

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 CRIMINAL APPLICATION NO.3267 OF 2022

GANESH NATHURAM JAT
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Deshmukh Sachin S.
APP for the respondent – State : Mr. B.V. Virdhe
...

**CORAM : MANGESH S. PATIL &
SANDIPKUMAR C. MORE, JJ.**

DATE : 14 OCTOBER 2022

PC :

The applicant is seeking quashment of the FIR no. 266 of 2022 registered with Bhagyanagar Police Station, District – Nanded for the offence punishable under section 379 of the Indian Penal Code at the instance of the respondent no. 2.

2. The FIR, *prima facie*, reads that the respondent no. 2 had agreed to sell the vehicle to the applicant for a stipulated consideration, however, the transaction was not completed and on 29-05-2021, when he had parked his vehicle in front of his house, the next day morning it was found missing. When he contacted the applicant, latter admitted to have taken away the vehicle.

3. The learned advocate for the applicant submits that it is purely a civil dispute. After receiving part of the consideration, possession of the vehicle was delivered to him. He was actually using the vehicle but without completing the transaction for the undisclosed reasons, the respondent no. 2, all of a sudden, lodged the FIR that too belatedly.

He would submit that on 22-08-2022 itself, the applicant had informed the Superintendent of Police, Beed about the sinister design of the respondent no. 2 to dupe him. It is thereafter that the FIR has been lodged. There is no element of criminality. The ingredients of the offence of theft cannot be made out from the FIR. It would be a sheer abuse of the process of law if the applicant is made to face the investigation and possible prosecution.

Learned advocate also submits that the vehicle was purchased by the respondent no. 2 by obtaining a loan and pursuant to the agreement, it was the applicant who had continued to pay the installments towards repayment. He would submit that the case is clearly covered by the guidelines in the matter of *State of Haryana and others Vs. Bhajan Lal and others; 1992 AIR SC 604*.

4. We have considered the rival submissions and the papers.
5. In spite of our specific query to the learned advocate for the applicant, he was unable to point out any semblance of material or *iota* of evidence to *prima facie* indicate that the possession of the vehicle was delivered to him pursuant to the agreement of sale. The agreement of sale is conspicuously silent about delivery of possession. At this juncture, it will have to be assumed that being the registered owner, the vehicle was in possession of the respondent no. 2.
6. Going by the allegations in the FIR, the vehicle was in possession of the respondent no. 2 he had parked it and was found missing and later on being contacted, the applicant told him about he having taken away the vehicle.
7. At this juncture, these allegations clearly make out a case of theft punishable under section 379 of the Indian Penal Code.
8. The Application is rejected.
9. The observations made herein-above are confined to the decision of the present matter.

[SANDIPKUMAR C. MORE]
JUDGE

[MANGESH S. PATIL]
JUDGE