

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NOS. 1621/2022 & 128/2023

CRIMINAL APPLICATION (APL) NO. 1621 OF 2022

APPLICANT : Shaikh Shoheb Shaikh Ibrahim,
Aged about 29 years, Occ. Business
R/o Koradi Road, Near Orange City
College, Smruti Nagar, Nagpur.

V E R S U S

NON-APPLICANTS :

1. State of Maharashtra
Through P.S.O. Gadge Nagar,
Amravati.
2. Rafiullah Khan Hafizullah
Aged about 43 years,
R/o Post Faizpura, Indola,
Amravati.

AND

CRIMINAL APPLICATION (APL) NO. 128 OF 2023

APPLICANT : Manish s/o Naresh Chandak
Aged about 52 years, Occupation
Surveyor, having it's office at
F-23, Sai Regency Complex,
Ravi Nagar Square, Amravati
Road, Nagpur – 440 033
Email-manishchandakngp@gmail.com

V E R S U S

NON-APPLICANTS :

1. State of Maharashtra
Through Amravati Police Station,
Gadge Nagar,
District Amravati.
2. Rafiulla Khan Hafijulla Khan Pathan

Age 42 years,
Occupation – Nil,
R/o Indhla, PO Camp, Amravati
Amravati – 444 602.

Mr. Z.Z.Haq, Advocate for the applicant in APL No.1621/2022
Mr. M. Anilkumar, Advocate and Mr.N. Bahal, Advocate for the applicant in
APL No.128/2023
Mr. N.R.Rode, APP for respondent no.1 (in both matters).
Mr. M.N. Ali, Advocate for respondent no.2 (in both matters)

**CORAM:- VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.**
DATED : 31/03/2023.

ORAL JUDGMENT : (PER VINAY JOSHI, J.) :

1. **Admit.** Heard finally with the consent of learned counsel appearing for the parties.

2. Both applications are filed under Section 482 of the Code of Criminal Procedure seeking to quash FIR in Crime No.1230/2022 registered with Police Station, Gadge nagar, District Amravati for offences punishable under Sections 406, 420, 468, 471, 120-B read with Section 34 of the Indian Penal Code. The applicant of Criminal Application No.1621/2022 is a Purchaser of truck in question whilst the applicant of Criminal Application (APL) No.128/2023 is a Surveyor appointed by Financer Bank.

3. It is the informant's case that he has purchased a

motor vehicle namely truck bearing Registration no.MH-27-BX-1276 by availing finance from HDB Financial Services Limited, Mumbai. The said truck met with an accident on 13.7.2019 thus was parked in the Jaika Motors. According to the informant, the applicant Rafiulla Khan has no concern with the truck, however, by joining hands with Financer prepared false documents and purchased the said truck for which the report.

4. It is the case of Shaikh Shoheb that the truck was seized by the Financer as the informant did not paid the agreed installments. The truck was hypotheticated with the Financer, who has seized the truck and decided to sale. The applicant Shaikh Shoheb has purchased the truck from the Financer in consideration of Rs. Five lakhs. At the relevant time, the truck was lying in Jaika Motors in damaged condition but, he purchased the same on wear and tear basis. The applicant Shaikh Shoheb would submit that for transfer of truck he went to RTO office and in the process has filed an affidavit prepared by agent which was, in fact, in the name of informant. He would submit that when he came to know that he has signed an affidavit sworn to be shown by the informant, he has filed one another affidavit stating the real facts and filed with the RTO regarding correction of the mistakes.

According to applicant Shaikh Shoheb, neither he has fabricated any documents nor offences alleged are made out. Likewise, it is the contention of the applicant Manish Chandak that he is merely Surveyor against whom no specific allegations are made, therefore, prosecution against him would not lie.

