offences and ordinarily the Court needs to avoid interference into the investigation at the initial stage. Submissions were made that not only in the present matter but in other matters it is noticed that Salasar Dealer was involved in creation of false record and

complaints of cheating are filed against it by other persons. In such cases only after thorough investigation more material can be collected and more offences can be detected. Such offences involve fraud against Government also as it is noticed that taxes like VAT or taxes to the local body are not paid when such transactions are made by the Dealer. There is power with the investigating agency to make investigation on that line also. Thus this is not a fit case to grant relief in favour of the persons who were doing business of dealership like the applicants from Proceeding Nos.1004/2018 and 994/2018 but the relief can be granted in favour of applicant from Proceeding No.951/2018. In the result, following order.

19) Criminal Application No.951 of 2018 is allowed. Relief is granted in terms of prayer clause (B). Rule is made absolute in those terms.

20) Criminal Application Nos.994 of 2018 and 1004 of 2018 are dismissed. Rule discharged in these two proceedings. Interim relief stands vacated.

21) Learned counsels for the applicants whose proceedings are dismissed requested for continuation of interim relief. The request is rejected.

Sd/-	Sd/-
(K.L. WADANE, J.)	**(T.V. NALAWADE, J.)**

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