IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.03.2020
Pronounced on : .03.2020

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

Crl.O.P.No.3926 of 2015
and
Crl.M.P.No.1 of 2015

Ujjawal Sampath Chordia ... Petitioner

Vs.

1.The State represented by,
Inspector of Police,
Central Crime Branch, Team-I,
EDF-1 Wing, Vepery,
Chennai-600 007.

2.MRF Limited,
Represented by Mr.Joshy Joseph,
11 (Old 124), Greams Road,
Chennai-600 006. ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings in Crime No.317 of 2014 on the file of the respondent Police and quash the same.

For Petitioner	:	Mr.I.Subramaniam, Senior Counsel for Mr.K.V.Bhashyam Clari
For R1	:	Mr.S.Karthikeyan, Additional Public Prosecutor
For R2	:	Mr.M.Vijayan for M/s.King & Partridge Associates

*****

ORDER

The petitioner is the 3rd accused in Crime No.317 of 2014 for offence under Sections 406, 420 r/w 120-B of IPC has filed this quash petition.

2.The case of the prosecution is that the 2nd respondent lodged a complaint against the petitioner/A3 and two others. The 2nd accused is the son of the petitioner/A3. Both of them are the Directors of M/s.Automobilia Italia Private Limited at Mumbai and M/s.Fiorano Motors Private Limited at Delhi and are dealers of Maserati Quattraporte Car and the 1st accused was working as Branch Manager of M/s.Fiorano Motors Limited at Delhi. During March 2004, the 2nd respondent had called M/s.Fiorano Motors Limited, Delhi at Janpath and enquired about the availability of new Maserati Quattraporte Car for MRF Limited/2nd respondent. The 1st accused claiming to be a Branch Manager of M/s.Fiorano Motors Private Limited, Delhi and an authorized dealer of Maserati Quattraporte Car sent an e-mail on 20.03.2014 attaching three photographs of three new Maserati Quattraporte Cars and three proforma invoices to the 2nd respondent. Further, the 1st accused said that he will come to Chennai to discuss about the final price, delivery schedule of the cars and to ensure prompt delivery, further, claimed that he has rich experience of importing luxury cars into India and have a good rapport with Maserati Quattraporte Car.

3.The 2nd accused and the petitioner/A3 have instructed him to visit the 2nd respondent to discuss the price and delivery of Maserati Quatraporte Car. The deal for Quotraporte 4.7 Automatic Car was discussed and finalised the price of Rs.1,98,50,592/-. Further, the accused have claimed that the imports have been done through Automobilia Italia Private Limited, a group company of the above partners (A2 and A3) and also authorized importers of Maserati

Quatraporte Car. Further, the 1st accused handed over a brochure of the vehicle represented that three new cars have been imported and are available at the customs bonded warehouse in Mumbai, if 100% payment is made in advance he will deliver the vehicle within 25 working days. He requested the payment to be made to the Deutshe Bank AG, RTGS/IFS, Mumbai to the account of M/s.Fiorano Motors LLP. Based on the assurance, the 2nd respondent made full payment of Rs.1,98,50,592/- on 27.03.2014 through RTGS. Thereafter, the car was not delivered as promised within 25 working days, phone calls were made regularly to the 1st accused for delivery of the car, the accused was giving one reason or other. Later, the 1st accused stated that the car has been moved to the warehouse and proposed to deliver within a week time. Then too, the care was not delivered and there were several exchanges of letter and e-mails.

4.During May 2014, when a letter was sent to Delhi office of M/s.Fiorano Motors, it was returned as unserved. Thereafter, suspecting the genuineness of the accused, discrete enquiry was made. The 2nd respondent came to know that no car was imported by the Automobilia

Italia Private Limited/Fiorano Motors LLP in the past two years and they are not an authorized dealer of Maserati SPA, Itali. On enquriy, further, revealed that Janpath Office/Showroom was closed during 1st week of April. Thus all the accused with fraudulent intention, deceived the 2nd respondent, concealed the fact of not being authorized dealers of the Maserati Quatroporte Car. The car was not delivered by the accused as promised, despite receipt of 100% payment. The enquiry made with the customs department was contrary to the representation made by the accused that the price, agreed was a special pre-budget price and thereafter, the customs office increased the price substantially, the accused made a further demand of Rs.47,38,000/-. Finding the accused on receipt of huge money, on deception and by making false claim, case came to be registered for offence under Sections 406, 420 r/w 120-B of IPC in Crime No.317 of 2014 by the 1st respondent.

