



ORDER BELOW EXH. 1 IN CRI. MISC. APPLICATION NO. 201/2021

This is an application filed by the complainant seeking relief of directions under section 156(3) of the Code of Criminal Procedure against the accused.

Brief facts of the complainant's application are as under-

2. Complainant and his family is doing family business of decoration and event. In July 2018 complainant has purchased Tavera Car bearing No. MH10AG4644 for his personal use. Complainant took loan from finance company to purchase the car. In December 2018 due to the financial crisis complainant has decided to sell his car. Thereafter accused has approached to the complainant through one friend of complainant. Accused conveyed his interest for buying the car. However when accused approached to the bank and private finance company for loan, bank and private companies has denied for the sanction of loan. Accused also approached to the Shriram finance Company for continuation of loan. However, said finance company has denied the loan to the accused.

3. Complainant further contended that, thereafter accused has requested to the complainant that complaint may continue the loan and he will pay each every monthly installment alongwith interest. Complainant has agreed to sale the car to accused on said condition and handed over the possession of car on 22.12.2018 to accused. At same time accused agreed to execute a notarized document in favor of complainant. Thereafter, complainant called

several times to accused for the execution of document. However, accused has deliberately avoided the execution of notarized document of sale. Therefore, when the complainant come to the knowledge of ill-intention of the accused, he asked to the accused for return of car and cancellation of sale transaction. Thereafter, accused has executed a notarized document of sale on 01.01.2019 and agreed to pay remaining monthly installments with interest. However, accused has paid only few installments and delayed the payment of remaining installments.

4. Complainant further contended that, thereafter, one person namely Sagar Dabhade called the complainant and told him that he has purchased a car from accused and they have executed one notarized document for said transaction. Thereafter, complainant has tried to contact accused for several time, however accused did not replied. After few days accused replied and told to the complainant that he is not going to re-pay the amount of loan and he has sold the car to third party. Accused also threatened the complainant at various instances. Recovery agent of finance company are repeatedly asked for the recovery of amount. Therefore, the image of the complainant is defamed in the society. So also, it caused mental trauma to the complainant.

5. Complainant further contended that, thereafter, complainant went to the Koregaon Police Station to register an FIR. However police officer has refused to register the FIR against accused. Police officer also denied to take written complaint against the accused. Thereafter, on 23.06.2021 complainant has sent written complaint to Koregaon Police Station as well as to the superintendent of police, Satara. However, Police officers have not taken any action against the accused. Act of the accused is fraudulent since its beginning. Accused sold the car to the third person without paying any

monthly installment and therefore he has cheated the complainant by committing criminal breach of trust. Offence committed by accused are cognizable and non-bailable in nature. Therefore, it is necessary to direct the police inspector of Koregaon police station to lodge an FIR against accused for above mention offences. Accused has committed offences punishable under Section 405, 406, 420, 499, 500, 120B of the Indian Penal Code. Hence, prayed for the direction of investigation under section 156(3) of the Code of Criminal Procedure.

6. Read the application and perused the record. Heard Ld. Advocate for the complainant. It is observed that, on 23.06.2021 complainant has sent a written complaint against the accused to the Koregaon Police station. Learned advocate for the complainant submitted that, complainant also sent a written complaint to the Superintendent of Police, Satara. However, complainant has not filed on record any written complaint which sent to the Superintendent of Police, Satara. Therefore, it appears that, complainant has not filed any written complaint to the Superintendent of Police, Satara. As per the Section 154 of the code of Criminal Procedure, complainant has to lodge a report in concern police station firstly and if they refused to take a report then he has to file report to the commissioner of the police. However, it is seen that, after the alleged refusal of the police officer to lodge a report, instead of filing of report to Superintendent of Police, Satara, complainant directly file present complaint before the Court. Therefore, it is observed that, complainant has not complied with the mandates of the Section 154 of the Code of Criminal Procedure.

7. Complainant filed this complaint against the accused for the offence punishable under Section 405, 406, 420, 499, 500 and 120B of the

Indian Penal Code. Complainant has contended that, accused has committed the criminal breach of trust. However, from perusal of the record, it appears that, despite of mere words, no evidence is placed on record by complainant to show the prima facie commission of the act which fitted into criminal breach of trust. Hence, complainant has to produce more evidence about the commission of offence which is punishable under Section 405 and 406 of Indian Penal Code.

8. It is also pertinent to note that, complainant contended that, he himself deliver a car to the accused. So also, it appears prima facie that, complainant has given the car without confirming about the payment of remaining loan amount. Therefore, mere words of the complainant are not enough to involve the accused into the criminal prosecution. Hence, complainant has to produce more evidence about the commission of offence which is punishable under Section 420 of Indian Penal Code.

9. Complainant also contended that accused has committed the offence punishable under Section 500 of the Indian Penal Code. However, there is absence of words or description of signs in the present application which constitute the offence punishable under Section 500 of the Indian Penal Code. Without detailed information regarding the defamatory material, accused cannot be involved into the criminal proceeding. Therefore, complainant has to produce more evidence about the commission of offence which is punishable under Section 500 of Indian Penal Code. At present no sufficient material is found to proceed against the accused for the offence punishable under Section 500 of the Indian Penal Code.

10. It is also seen that; complainant filed this complaint for the offence punishable under section 120B of the Indian Penal Code. However, as per section 120A of the Indian Penal Code, there must be an agreement between

the accused persons to do an illegal act. However, prima facie it appears that complainant has not mentioned any other accused or has not made allegations against any other person other than present accused. So also, there is no evidence on record to show that, there is an agreement between the accused and other person about the commission of an offence. Therefore, prima facie, ingredients of section 120B of the Indian Penal Code are not proved by the complainant.

11. From the above discussion and observations, prima facie, allegations in the complaint as to the offences punishable under section 406, 420, 500 and 120B of the Indian Penal Code are not made out. Moreover, complainant has not complied as per Section 154 of the Code of Criminal Procedure. Therefore, in my considered opinion, complainant has to produce more evidence before this Court to constitute alleged offences against the accused. Hence, I do not find it to be fit case to send for investigation by police machinery. Hence, I Pass the following order.

O R D E R

1. Prayer for the direction to investigate the matter by police under Section 156(3) the Code of Criminal Procedure is rejected.
2. Complainant is at liberty to proceed with the matter under Section 200 of the Code of Criminal Procedure.
3. If complainant wants to proceed under Section 200, matter be register as complaint case and be numbered regular criminal case or summons case, as per the nature of proceeding accordingly.

Date: 18.12.2021
Place: Koregaon

(Sameer Gopal Gunari)
Judicial Magistrate First class
(Court No. 2) Koregaon

CERTIFICATE

I affirms that the contents of this P.D.F file order are same word for word as per original order.

Name of Steno	: R. P. Sargar
Court Name	: Shri. S. G. Gunari, 2 nd Jt. C.J.J.D. & J.M.F.C. Koregaon, Dist Satara.
Date of order	: 18.12.2021
Order signed by P.O. on	: 18.12.2021
Order uploaded on	: 18.12.2021