



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.147 OF 2021

- 1 Santosh Arjun Birajdar,
Age 43 yrs., Occ. Service,
R/o Jyoti Nagar, Behind More Mall,
Shahanoorwadi, Darga Road,
Aurangabad.
- 2 Ram @ Dhondiram Madhav Birajdar,
Age 32 yrs., Occ. Service,
R/o New Mondha, Behind Honda Showroom,
Mangapura, Nanded

... Applicants

... Versus ...

- 1 The State of Maharashtra
Through Police Station, Kuntur,
Dist. Nanded
- 2 Nagorao Laxman Motarage,
Age 65 yrs., Occ. Agri.,
R/o Ikalimor, Tq. Naigaon,
Dist. Nanded.

... Respondents

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Ms. Pooja S. Ingle, Advocate h/f Mr. S.J. Salunke, Advocate for applicants

Mr. A.R. Kale, APP for respondent No.1

Mr. Y.R. Neb, Advocate (appointed) for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 15th OCTOBER, 2024

PRONOUNCED ON : 24th OCTOBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed initially for quashing First Information Report vide Crime No.153/2020 dated 08.09.2020 registered with Police Station, Kuntur, Dist. Nanded, for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860 and by way of amendment for quashing the proceedings in Regular Criminal Case No.96/2024 pending before learned Judicial Magistrate First Class, Naigaon, Tq. Naigaon, Dist. Nanded.

2 Heard learned Advocate Ms. Pooja S. Ingle holding for learned Advocate Mr. S.J. Salunke for applicants, learned APP Mr. A.R. Kale for respondent No.1 and learned appointed Advocate Mr. Y.R. Neb for respondent No.2.

3 The informant i.e. respondent No.2 had filed an application OMCA No.130/2017 before learned Judicial Magistrate First Class, Naigaon Bazar under Section 156(3) of the Code of Criminal Procedure, 1973, which came to be allowed and thereupon the First Information Report was lodged.

Respondent No.2 in his First Information Report contended that he had borrowed the loan from Mahindra Finance for purchase of a Tractor head. Accordingly, he purchased the vehicle, but he failed to repay the loan regularly. Applicants were the employees of Mahindra Company. Innocently respondent No.2 had requested the present applicants that they should help him in getting rid of the loan. According to informant, applicants, who are accused Nos.1 and 2, introduced accused No.3 as customer and told the informant that he should sale the Tractor to accused No.3. On 05.12.2014 applicants told that he should accept amount of Rs.15,000/- and be tension free as the further loan installments would be paid by accused No.3. Such agreement was then entered into on a stamp paper which was signed by informant. He was then under the impression that he will not be required to pay the loan installments, however, present applicants shown that accused No.3 has paid amount of Rs.50,000/- each on 16.02.2015 and 26.02.2015 and they had taken the Tractor in possession. Accused persons were aware that after the sale the informant was not concerned with the Tractor. It appears that the Finance Company suppressed the transaction of sale by the informant and then got the order of recovery against the informant, thereby he has been cheated.

failed to repay the loan amount as agreed, the matter was taken before the Arbitrator and the sole Arbitrator had allowed the petition and directed informant and his guarantor to pay sum of Rs.5,47,666/- together with interest @ 3% per month from 18.02.2016 till the date of Award and thereafter @ 1.5% per month till the date of payment. Thereafter, the Mahindra and Mahindra Finance Company had filed execution proceedings i.e. Regular Darkhast No.253/2017 against the informant and guarantor. There was no question of cheating the informant by them.

5 Now, as the entire investigation is over, we are required to consider the material that has been collected. Interestingly by order dated 01.01.2018 on the application under Section 156(3) of the Code of Criminal Procedure learned Judicial Magistrate First Class had passed the order that preliminary inquiry should be conducted, but thereafter it appears that by order dated 04.09.2020 the successor of learned Judicial Magistrate First Class passed an order that the investigation should be completed under Section 156(3) of the Code of Criminal Procedure. Therefore, there are statements of witnesses taken in both stages, however, there is no witness who could say about what was the exact transaction. Certainly, there was a stamp agreement/document which shows that informant had sold the Tractor to accused No.3. However, there is absolutely no document to show that

present applicants i.e. the employees of Finance Company had played any role. Learned Advocate for respondent No.2 has tried to rely upon the statement of Dattu Rajaram Thakur taken by police on 04.12.2018, but it is to be noted that said Dattu Thakur i.e. the witness is accused No.3. Therefore, his statement has no evidentiary value or cannot be considered at all. Even the statement of Notary Public before whom the said stamp paper was got executed has not stated that the present applicants were present at the time of execution of that document. Therefore, when there is no evidence forthcoming in respect of role of the present applicants, we take this case to be a fit case where we can exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) Charge sheet i.e. proceedings in Regular Criminal Case No.96/2024 pending before learned Judicial Magistrate First Class, Naigaon, Tq. Naigaon, Dist. Nanded arising out of First Information Report vide Crime No.153/2020 dated 08.09.2020 registered with Police Station, Kuntur, Dist. Nanded, for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860 and order passed by Judicial Magistrate First

Class, Naigaon in OMCA No.130/2017 dated 04.09.2020 stand quashed and set aside as against applicant Nos.1 and 2.

iii) Fees of the appointed Advocate Mr. Y.R. Neb is quantified at Rs.7,000/- (Rupees Seven Thousand only), to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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