

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1953 OF 2023

Irfan Barniwala ... Petitioner
Versus
State of Maharashtra & Ors. ... Respondents

Mr. Sameer Reshamwala i/by S. R. Legal for the Petitioner.
Ms. Rahila Memon a/w Rohida Kazi for the Respondent No.3.
Mr. J. P. Yaagnik, APP for the Respondent No.1-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 4th AUGUST, 2023

P.C. :-

. The prayer is for quashing of the FIR being Crime No. 50 of 2023 for the offence punishable under Sections 406, 409, 420, 467 read with 34 of the Indian Penal Code.

2. The aforesaid offence came to be registered at the behest of respondent No.3-Salman Mohd Farook Navsarivala, whose father was a registered owner of a four wheeler bearing registration No. MH 02 BV 0013. It is claimed that since the registered owner was indisposed because of serious ailment and the complainants were in need of the money, they have contacted accused No.2-Khalid, a second hand car dealer, so as to dispose of the aforesaid vehicle. It is further claimed that accused No.2-Khalid paid certain amount to the complainant towards consideration, by a cheque which was dishonoured. However,

accused No.2-Khalid allegedly sold the vehicle to the present petitioner-accused No.3, who has paid Rs.5,50,000/- in cash to accused No.2-Khalid.

3. Since the original owner has neither received the amount nor parted with the lawful custody of the vehicle, the offence came to be registered against accused persons. Allegation against the petitioner is that of fraudulently and by forging the signature getting the vehicle transferred in R.T.O. record.

4. The submissions of the counsel for the petitioner are that the accused No.2 has already issued a cheque to the complainant towards the consideration which was dishonoured. The conduct of the complainant in this eventuality of presenting the cheque sufficiently speaks of there being a contract of sale of the vehicle between the accused No.2 and the complainant. According to him, even if the cheque got dishonoured, no proceedings are initiated by the complainant against the accused No.2. Further contention is the accused No.3 i.e. present petitioner has lawfully purchased the movable property viz four wheeler after parting the consideration in cash which is around Rs.5,50,000/-. Based on which the petitioner become the registered owner of the vehicle. As such, he would urge that there is no element of cheating or forgery in the case in hand and as such, the offence needs to be quashed and set aside.

5. The learned APP submits that the investigation is at nascent stage. The counsel for respondent-complainant supports the prosecution's case.

6. We have appreciated the submissions.

7. The fact remains that the petitioner is claiming that he has parted with the consideration of Rs.5,50,000/- to the accused No.2 in cash. There is no evidence to infer that such payment was made by the petitioner to the accused No.2 towards the consideration of the vehicle in question.

8. Once it can be inferred from the record that the complainant who has not received the consideration of the vehicle, there is no question of same being got transferred by the petitioner in his name having allegedly paid the amount to a third party and that to in cash and not to the registered owner. Right, if any, of the petitioner is against the accused No.2 to whom he claimed to have paid the amount.

9. Once it can be inferred from the record that the complainant is not in receipt of the consideration of the vehicle, it cannot be said that the complainant has lawfully parted with the custody of the vehicle in favour of the petitioner, who has got the same transferred in his name. That being so and having regard to the fact that the investigation is at nascent stage, no case for causing interference thereby quashing the FIR is made out.

10. The Petition accordingly stands dismissed.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]