

(2022) 06 BOM CK 0034

In the Bombay High Court

Case No : Criminal Writ Petition No. 1118 Of 2021

Saheblal Sohrab Shaikh

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 10-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 406

Citation : (2022) 06 BOM CK 0034

Hon'ble Judges : C. V. Bhadang, J; Bharat P. Deshpande, J

Bench : Division Bench

Advocate : Amol T. Jagtap, K. S. Patil

Final Decision : Allowed

Judgement

Bharat P. Deshpande, J

Heard. finally by consent of parties.

1. By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short), Petitioner is seeking quashing of the F.I.R. No. 225/2021 registered on 01.07.2021 at Police Station, Naldurg, Tq. Tuljapur, Dist. Osmanabad for the offence punishable under Section 406 of the Indian Penal Code, in pursuance of the complaint lodged by Varshita Wd/o Shrikant Potdar, on the ground that such complaint is filed with ulterior motive and there is no case made out for registration of offence under Section 406 of IPC against the Petitioner.

2. Petitioner is praying for quashing of the said F.I.R., which is the main prayer in the present petition amongst the grounds raised in the petition.

3. We have heard the learned Counsel appearing for the Petitioner, who forcefully submitted that an agreement was executed between him and the deceased-husband of the Complainant with regard to purchase of the vehicle in question

and such document was executed before a notary, wherein the Petitioner has paid part price of the said vehicle to the deceased-husband of the Complainant and thereafter cleared the outstanding loan amount, which was with the Axis Bank. By way of additional documents produced by the Petitioner, the statement of account is placed on record to show RTGS transaction dated 08.03.2018. Similarly the Axis Bank statement of account is also placed on record, which shows that the balance loan amount was paid on 20.02.2018 by way of cheque amounting to Rs. 4,05,000/-, whereby the entire loan was cleared.

4. Learned Counsel for the Petitioner pointed out that agreement between him and deceased-husband of the Complainant was duly executed on 06.05.2019 in presence of two witnesses, which shows that the vehicle in question was handed over to the Petitioner by the deceased-husband of the Complainant on 06.05.2019 with the understanding that registration of the said vehicle shall be completed and a transfer of the said vehicle in the name of Petitioner shall be initiated with the RTO office and for that purpose, the husband of the Complainant assured that he will submit necessary format and sign the same for the purpose of transfer or the registration.

5. Learned Counsel for the Petitioner then pointed out that Complainant is Widow of Shrikant Potdar, from whom he purchased the said vehicle, lodged false F.I.R. on 01.07.2021, claiming therein that said vehicle was entrusted to the Petitioner by her deceased-husband and thereafter he is not ready to hand over the said vehicle to her in spite of repeated request. A copy of F.I.R. is placed on record alongwith the complaint and on perusal of it, one thing is clear that Shrikant Potdar expired on 24.03.2021, whereas the document for transfer of vehicle in the name of the Petitioner was executed by him on 6. 05.2019. The said vehicle is in possession of the Petitioner since 6. 05.2019.

6. Section 406 of IPC reads as under ;

"[406] Punishment for criminal breach of trust. -- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

7. The main ingredients to attract Section 406 of IPC are;

(i) Entrusting any person with property or with any dominion over property;

(ii) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or

(b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation

(i) of any direction of law prescribing the mode in which such trust is to be discharged, or

(ii) of any legal contract made touching the discharge of such trust.

8. The learned Counsel for the Petitioner then placed reliance in the case of Syed Yaseer Ibrahim Vs. State of Uttar Pradesh & Anr. arising out of SLP (Cri) No. 7955 of 2021) in Criminal Appeal No. 295/2022, decided by the Hon'ble Apex Court on 28.02.2022 to buttress his argument that ingredients of Section 406 of IPC are not at all made out and therefore this Court under Section 482 of Cr.P.C. is empowered to quash the FIR.

9. The learned Additional Public Prosecutor appearing for the State submitted that investigation carried out shows that the document executed before the notary by the deceased-husband of the Complainant, thereby entrusting the property that is vehicle to the Petitioner on certain conditions. It also shows that there are certain bank transactions in the loan account, wherein loan granted by Axis Bank, was cleared by the the Petitioner.

10. In the case of Sushil Suri Vs. Central Bureau of Investigation and another, 2011(3) Mh LJ (Cri) 580 SC, it has been observed that under Section 482 of Cr.P.C., three circumstances under which the inherent jurisdiction may be exercised by the High Court namely; (i) to give effect to an order under the Code; (ii) to prevent an abuse of the process of Court; and (iii) to otherwise secure the ends of justice. The Hon'ble Apex Court further observed that it is neither flexible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction, where the allegations made in the complaint or charge-sheet, as the case may be taken if they are taken at their face value and accepted in their entirety do not constitute the offence.

11. After giving anxious consideration to the facts and circumstances of the matter in the hand and more particularly after perusal of the complaint and investigation carried out till date, it appears that ingredients of Section 406 of IPC are not at all made out and continuation of such investigation is abuse of process of law.

12. Having said so, we allow the petition in prayer Clause 'B'.