



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2842 OF 2022

1. Arjunsingh Vasudev Rajput
Age : 25 years, Occ : Service,
Juna Bazar, Aurangabad.
2. Vasudev Padmanabh Rajput
Age : 55 years, Occ : Service,
R/o As above
3. Shaikh Amaan Shaikh Shahab
Age : 24 years, Occ : Service,
R/o Taz Complex, Shahabazaar,
Aurangabad.
4. Krushna Arvind Dhiwar
Age : 24 years, Occ : Business,
R/o Narali Baug, Aurangabad.

..APPLICANTS

-VERSUS-

1. The State of Maharashtra
Through Police Inspector
City Chowk Police Station,
Aurangabad.
2. Shaikh Sarfaraj Shaikh Salim
Age: Major, Occ : Business,
R/o Behind Taj Complex, Town Hall,
Near Hotel Akbar, Jai-Bhimnagar,
Aurangabad
3. Siraj Khan Kaisar Khan
Age : 37 years, Occ : Driver,
R/o H.No.1-21-145, Behind Feroz
Kirana, Town Hall, Aurangabad.

..RESPONDENTS

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Advocate for the applicants : Mr.D.R. Kale Patil h/f Mr.Umesh A.
Bhadgaonkar

APP for Respondent- State : Mr. N.R. Dayama

Advocate for Respondent No.2 : Ms. Tejshree K. Narwade (appointed)
Advocates for Respondent No.3 : Mr.A.R. Kawade and Mr.G.B. Gaikwad

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**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

**RESERVED ON : 2nd JANUARY, 2025
PRONOUNCED ON : 13th JANUARY, 2025**

JUDGMENT (PER ROHIT W. JOSHI, J.) :

. The applicants have approached this Court invoking inherent jurisdiction vested under Section 482 of the Criminal Procedure Code (Cr.P.C.) seeking quashment of F.I.R. registered vide Crime No.198/2022 with City Chowk Police Station, Aurangabad, for the offences punishable under Sections 406, 420, 506 read with Section 34 of the Indian Penal Code (I.P.C.) and Criminal Case registered against them pursuant to the said F.I.R., being Regular Criminal Case No. 2408/2022, which is pending on the file of the learned IIIrd Judicial Magistrate, First Class at Aurangabad.

2. Respondent No.2 – informant has lodged F.I.R. stating that the applicant No.1 had taken a Car bearing R.T.O. registration No.MH-05-AJ-4300 from him on lease on annual rent of Rs.2,64,000/-. He states that this rent was payable in 12 monthly installments of Rs.22,000/- each. The date of agreement is 15.01.2022. Applicant No.2 is the broker through whom the rental agreement is fructified.

Applicant Nos.3 and 4 are father and brother respectively of applicant No.1. The allegation against applicant No.3 is that before entering into the rental agreement he had made inquiries with applicant No.3, who had stated that there will be no problem in renting out the Car to applicant No.1. The allegation against applicant No.4 is that after having committed default in payment of car rent, the vehicle was kept with him.

3. As against the principal accused i.e. accused No.1, it is stated in the F.I.R. that applicant No.1 was introduced to respondent No.2 by the broker, applicant No.2. It was represented that he is Director of Company, named A.K. Padma Kamal Sons Private Limited and that the said company needed a Car on rental basis for its office at Aurangabad. Respondent No.2 states that after making due inquiries with respect to the office of the said company and also after assurance from applicant No.3, he entered into a Car Rental Agreement dated 15.01.2022 with applicant No.1. He states that there was a delay in making payment of first rental installment of Rs.22,000/-, which was paid in March, 2022 and thereafter there were persistent defaults in making payment of rent. He further alleges that on being asked to return the vehicle, applicant No.1 avoided to do so and stated that it was in custody of applicant No.4. It is also alleged that the father of

applicant No.1 i.e. applicant No.2 had threatened him that he will falsely implicate in an offence and put him behind bars since he is working in D.I.G. office. Respondent No.2 has stated that apart from the present matter where applicant No.1 committed defaults in making payment of car rent as agreed terms, he has also committed default in paying rent for another vehicle, being Tata ACE bearing R.T.O. registration No. MH-20-EG-0038.

4. Upon registration of the offence, respondent No.1 has started investigation in the matter and has filed charge-sheet, vide Final Report No.161/2022 on 13.11.2022, pursuant to which Regular Criminal Case No. 2408/2022 came to be registered against the applicants.

5. Learned counsel pointed out from the record that the entire rental arrears were cleared by him and vehicle was also returned to respondent No.2. He submitted that dispute being a dispute of predominantly civil nature, the matter should be given a quietus by quashing the F.I.R. Learned counsel for respondent No.2 did not agree to this. Since the parties could not agree for disposal of the matter in view of the arrears being cleared and vehicle being returned, we called upon respective counsel to address us on merits of the matter.

