



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1020 OF 2024

**NIRAJKUMAR CHANDRASHEKHAR SHARMA
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Advocate for Applicant : Mr.Dhananjay Shinde h/f Mr.Kawale Laxman H.
APP for Respondent/State : Mr. S.B. Pulkundwar

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 21 MARCH 2024

PER COURT :

. Heard the learned Advocate for the applicant, learned APP and have gone through the papers.

2. The FIR alleges that the applicant had placed an order with the respondent no.2 for supply of various goods. He had made part payment and was waiting for delivery and was assured that the goods were being delivered. But ultimately, those were not delivered, in spite of he having been made to part with an amount of Rs.2,95,881/- and thereby has been cheated. The offence was registered under Section 420 of Indian Penal Code and Section 66(B) of the Information Technology Act, 2008.

3. Learned Advocate for the applicant would submit that it is a plain

and simple business transaction. The respondent no.2 had merely made a part payment. He was aware that he was to pay the entire amount before the goods were delivered and without making the complete payment, he has lodged FIR within a month. The learned Advocate would submit that the applicant is ready to refund the money. It is not a matter of deceiving anybody much-less by dishonestly and fraudulently inducing him to pay something. Even if the transaction could not fall through, it was merely a matter of refund. The applicant is ready and willing to refund the money. It will not be a crime but a civil dispute. It is an abuse of the process of law and that is why the applicant is seeking quashment of FIR.

4. Having heard the learned Advocate, it transpires that though *ex-facie* it was a business transaction inasmuch as, the respondent no.2 had placed an order online on the applicant's portal, had parted with Rs.2,95,881/- and was waiting for the goods to be supplied.

5. However a careful reading of the FIR reveals that after waiting for sometime for receiving the goods, the respondent no.2 had specifically contacted the applicant. The mobile number has also been given together with the dates on which the communication was made. He was assured of delivery of goods by a particular time. Since goods were not delivered, he again contacted on the same phone number and again was assured that the delivery was being delayed due to the vehicle having been punctured. He was then assured that the goods would be delivered

on the next day by 11:00 am and since he did not receive the goods, the FIR was lodged. It also contains a statement that thereafter he was asked to send a blank cheque and was assured of returning the money. A blank cheque was forwarded on a mail but nothing was refunded and it is thereafter that the FIR was lodged.

6. If this is the state of affairs, even if it is a business transaction, once it was not going through, the applicant ought to have refunded the money then and there or at-least should have assured of its refund. Nothing is placed on record to demonstrate that the applicant had ever made any attempt by a communication with the respondent no.2 of refunding the money. Precisely for this reason, even if the learned advocate for the applicant now is coming with a spacious plea of applicant's readiness to refund the money, in the absence of any overtact on his part to demonstrate that he really intended to refund the money, it would be merely an excuse.

7. Apart from the above state of affairs, even if for the sake of arguments, it is assumed that it would not be an offence of cheating as defined under Section 415 or 420, the moment transaction did not go through, the applicant was under obligation to refund the money which he retained obviously without any intention to refund and could constitute even a misappropriation. Even if the applicant now refunds the money, it would be a temporary misappropriation which is an offence punishable under Section 406 of IPC.

8. In view of above state of affairs, we are not inclined to entertain the application. Application is rejected.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

Najeeb