5.The contention of the learned senior counsel for the petitioner is that the 2nd respondent had inadvertently committed a mistake of quoting lesser price of the car without taking into consideration of the customs duty rates applicable at the time of proposed delivery of the car. The car was imported in the year 2011 and retained in Customs Warehouse, Mumbai. The car was contemplated for delivery to the 2nd respondent in the year 2014 by the time the customs duty payable to the car escalated. Unknowingly the accused quoted lesser price to the 2nd respondent. The learned senior counsel further submitted that as per terms and conditions of the sales which was mutually agreed between the parties, the price revision was agreed as the contract clearly stated that the price prevailing at the time of delivery shall apply. Taking advantage that the copy of the same is not available with the petitioner, now false allegations are made against her. The petitioner had notified the factum of Rs.47,83,000/- of duty payment, to the 2nd respondent. The petitioner vide its e-mail dated 31.07.2014 reiterated its commitment to honour its obligation on payment of duty amount. The 2nd respondent had sent a demand draft for Rs.37,55,074/- and also asked for scores of document by mail and the 2nd respondent admitted the transaction to be treated as loan. Further the petitioner had sent all the documents along with keys of the car including the sales invoice before delivery of the case, which has been acknowledged by the 2nd respondent.

6.It was further contended that the petitioner/A3 was compelled to hand over a cheque for Rs.65,00,000/- to the 2nd respondent. Thereafter several communications were taken place and finally, the customs duty was cleared on 27.10.2014 and the car was delivered on 30.11.2014. Suppressing all these facts, the 2nd respondent giving criminal colour to a commercial transaction, exerted undue pressure by filing one petition or other before the lower Court for cancellation of bail, on the pretext that the sureties executed for the bail bond were not genuine. The petitioner/accused firm is registered with Commercial Tax authorities, New Delhi and hence, they are governed by the Delhi Value Added Tax Act, 2004 and requested the 2nd respondent to bring the car to Delhi NCR so that the registration formalities could be completed at New Delhi. The 2nd respondent, so far not brought the car to Delhi NCR to complete the formalities.

7.The cheque of Rs.65,00,000/- of the petitioner/A3 is with the 2nd respondent. No notice under Section 41A of Cr.P.C., was issued to the petitioner, not following the procedure and rules, the petitioner was taken into custody at Mumbai when she was about to leave India on a travel and thereafter, she was produced before the learned XXIV Additional Chief Metropolitan Magistrate, Borivalli, Mumbai on 01.11.2014. The petitioner was released on the same day on undertaking that she will appear before the learned Chief Judicial Magistrate, Egmore. On 03.11.2014 she appeared before the learned Chief Judicial Magistrate, Egmore and obtained bail in Crl.M.P.No.7332 of 2014. Hence, it would go to show that how the 2nd respondent a corporate giant having high connection and influential, has given a criminal case, even after delivery of the car and using the 1st respondent exerted undue pressure. Further, the 1st respondent taking dictum from the 2nd respondent without following the procedure to find out the truth, had foisted a case against the petitioner. The delivery of the car is admitted by the 2nd respondent. From the documents handed over, it is seen that the particulars of the car stated in the documents are same as represented. After taking delivery of the car, nothing survives in this case.

8.The 1st respondent had filed a status report during July 2015 in which it is mentioned that the petitioner after receiving the amount had never delivered the car contra to the facts. The 1st respondent failed to look into the fact the car was delivered duly November 2014 and proof has been submitted to the police. He further contended that the petitioner is a lady and she was only a sleeping partner along with her son/A2. Hence, she prayed for quashing the proceedings.

9.In order to prove the genuineness of the petitioner, the learned counsel for the petitioner filed the typed set of papers containing Bill of Entry issued, EC Certificate of conformity issued, Sale certificate issued by Automobilia Italia Private Limited, Sales letter from Automobilia Italia Private Limited to Central Warehousing Corporation, Mumbai, Model Sales contract of the car, Letter of the petitioner to the 1st respondent forwarding the documents pertaining to car along with proof of service and Tax invoice.