6. We have heard learned Advocate Shri D.R. Kale Patil holding for Advocate Shri Umesh A. Bhadgaonkar for applicants, learned APP Shri N.R. Dayama for respondent-State and learned Advocates Shri A.R. Kawade and Shri G.B. Gaikwad for respondent Nos.2 and 3 respectively. With the able assistance of the learned counsel, we have gone through the contents of the F.I.R., perused the charge-sheet and documents enclosed therewith along with the statements of the witnesses.

7. Perusal of the charge-sheet will indicate that the allegation against applicant No.1 is that having taken the car on rent, applicant No.1 committed defaults in making payment of car rent as agreed. It is stated in the F.I.R. that the Car was rented for a period of one year for rent of Rs.2,64,000/-. Respondent No.2 has stated that this amount of Rs.2,64,000/- was payable in installment of Rs.22,000/- each. The date for payment of installment is not mentioned in the F.I.R. Perusal of the agreement dated 15.01.2022 indicates that the annual rent amount of Rs.2,64,000/- was payable in 12 installments of Rs.22,000/- each. It is further stated that the agreement could be cancelled by either parties by giving prior notice of 15-30 days. The tenure of agreement was for one year from 15.01.2022 on which date the vehicle was delivered by

respondent No.2 to applicant No.1.

8. Perusal of the F.I.R. indicates that respondent No.2 has not alleged that applicant No.1 had entered into agreement with an intention not to honour his commitments with respect to payment of rent or with an intent not to return the Car upon termination/expiration of the agreement. The grievance of respondent No.2 – informant as it appears from the F.I.R. is that applicant No.1 has not paid first installment rent in time and thereafter he has committed default in making payment of further installments. Further grievance made in the F.I.R. is that the vehicle was not returned although there was default in making payment of rent and demand for returning the vehicle was made.

9. Having perused the F.I.R., we find that the essential ingredients of the offence of cheating as defined under Section 415 of the Indian Penal Code are pertinently missing in the F.I.R. Essential element of cheating i.e. deception at the very initiation of the transaction is not alleged. It is not case of respondent No.2 that he had parted with possession of Car by delivering it to applicant No.1 as a consequence of deceptive inducement. Such being the case, ingredients of Section 415 of the Indian Penal Code are not made out. It is not

alleged in the F.I.R. that applicant No.1 had taken car on rent with an intention to use the same without making payment of rent and/or not to return the same upon termination of contract or expiration of tenure of contract. The contents of the F.I.R. at best make out a case for failure to pay rental amount in terms of agreement. The statements recorded during the course of investigation also do not take the case of respondent No.2 any further. The transaction between the parties is apparently a civil transaction. The contents of the F.I.R. and other statements of prosecution witnesses taken on their face value do not made out ingredients of Section 415 and as such prosecution under Section 420 of the IPC can not be allowed to continue. We find that the wrong that is failure to make payment of rent for Car hired is a civil wrong at best. The question of criminal prosecution does not arise. The learned counsel for the applicants has rightly placed reliance on the judgments of the Hon'ble Supreme Court in the matters of ***Sarabjit Kaur Vs. State of Punjab and another*** reported in ***(2023) 5 SCC 360*** and ***Usha Chakraborty and another Vs. State of West Bengal and another*** reported in ***(2023) 15 SCC 135***, which reiterate the settled principle that mere failure to keep a promise or honour terms of contract would not enough to initiate criminal prosecution for offence punishable under Section 420 of the IPC.

10. Since, we have held that the case is not made out against applicant No.1, who is principal accused, it is obvious that no case is made out against applicant No.2 who acted merely as broker in the transaction, applicant No.3 who is father of applicant No.1, who had merely confirmed that his son, applicant No.1 was Director of A.K. Padma Kamal Sons Private Limited and applicant No.4, who is a brother of applicant No.1 in whose custody the Car was allegedly kept despite failure to pay rental installments. There is one more allegation against applicant No.3, which pertains to Section 504 of the IPC. Since, it is non-cognizable offence, registration of FIR and continuation of criminal prosecution for the said offence can not be permitted to continue.

11. In the result, we pass the following order :-

ORDER

- (i) The application is allowed.
- (ii) F.I.R. No.198/2022 registered with City Chowk Police Station, Aurangabad, for the offences punishable under Sections 406, 420, 506 read with Section 34 of the Indian Penal Code and Regular Criminal Case No. 2408/2022 pending on the file of the learned IIIrd Judicial Magistrate, First Class at Aurangabad are hereby quashed against applicant No.1 - Arjunsingh Vasudev Rajput, applicant No.2 - Vasudev

Padmanabh Rajput, applicant No.3 - Shaikh Amaan Shaikh Shahab and applicant No.4 - Krushna Arvind Dhiwar.

(iii) The fees of learned Advocate Ms. Tejshree K. Narwade appointed to represent respondent No.2, is quantified at Rs.7,000/- (Rupees Seven Thousand), to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/