

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3629 OF 2017**

Ashish Kamlesh Sanghvi

..Petitioner

Vs.

The State of Maharashtra & Ors

..Respondents

Mr. Subhash Jha i/b Law Globla for the Petitioner

Mrs. Anamika Malhotra APP for the Respondent State

**CORAM :R. M. SAVANT, &
SANDEEP K SHINDE,JJ**

DATE : 14th FEBRUARY, 2018

P.C.

1 The above Writ Petition has been filed seeking quashing of the proceedings being CC No.2/PW/s2017 pending on the file of the Learned Metropolitan Magistrate 26th Court Borivali, arising out of the FIR No.1-484/2015 for offences punishable under Sections 420, 468, 471 and 34 of the Indian Penal Code. The said FIR has been registered on 24-9-2015. It seems that the Petitioner was thereafter arrested and produced before the Learned Metropolitan Magistrate and was remanded to custody till 3-10-2015 as can be seen from Exhibit B of the Petition. The charge sheet in the instant case has been filed on 2-1-2017 and the instant Petition has been filed in September 2017. The said FIR it appears has arisen out of the business transactions that the Petitioner herein had with one Kunal Mehta in respect of purchase of mobile phones from him. The said Kunal Mehta it seems was procuring the said mobile phones through tender floated by the customs authorities. The

quashing of the FIR has been sought on the ground that in fact it is the Petitioner herein along with one Darshan Mehta and Mukesh Padhiyar who had all allegedly invested an amount to the tune of Rs.57 lacs for the purchase of mobile phones from the said Kunal Mehta, had made a complaint to the Senior Inspector of Police, Borivali Police Station which was received by the said Police Station on 1-5-2015. The case for quashing is sought to be further buttressed by placing reliance on the said complaint, writing allegedly executed by the said Kunal Mehta dated 25-2-2015 by which writing the said Kunal Mehta has accepted his liability to the tune of Rs.53 lacs towards the Petitioner and Darshan Mehta, pursuant to which writing it seems that the said Kunal Mehta had issued a cheque in favour of the said Darshan Mehta for the said sum of Rs.53 lacs which cheque is dated 25-2-2015.

2 It is required to be noted that the first informant is the said Darshan Mehta at whose behest the FIR has been registered against the Petitioner and the said Kunal Mehta. In the teeth of the aforesaid factual background what confounds us is the fact that though the FIR was registered as long back as on 24-9-2015 and the Petitioner arrested in September, 2015 and the charge sheet has been filed in January 2017, the instant Petition has been filed only in September 2017. This has to be viewed in the context of the fact that the filing of the FIR is sought to be questioned in the touchstone of the aforesaid three documents and it was also the submission of the Learned

Counsel for the Petitioner that though the Petitioner was the original complainant who had filed the complaint on 1-5-2015 along with the said Darshan Mehta , the tables have now been turned upon the Petitioner.

3 In support of the contention that the FIR in question is actuated by fraud, the Learned Counsel for the Petitioner seeks to rely upon the judgment of the Apex Court in the matter of **B Suresh Yadav Vs. Sharifa Bee & Anr.**¹ and in the matter of **Vijay Shekhar & Anr Vs. Union of India & Ors.**² We have with the assistance of the Learned Counsel for the Petitioner gone through the judgments (supra). In so far as judgment in the case of B Suresh Yadav is concerned, the Apex Court has mentioned the requirements for proving the offence of cheating namely that the complainant is required to show the accused has fraudulent or dishonest intention at the time of making promise or presentation. In so far as the judgment in Vijay Shekhar's case the Apex Court in the said case came to a conclusion that the complaint in the said case was actuated by fraud and a total abuse of the process of the Court. The Apex Court also observed that a serious doubt arises whether the procedure required under the CrPC was really followed by the Magistrate at all while taking cognizance of the offence alleged. In our view, the said judgments would not further the case of the Petitioner in the instant matter. As observed earlier, the delay in the part of the Petitioner approaching this Court, in our

1 (2007)13 Supreme Court Cases 107

2 (2004) 4 Supreme Court Cases 666

view militate against the case of the Petitioner. In so far as the quashing of the proceeding are concerned, the conduct of the Petitioner not approaching this Court at the earliest opportunity more so when the Petitioner's case for quashing is based on the complaint made by the Petitioner a/w Darshan Mehta on 1-5-2015 and thereafter writing which has been executed by the said Kunal Mehta also in the year 2015, cannot be said to be a person who has been wrongly implicated. In our view therefore the instant case does not merit any interference in our Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]