10.The learned Additional Public Prosecutor for the 1st respondent submitted that the petitioner/A3 as well as her son/A2 had plethora of cases, which were registered against them on similar nature of offence committed by them in various parts of the country. They have cheated several persons involving several crores. The 2nd accused in this case has left the country and now he is absconding. This petitioner on the alertness of the police could be arrested and secured while she was fleeing the country. The petitioner's claim is that she is a lady and having health issues is not substantial with medical records. Further, it is found that she is actively involved in the business of M/s.Fiorano Motors LLP along with her son/A2 and she had taken active part in the deception of the 2nd respondent. The 2nd respondent had produced all the communication documents and proof for making transfer the funds through RTGS. The model of the car is of the year 2011 it was projected as though it is new model of the year 2014. Further, it is also found that the petitioner was not an authorized dealer of the car Maserati Quattroporte Car. The representation of promise made by the petitioner proved to be false. The petitioner conspired with other accused committed offence of deception, cheating and misappropriation.

11.The learned Additional Public Prosecutor further submitted that due to the petitioner obtaining stay from this Court, the investigation of this case could not be progressed. Further, the documents are to be collected, witnesses are to be examined and after completion of investigation, the genuineness or otherwise of the claim of the petitioner have to be found. Further, the petitioner had involved in several other cases of similar in nature.

12.The learned Additional Public Prosecutor further submitted that this case could not be progressed, it is in the initial stage. Unless investigation is conducted on collection of documents and examination of the witness, the complicity or otherwise of the accused including the petitioner could be found and criminal case cannot be terminated at the initial stage

13.The learned counsel for the 2nd respondent reiterated the complaint and submitted that the petitioner and her son/A2 are partners in several firms, the petitioner's contention of she being a lady and sleeping partner is false. Further the petitioner is a partner in many of the firms and companies along with her son and others and they are actively carrying on the business. There have been cases filed against her of similar in nature. The petitioner has been indicted by Bombay High Court and Delhi High Court. This would go to show that the petitioner is a regular offender who is involved in similar nature of cases, exploiting innocent persons.

14.The 2nd respondent was deceived by believing the representation of the accused as though they were authorized by Masserati SPA to act as a dealer in India. The petitioner's firm M/s.Fiorana Motors LLP was never an authorized dealer. Further, the imposition and distribution agreement between Masserati SPA and Automobilia Italia Private Limited was terminated since 2012. The petitioner and other accused have committed the offence of cheating and misappropriation. Due to stay obtained by the petitioner, the investigation could not be taken to its logical end.

15.The learned counsel for the 2nd respondent further submitted that the contention of the learned counsel for the petitioner that the petitioner being a lady to be considered, cannot be countenanced for the reason that the petitioner was taking active part in the business of various firm and there are several cases pending against her. The Hon'ble Apex Court in the case of ***State of Tamil Nadu Versus R.Vasanthi Stanley***

and another reported in (2016) 1 Supreme Court Cases 376 had held that *"An offence under the criminal law is an offence and it does not depend upon the gender of an accused."*

16.Considering the rival submissions and on perusal of the materials this Court finds that it is an admitted case that the petitioner is a partner of M/s.Florana Motors LLP along with her son/A2 and she had approached the 2nd respondent claiming to be a dealer of Maserati SPA, Italia. Believing the representation, orders were placed by the 2nd respondent, 100% price of the car was received and thereafter, car was not delivered as promised. After deliberations, exchange of mails and letters and on coercive steps being taken, the car was delivered much delay after several months and it is found that the car was not as per specification. Further over and above, amount was received by the accused for which the cheque was issued and was not honoured and a separate proceedings under the Negotiable Instruments Act, 1889 is in progress. The conduct of the petitioner attempting to leave the country coupled with the fact that the 2nd respondent has left the country and absconding himself. Further, the letter from Maserati SPA, Italia revealed that M/s.Florana Motors LLP was never an authorized dealer. The import and distribution agreement of Automobilia Italia Private Limited was terminated as early as November 2012. There are claims and counter claims and the documents have to be verified and collected in this case. The letter for delivery of the car would not absolve her from the case. Only after completion of investigation the complicity or otherwise of the petitioner would be seen.

17.In view of the above, this Criminal Original Petition is liable to be dismissed and the same is dismissed, accordingly. Taking into consideration FIR is of the year 2014 and the case could not be progressed due to pendency of this petition, the 1st respondent is directed to give top priority in completing the investigation in Crime No.317 of 2014 as soon as possible in accordance with law. Consequently, the connected miscellaneous petition is closed.

.03.2020

vv2

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No

To

1.The Inspector of Police,
Central Crime Branch, Team-I,
EDF-1 Wing, Vepery,
Chennai-600 007.

2.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY ORDER IN

Crl.O.P.No.3926 of 2015

____.03.2020