5. Learned APP as well as Advocate Ali appearing for the respondent-informant resisted both applications. It is contended that the applicant Shaikh Shoheb has fabricated an affidavit as well as put his own mobile number so as to receive OTP or message on his mobile. Thus, fabrication is of the documents so as to transfer the ownership of truck in his name. It is submitted that the informant has already filed a case before the District Consumer Forum against the Financer and it was within the knowledge of Shaikh Soheb. The informant has also filed an objection with RTO regarding transfer of truck in the name of applicant. Moreover, it is contended that the learned Magistrate has refused to return seized truck to the applicant Shaikh Shoheb. It is pointed out that there was tampering in the chassis of truck and thus, it is a matter of investigation.

6. Most of the facts are not in dispute. The informant has purchased truck by raising finance from the HDB Financial

Services Limited, Mumbai - Financer. Undisputedly, the informant has failed to repay the installment which resulted into seizure of truck by the Financer. It is not in dispute that the applicant has paid consideration of Rs.Five lakhs to the Financer for purchasing the truck. The applicant has also produced a notice issued by the Financer to the informant prior to sale indicating that the installment shall be paid, failing which the Financer will sale the truck. Admittedly, truck met with an accident and lying in Jaika Motors and from the said place, the applicant Shaikh Shoheb purchased the truck on wear and tear basis. The principal allegation is of fabrication of an affidavit and putting his own mobile number while seeking transfer of vehicle with the concerned RTO. The typed copy of said affidavit has been produced on record. True, said affidavit was in the name of the informant and below it admittedly the applicant Shaikh Shoheb has signed. According to the applicant, the affidavit was prepared in the name of original owner by agent and therefore, he has mistakenly signed. He has produced a copy of another affidavit dated 30.8.2022 sworn and particularly, tendered with the RTO admitting the oversight mistakes. Pertinent to note that the said exercise was carried out prior to registration of FIR dated 15.10.2022.

7. Mr. Haq, learned counsel for the applicant would submit that the affidavit dated 27.9.2022 was in the name of informant, however, the applicant did not put forged signature of informant but, has made his own signature on it. The said circumstance shows the absolute bonafides of the applicant coupled with the following affidavit made and tendered to the RTO prior to registration of crime. The another objection is about putting mobile number by the applicant with RTO. Prima facie putting his own cell number may not constitute any deceitful intent. The applicant himself went to the RTO office to urge of transfer. Therefore, furnishing his own mobile number cannot be construed as something done with malice.

8. The arguments have been advanced on the point that there was an attempt of tampering of chassis number of the concerned truck. How, the said aspect is connected with the grievance of the informant has not been explained satisfactorily. There is no dispute regarding identity of the truck. Nobody claims that on some other vehicle there was tampering in chassis number. The applicant came with specific case that he has purchased the same truck of which the informant was erstwhile owner. Moreover, RTO has inspected the truck and issued certificate of

fitness which is tendered on record. Therefore, the said aspect no longer constrains us to consider the case of the applicant.

9. It is apparent that the informant the owner of truck committed several defaults for which he was aggrieved. He did not tolerated the things that during pendency of his case before Consumers Forum, the truck was sold by the bank. The legality and the right of a bank to seize vehicle and sale is matter to be considered in appropriate proceeding. However, prima facie in the present proceedings, we do not find the element of intentional deceitful act of the applicant Shaikh Shoheb who had purchased the truck from Financer. As regards to another applicant Manish is concerned, he is Surveyor against whom there is absolutely no material.

10. The factual position squarely falls in the category nos. 1 to 3 as laid down by the **Supreme Court in the case of State of Haryana Vs. Bhajan Lal (1992 SC 604)**. The allegations made in the FIR is accepted, it does not disclose commission of offence. In fact, remedy for informant lies elsewhere, however, the bonafide purchaser and surveyor cannot be engulfed into criminal proceedings. In the circumstances, to prevent the abuse of the process of the Court, it necessitates us to invoke our inherent

power.

11. In view of above, both applications are allowed. We hereby quash and set aside FIR of Crime No.1230/2022 registered with Gadge Nagar Police Station, Amravati for offences punishable under Sections 120-B, 406, 420, 468, 471 read with Section 34 of the Indian Penal Code, as against both applicants.

[BHARAT P. DESHPANDE, J.]

[VINAY JOSHI, J.]

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