

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 20148 of 2025

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UZAIR GULAMNABI BIVALA
Versus
STATE OF GUJARAT & ANR.

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Appearance:
JAYDEEP H SINDHI(9585) for the Applicant(s) No. 1
MR TRUPESH KATHIRIYA, PUBLIC PROSECUTOR for the Respondent(s)
No. 1

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CORAM: HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 03/10/2025

ORAL ORDER

Rule. Learned APP waives service of rule for the Respondent-State.

1. By way of this petition, the petitioner has prayed to quash and set aside the impugned FIR, bearing CR No. 11822006250944 of 2025, registered with Bilimora Police Station, District: Navsari, under Sections 316(2), 318(4), 54 of the Bhartiya Nyay Sanhita and all other proceedings arising, there from.

2. As per the impugned FIR filed by the original complainant – Respondent No.2, namely Vahidaben Mahamadsafi Jivabhai Pinjara, her husband purchased a white colour, Maruti Wagon LXI car bearing registration No. GJ-21-6114, Engine No. F10DN4112466 and Chassis No.

MA3EED81500288818, which was registered in her name.

2.1 After a few years, since, they wanted to sell the car in question, the younger son of the complainant-Respondent No.2 uploaded the details of the car, i.e. R.C. Book, photos of car on OLX website. In response to the said advertisement, on 22.07.2024 in the late afternoon at about 04:15 p.m., the complainant-Respondent No.2 received a call over her cell phone from another cell phone, having number 9920911991, and the concerned person introduced himself as Parvez Imtiaz Koliwala, i.e. original accused No.1 and they had a talk.

2.1.1 Thereafter, on the very same day, in the evening at about 05:00 p.m., original accused Nos. 1 and accused No.2, namely Sarfaraj Badla, came to the house of the complainant-Respondent No.2. After accused Nos. 1 and 2 completed the inspection of the car, a deal was struck and the complainant-Respondent No.2 agreed to sold the car in question for consideration of Rs.1,12,786/-.

2.2 After the sale price of the car in question was determined, accused No.1-Parvez Koliwala told the complainant that he would make the payment by way of cheque, as he has to show the said amount in his income tax return and therefore, the complainant-Respondent No.2 agreed to accept the same. Accordingly, accused No.1-

Parvez issued a cheque bearing No. 825258, drawn from his bank account bearing No. 189924281991, maintained with Indusind Bank dated 23.07.2024. After the complainant-Respondent No.2 gave original R.C. book of the car in question, accused No.2-Salim took the driver seat, while accused No.1-Parvez was sitting beside him, and they went away with the car.

2.3 The complainant-Respondent No.2 deposited the cheque in question on 23.07.2024 in her bank account maintained with the Bank of Baroda and when she went to withdraw the said amount on 30.07.2024, she was informed that the cheque deposited by her was returned due to insufficient funds. When the complainant-Respondent No.2 contacted accused No.1-Parvez over his cell phone, accused No.1-Parvez assured her that he will settle the account after two-three days, as he was out of station. When the complainant-Respondent No.2 asked him to return the car, accused No.1-Parvez informed her that he had sold the car in question to the present petitioner and accused No.1-Parvez also gave her cell phone number, i.e. 7778887856, of the present petitioner.

2.4 When the complainant-Respondent No.2 called the petitioner over his cell phone, the petitioner informed her that he has purchased the car in question from accused No.1-Parvez for the consideration of Rs.40,000/- and

therefore, if, she wants her car back, then, she may pay Rs.40,000/- to the present petitioner. Thereafter, the complainant-Respondent No.2 tried to contact accused No.1-Parvez, but, his cell phone was switched off and when all her attempts to get either money or the car back from the accused persons failed, she filed the impugned FIR against all the three accused persons, including the present petitioner.

Hence, the present petition.

3. Learned Advocate, Mr. Sindhi, submitted that the present petitioner happens to be the *bona fide* purchaser of the car in question, as the petitioner paid an amount of Rs.40,000/- to accused Nos. 1-Parvez and No.2-Salim through G-pay on 22.07.2024 with remark “Wagon R Payment GJ 21 NU” and therefore, the petitioner is required to be protected.

3.1 According to learned Advocate, Mr. Sindhi, the complainant-Respondent No.2 sold her car to accused Nos. 1 and 2 on 22.07.2024, whereas, the impugned FIR came to be filed only on 24.07.2025 and thus, there is a delay of about one year in filing the impugned FIR and therefore, the same requires to be quashed and set aside.

