

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2883 OF 2018

Ranjit @ Balu s/o. Rajkumar
Deshmukh, Age 30 years,
Occu. Agriculture, R/o. Gangakhed,
Tq. Gangakhed, Dist. Parbhani.

....Applicant.

Versus

1. The State of Maharashtra
Through Police Inspector
Police Station, Udgir,
District Latur.
2. Shaikh Ibran s/o. Abdul Rashid Sab,
Age 35 years, Occu. Business/driver,
R/o. Musanagar, Udgir, Tq. Udgir,
District Latur.

....Respondents.

Mr. R.J. Nirmal, Advocate for applicant.

Mr. R.V. Dasalkar, APP for respondent No. 1/State.

Mr. B.M. Dhanure, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATED : 26/02/2020.

JUDGMENT : [PER T.V. NALAWADE, J.]

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

2) Present proceeding is filed for relief of quashing of F.I.R. No. 118/2018 registered with Udgir City Police Station, District Latur for offences punishable under sections 392 r/w. 34 of Indian Penal

Code. The crime is registered on the basis of complaint of respondent No. 2 Shaikh Imran. He is owner of truck bearing No. MH-14/CP-8915. It is his contention that he gives the vehicle on rent basis to make income.

3) It is the case of complainant that on 1.8.2017 he had given aforesaid vehicle on rent basis to present applicant and he was expected to give rent of Rs.5,000/- per day to the complainant. It is contended that by way of advance, present applicant had given the amount of Rs.2,00,000/- as advance and then he gave the rent for the period of three months of about 4.5 lakh rupees. It is contended that no rent was paid in respect of further three months and when the complainant insisted for giving that amount, there was quarrel. It is contended that the complainant then took the custody of the vehicle and on 8.3.2018 the vehicle was kept at a place for giving it on rent. It is contended that the driver Vyankat Kirwade appointed by the complainant was with the vehicle. It is contended that by assaulting driver, the applicant took away the vehicle and so, attempt was made to give report against him on 9.3.2018. It is contended that police refused to accept the report and so, he sent the report online. It is contended that the applicant then was convinced to return the vehicle and then the vehicle was returned and the vehicle was then parked near the campus of Maulana Azad Marathi School, Gandhi Nagar. It is contended that on 12.3.2018 at

10.20 p.m. the applicant again came there with his men and by showing knife and by giving threat of life he took away the vehicle from that spot.

4) Though there are aforesaid allegations, the complainant has further contended that on the date of complaint which was filed before J.M.F.C., the vehicle was in his custody. It is contended that vehicle worth more than Rs.16 lakh was taken away by committing the offence of theft by applicant, but no action was taken by the police and so, he was required to file private complaint. He filed private complaint on 21.4.2018 before J.M.F.C. In that matter, the order of investigation u/s. 156 (3) of Cr.P.C. was made by J.M.F.C. and then aforesaid crime came to be registered.

5) The submissions made and the aforesaid allegations show that on the date of complaint the vehicle was in the custody of informant. He has not given explanation as to how the vehicle again came in his custody. On one hand, he admits that vehicle was given on rent basis and by way of advance huge amount was given by the applicant and then he had paid the rent also of many months. On the other hand, allegations of theft of vehicle on two occasions are made. It appears that no record in respect of giving vehicle on rent basis was created. The applicant has produced a copy of notice given through advocate to the complainant and in that notice dated

15.3.2018, it was contended that the vehicle was actually sold by the complainant for consideration of Rs.13.5 lakh and the amount of Rs.5 lakh was given as earnest money by the applicant. It was also contended in the notice that the remaining amount was to be given at the time of transferring vehicle in R.C.T.C. book in favour of the applicant. It was contended that the vehicle was repaired by the present applicant by spending amount of Rs.4,00,000/- and the tyres were also changed. It was informed in the notice that the revenue office had also found the vehicle in the custody of applicant and in respect of transport of minor minerals notice was given by revenue authority and as per the decision given by the revenue authority penalty of Rs.78,658/- was paid by the applicant. It was contended in the notice that the complainant misused the circumstance that no record of transfer was created and on 1.3.2018 he had taken the custody of the vehicle illegally when the vehicle was parked near Petrol Pump of Nanded. In the notice, it was informed that the present applicant was likely to take legal action against the present complainant. It can be said that after giving of the notice on 15.3.2018 complainant filed private complaint on 21.4.2018 and the order of investigation came to be made.

6) As in the complaint itself it is admitted that the custody of the vehicle was given to the applicant, though under rent agreement and it is admitted that huge amount was given by the

present applicant to informant, it can be said that there was dispute of some civil nature. With the complainant there is no record though huge amount was given by the applicant. Due to all these reasons, this Court holds that it is desirable that civil court decides the dispute. It can be said that the complainant is trying to use the criminal action to pressurize the applicant. Already legal notice was given by the applicant to the complainant. Due to all these circumstances, following order :-

ORDER

- (I) Application is allowed.
 - (II) Relief is granted in terms of prayer clause "B".
- Rule is made absolute in those terms.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

SSC/