



(1)

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

CRIMINAL WRIT PETITION NO.1990 OF 2024

Pushpak s/o Manohar Dhanure

....PETITIONER

VERSUS

Arun s/o Dagdu Madukar

....RESPONDENT

.....

Mr V. R. Jain, Advocate for Petitioner

Mr T. C. Shinde, Advocate for Respondent

.....

CORAM : SUSHIL M. GHODESWAR, J.

RESERVED ON : 03 OCTOBER 2025

PRONOUNCED ON : 17 OCTOBER 2025

ORDER :-

1. By this petition, the petitioner is praying for quashing and setting aside the order dated 26/10/2023, passed by the learned Judicial Magistrate First Class (Court No.22), Aurangabad (JMFC) in Criminal M. A. No.346/2020 (newly registered as R.C.C. No.316/2024), filed under Section 156(3) of the Code of Criminal Procedure, thereby issuing process against the petitioner for the offences punishable under Sections 420, 427, 506 read with Section 34 of the Indian Penal Code. He also prays for quashing and setting aside the entire proceedings in R.C.C. No.316/2024.

(2)

2. According to the petitioner, respondent had intended to sell his car bearing registration No. MH-20-EY-9060 and for that purpose, he advertised for the same on social platform. Since the petitioner was interested in purchasing the same, he offered him to purchase the said vehicle with the price of Rs.11,50,000/- and on 06/07/2019, petitioner had paid Rs.21,000/- as a token amount in relation to that deal. For the remaining amount of Rs.11,29,000/-, the petitioner issued a cheque in favour of the respondent. However, thereafter, things went wrong with the said vehicle and the petitioner issued a letter to the concerned Punjab National Bank, Cidco Branch, Aurangabad to stop the payment of cheque of Rs.11,29,000/-, which he was issued towards the final payment for purchasing the said car. It is also stated that, thereafter, on 02/09/2019, the petitioner returned the car to the respondent and cancelled the contract between them. He also demanded the original cheque which was handed over to respondent at the time of making final payment. Thereafter, on 31/01/2020, respondent filed private complainant under Section 156(3) of the Code of Criminal Procedure against the petitioner before the learned JMFC, Aurangabad, which came to be registered as Criminal M.A. No.346/2020. Through the said proceedings, respondent prayed for issuance of direction to the Police under Section 156(3) of the

(3)

Code of Criminal Procedure to register a First Information Report and conduct an investigation. However, learned JMFC, Aurangabad, vide the order dated 17/10/2020, rejected the said application. Further in the said order, the complainant/respondent was granted liberty to proceed under Section 200 of the Code of Criminal Procedure. In pursuance of the same, respondent appears to have appeared before the learned JMFC under Section 200 the Code of Criminal Procedure. He came to be examined for the purpose of verification. Learned JMFC, thereafter, vide the order dated 26/10/2023, issued process against the petitioner for the offences punishable under Sections 420, 427, 506 read with Section 34 of the Indian Penal Code, and directing to register the case as R.C.C. Being aggrieved by the said order, the petitioner has approached this Court.

3. Learned Advocate for the petitioner submits that the entire dispute between the petitioner and the respondent is of civil nature and as such, in any manner, the petitioner cannot be prosecuted for the criminal offences, as alleged by the respondent. He, further submits that issuance of process against him is nothing but abuse of process of Court, and therefore, same needs to be quashed and set aside. He further submits that the respondent had presented the cheque

(4)

No.622758 dated 17/07/2019 drawn on Punjab National Bank, Cidco Branch, Aurangabad, however, the same came to be dishonoured. Therefore, the respondent had also issued legal notice to the petitioner under Section 138 of the Negotiable Instruments Act, 19 (for short 'N.I. Act'). However, he has not filed complaint under Section 138 of the N.I. Act before the Court. Thus, the respondent himself has chosen not to prosecute against the petitioner for non-payment of amount promised to be paid to him. In these backgrounds, learned Advocate for the petitioner informed this Court that the petitioner had already returned the vehicle to the respondent on 02/09/2019 before filing a complaint under Section 156(3) of the Code of Criminal Procedure i.e. proceedings bearing Criminal M.A. No.346/2020. Thus, by lodging private complaint against the petitioner, respondent wants to harass and torture him by filing false complaint in order to extract some more money from him. Under these facts and circumstances, he prays for quashing and setting aside the impugned order of issuing process against the petitioner.

4. Per contra, learned Advocate for respondent submits that the instant petition is not maintainable since the petitioner is having an alternate remedy of filing revision under Section 397 of the Code of

(5)

Criminal Procedure. He, therefore, prayed that instant petition be dismissed for availing the petitioner an alternate remedy. According to him, there are various disputed questions of facts, which cannot be taken into consideration in the instant proceedings, and therefore, the prosecution under Sections 420, 427, 506 read with Section 34 of the Indian Penal Code against the petitioner is justified. He also contends that various facts would be revealed after examining the witnesses on oath, and therefore, at this stage it would not be proper to interfere in said proceeding by this Court, and accordingly prays for dismissal of the present petition.

5. After going through the entire record and the submissions made by the learned Advocates for the respective sides, it is evidently clear that the dispute between the petitioner and the respondent is purely of civil in nature. The crime as alleged against the petitioner is frivolous and there is no element of cheating to the respondent at the hands of petitioner found in the instant matter. The petitioner, after finding certain trouble in the vehicle, had returned the said vehicle to the respondent and demanded his cheque back. He also issued a letter to the concerned Bank for stopping the payment of cheque. The respondent has also chosen not to prosecute him under Section 138 of

(6)

the N.I. Act. The vehicle in question also alleged to be disposed of by the respondent to third person. Therefore, under such circumstances, it is very difficult to arrive at a conclusion that there is an element of cheating by the petitioner to the respondent in the whole transaction took place between them. Continuing of the proceedings bearing R.C.C. No.316/2024 against the petitioner would therefore be abuse of process of Court. Hence, in my opinion, the same is required to be quashed and set aside. I, therefore, pass the following order :-

ORDER

- (I) The present Criminal Writ Petition is allowed.
- (II) The order dated 26/10/2023, passed by the learned Judicial Magistrate First Class (Court No.22), Aurangabad (JMFC) in Criminal M. A. No.346/2020 (newly registered as R.C.C. No.316/2024), filed under Section 156(3) of the Code of Criminal Procedure is hereby quashed and set aside. The entire proceedings bearing R.C.C. No.316/2024 is quashed and set aside.

[SUSHIL M. GHODESWAR, J.]

sjk