3.2 It was, further, submitted that, if, original accused

Nos. 1 and 2 failed to make payment to the complainant-Respondent No.2, for the said reason no FIR can be filed against the present petitioner and in fact, the petitioner purchased the car in question from accused Nos. 1 and 2, against who similar such offences have already been registered, and thus, the petitioner, himself, being a victim, he is required to be protected.

3.3 It was submitted that the petitioner had also given a complaint to Valsad City Police Station, against original accused Nos. 1 and 2, on 17.08.2024 and 11.09.2024, however, the same was never converted into an FIR. It was, therefore, prayed that this petition be allowed.

4. On the other hand, learned APP, Mr. Kathiriya, appearing for Respondent No.1-State submitted that the investigation is going on qua the role played by the present petitioner and therefore, it would be too early to say anything about the complicity of the present petitioner in the offence in question. It was, however, submitted that from the record it is revealed that, even as per the case of the petitioner, the car in question was in his possession and whether, the alleged transaction between him and accused Nos. 1 and 2 was genuine or not is to be investigated, yet and therefore, as a *prima facie* case is made out against the present petitioner, this petition be dismissed.

5. I have heard the learned Counsels for the parties and also perused the material on record and I find that original accused Nos. 1 and 2 approached the complainant-Respondent No.2 on 22.07.2024, pretending to purchase her car. From the record, it is also revealed that accused Nos. 1 and 2 agreed to purchase the car in question for consideration of Rs.1,12,786/-. Here, it is required to be noted that accused Nos. 1 and 2 insisted that they shall pay the amount of consideration through cheque, as allegedly they have to show the same in their income tax return and thereby, they convinced the complainant-Respondent No.2 to accept the amount of consideration through cheque.

5.1 According to the complainant-Respondent No.2, she deposited the cheque in question in her bank account on 23.07.2024 and when she went to withdraw the amount on 30.07.2024, she was informed that the cheque in question was returned with the remark 'Insufficient Funds'. Pursuant thereto, when the complainant-Respondent No.2 contacted original accused No.1-Parvez, he initially assured to settle the account within a day or two and then, he gave the cell phone number of the present petitioner, whom, according to accused No.1-Parvez, he had sold the car in question. When, the complainant-Respondent No.2 contacted the present petitioner, she was informed by the petitioner that he had purchased the car in question from accused Nos. 1 and 2 for consideration of Rs.40,000/- and then, he asked

the complainant-Respondent No.2 to pay him Rs.40,000/-, if, she wanted her car back.

5.1.1 Now, in order to demonstrate that he is a genuine purchaser, the petitioner has submitted that he had paid the amount of Rs.40,000/- to accused Nos.1-Parvez and No.2-Salim through two different transactions by G-pay on 22.07.2024. The first transaction of Rs.15,000/- was made on 22.07.2024, at 08:01 p.m., whereas, the second transaction of Rs.25,000/- was done at 09:29 p.m. with the remark "Wagon R Payment GJ 21 NU". Here, it may be noted that while making the said remark, the petitioner has neither mentioned the registration number nor the chassis number of the car for which the payment in question is made. The petitioner himself has stated that he is dealing in second hand cars and therefore, whether the said payment was made qua the car in question or for some other car would require investigation. Further, in respect of both the aforesaid transactions, the petitioner has produced only printout of the screenshots of the payment getaway and there is no other material to confirm, whether the said payment was actually made or not.

5.2 It is also the case of the petitioner that subsequently, accused Nos. 1-Parvez and 2-Salim took away the car in question from him by saying that the original owner wants her car back, while assuring that they would

return the amount of consideration to the petitioner, but, subsequently they neither returned the car nor the amount of consideration to him. This story narrated by the present petitioner would also required to be verified by way of investigation. It has also come on record that there are several offences of similar nature have already been registered against original accused Nos. 1-Parvez and 2-Salim and therefore, whether the present petitioner is also a part of such offences etc. questions can be answered only at the end of a full fledged investigation. Under the circumstances, as the petitioner himself has admitted that he purchased the car in question from accused Nos. 1-Parvez and 2-Salim on payment of consideration of Rs.40,000/- and it was in his possession, a *prima facie* offence is made out against the present petitioner and therefore, this petition deserves to be dismissed.

6. Resultantly, this petition fails and the same is ***dismissed*** in *limine*. It is clarified that the observations made herein above are of *prima facie* nature and the same shall not come in the way of the petitioner in pursuing any other remedy available under the law to him. Rule is discharged.

UMESH/-

(NIRZAR S. DESAI,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: CHAVDA UMESH(HC00203), Principal pvt Secretary, at High Court of Gujarat on 07/10/2025 17:43:39