

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.259 OF 2019.

Ana Francisca D'Cruz Petitioner.

Vs.

State of Goa, thr. The Public Prosecutor
and 2 others. Respondents.

Shri L. Raghunandan, Advocate for the petitioner.

Shri S. Dhargalkar, Addl. Public Prosecutor for the respondent nos.1 and 2.

Shri A. Gaonkar, Advocate for the respondent no. 3 under legal aid scheme.

**Coram:- T.V. NALAWADE &
SMT. BHARATI H. DANGRE, JJ.**

Date:-15th February, 2021.

ORDER (PER T.V. NALAWADE, J)

The present proceedings is filed for relief of quashing of FIR no. 294/2014 registered with Ponda Police station and also chargesheet no. 8/2018 filed in this FIR for offence punishable under Section 420 read with 34 of Indian Penal Code.

2. Heard both sides.

3. The chargesheet is filed against the present petitioner and one more accused by name Sajan Haraualkar. In the report given by respondent no. 3 Devendra Gaude he has made following allegations:

(i) on 4.7.2014, he came across an advertisement given on OLX and it was given for sale of four wheeler Wagnor by Mr. Sajan Haraualkar. The number of the vehicle was given as GA-03-P-7512 and the price was quoted as

Rs.3.5 lakhs. It is the contention of the informant that after coming across the advertisement he showed interest for purchasing the vehicle and he contended aforesaid Sajan Haraualkar.

(ii) It is contention of the informant that on 4.7.2014, itself he agreed to purchase the car and on 5.7.2014 he handed over cash amount of Rs.20,000/- (Rupees Twenty thousand only) to Sajan Haraualkar in the presence of one lady who gave her name as Ana D'Cruz, the present petitioner.

(ii) It is the contention of the informant that for purchasing the vehicle he applied for loan to one co-operative bank at Ponda and loan was sanctioned on 7.7.2014.

(iv) It is contended that on 9.7.2014 for collecting consideration amount and for completing the transaction Sajan Haraualkar and the present petitioner came to Ponda Goa with the aforesaid vehicle.

(v) It is contended that on 9.7.2014 he gave cheque of Rs.3,30,000/- to them in the bank and their presence in the bank must have been recorded in CCTV system of the bank on that day. It is contended that on 9.7.2014 itself this cheque was encashed by these two persons.

(vi) It is contention of the informant that after receiving the consideration amount, the keys of the aforesaid vehicle was handed over alongwith copy

of the receipt NO."D314676 dated 15.5.2014 issued by the RTO Mapusa Goa and certificate of insurance.

(vii) It is the contention of the informant that on the same day his signature was obtained on transfer form by these two persons and promise was given that car will be transferred in his name within one week. It is contention of the informant that when subsequently he tried to contact Mr. Sajan Haraualkar, he switched off his mobile and avoided to complete the transaction.

(viii) It is contended that subsequently the petitioner came to know that the crime was registered on the basis of the present petitioner's complaint against Mr. Sajan Haraualkar for offence of cheating on 25.6.2014.

(ix) It is contention of the informant that due to aforesaid circumstances, he feels that the two persons acted in collusion with each other to cheat him by taking amount of Rs. 3.50 Lakhs from him and by using aforesaid *modus operandi*.

4. The learned counsel for the petitioner submitted that report given by the present petitioner was first in time. i.e. on 25.6.2014 and so it can be inferred that the petitioner is deceived by aforesaid Mr. Sajan and informant is also deceived by aforesaid Sajan Haraualkar. This Court holds that kind of inference is not possible at this stage in the present case, as there are specific

allegations against the petitioner of aforesaid nature and it can be said that prosecution needs to be allowed to prove their aforesaid contention in trial.

5. Submissions were made by the learned APP that correspondence was made with the bank to collect relevant CCTV footage. It is fact that the informant has lost money in the present matter. Other records produced i.e. the copies of the orders made by the learned JMFC and the learned Additional Session Judge show that direction is given against the present informant to hand over custody of the vehicle to the registered owner. This Court holds that relief of quashing FIR cannot be given in the aforesaid circumstances and so Petition stands dismissed.

SMT. BHARATI H. DANGRE,J.

T.V. NALAWADE, J.

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