IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 654 OF 2021

Nandkumar Triambakrao Kale
..vs..
State of Maharashtra, thr. P.S.O.

WITH

CRIMINAL APPLICATION (ABA) NO. 604 OF 2021

Ajay s/o Ambadasrao Dandale
..vs..
State of Maharashtra, thr. P.S.O.

WITH

CRIMINAL APPLICATION (ABA) NO. 597 OF 2021

Prashant s/o Dinkar Jadhav and ors.
..vs..
State of Maharashtra, thr. P.S.O.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri S. Katkar, Advocate for applicant. (ABA No.654.2021)
Shri G.R. Sadar, Advocate for applicant (ABA No.604/2021)
Shri R.R. Vyas, Advocate for applicants (ABA No.597.2021)
Shri S.D. Sirpurkar, A.P.P. for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 25/10/2021

Heard.

2. All bail applications are arising out of same Crime. In anticipation of arrest in Crime No.1574 of 2021 registered with Frezarpura Police Station, Amravati City for the offence punishable under Sections 415, 416, 417, 418, 419, 420 read with 34 of the Indian Penal Code, applicants/accused are

seeking for pre-arrest protection.

3. The informant Shubham Donti has initially lodged the report with the Police, however, no cognizance was taken. Therefore, the informant has filed an application to the Magistrate under Section 156(3) of the Code of Criminal Procedure seeking direction to the Police to register the First Information Report. In turn, in pursuance of order dated 07.08.2021 passed by the learned Magistrate, the crime was registered.

4. It is the informants' case that he was the owner of four wheeler bearing registration No. MH 27 BX 2626, which he agreed to sell to applicant Ajay Dandale in consideration of Rs.14,11,000/-. It is the informants' case that purchaser Ajay Dandale agreed to avail loan from Shriram Transport Finance Pvt. Ltd. (hereinafter referred to as 'the Finance Company) to pay the price. According to the informant concerned Officers of Finance Company also agreed to disburse the loan amount directly his account. It is the grievance that despite such agreement, amount was not paid to the informant, hence, the report of cheating.

5. It is the stand of the applicant – Ajay Dandale (purchaser) that at the time of agreement, he paid an amount of Rs.1,11,000/- to the informant and later on, as the loan proposal was not sanctioned in close

proximity, he had paid an amount of Rs.10,00,000/- in cash. Moreover, another amount of Rs.1,00,000/- was also paid. It is his contention that on payment of Rs.12,11,000/-, the informant-owner facilitated to transfer the vehicle in his name. He would submit that since already he has paid substantial amount to the purchaser at his request, the Finance Company has directly disbursed the loan amount to him.

6. Applicants of Criminal Application No. 597 of 2021 are the Branch Manager and Recovery Officer of the Finance Company. It is their stand that there was no agreement in between them with the owner, hence they were not obliged to transfer the amount to the owner of the vehicle. Moreover, it is submitted that the loan was sanctioned on 19.02.2020 and prior to that, already vehicle was transferred on 05.02.2020 in the name of purchaser Ajay Dandale. Having regard to these facts, they had disbursed the loan in favour of purchaser, who are the borrower.

7. As per the case of the purchaser, out of agreed amount of Rs.14,11,000/- already they have paid Rs.12,11,000/- and outstanding amount was of Rs.2,00,000/- only. During the pendency of this application, they have already deposited Rs.2,00,000/- in this Court to show their *bona fides*. It reveals from the record that purchaser Ajay Dandale has already put his stand in his complaint to the Police dated 20.02.2021 as well as legal notice dated

04.03.2020 to the informant-owner to accept balance consideration of Rs.2,00,000/- and to handover key. Pertinent to note that, in such a background, the informant has already filed a Regular Civil Suit No.141 of 2020 against the purchaser and Finance Officer claiming part consideration of Rs.13,00,000/-. In said suit, he has accepted receipt of earnest amount of Rs.1,11,000/- but, denied the remaining consideration. However, it is for Civil Court to decide on merits whether the purchaser has paid the balance consideration except Rs.2,00,000/- which are admittedly not paid. In such a background, application was move to the Magistrate directing the Police to register the complaint.

8. *Prima facie,* it reveals that predominantly it is a dispute of civil nature which relates to recovery of balance sale consideration, for which already civil action has been initiated. There appears to be substance in the contention of purchaser since the vehicle has already been transferred in his name and his stand is made clear by prior advocate's notice. As regards to applicants, who relates to the Finance Company, there is no material to show that either they have assured or entered into the contract with the owner to directly make payment to them. Likewise, there is nothing against applicant Nandkumar Kale who is the agent and merely introduced the parties with each other. Prima facie, the ingredients to constitute an offence of cheating

are missing, hence, applicants liberty cannot be curtailed on such belated action. In view of that, all applicants have made out a case for grant of pre-arrest protection. Hence, the following order :

(a) All Criminal Applications stand allowed and disposed of.

(b) Ad-interim orders dated 29.09.2021 (ABA No.654/2021), 14.09.2021 (ABA No.604/2021) and 09.09.2021 (ABA No.597/2021) are hereby made absolute upon same terms and conditions.

(c) Henceforth, all applicants shall attend concerned Police Station as and when called.

(d) The amount of Rs.2,00,000/- be transferred in Regular Civil Suit No.141/2020 which is pending before the Civil Judge, Senior Division, Amravati to deal it appropriately in his discretion.

JUDGE

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