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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 98/2007 and Crl.M.A. No. 323/2007 (stay)

B.L. BHARTIYA Petitioner
Through: MrS. Urmila Sharma, Adv.

versus

STATE & ANR Respondents
Through: Mr. O.P. Saxena, Addl. PP

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers
may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

% **ORDER**
18.11.2009

Judgment (ORAL)

No one has appeared for Respondent No. 2 even on third call.
It is already 2.15 pm. No one was present for the respondent No.
2 on the last two dates of hearing. Heard.

This a petition for quashing the order dated 5.10.06 whereby the petitioner was summoned for the offence punishable under sections 416, 417, 418, 419 and 420 of IPC. In nutshell, the case of the complainant Dr. Om Prakash Maurya, as disclosed in the complaint, is that one Ram Pal Singh (accused no. 3 in the complaint) proposed marriage of his son Ashutosh Kumar with one Aparna, daughter of Mrs. Shakuntala Jayant (accused No. 1 in the complaint), and the girl was shown to him in the house of the father of Smt. Shakuntala Jayant. The marriage of Aparna with Ashutosh Kumar was solemnized on 6th November, 2003. After marriage it was discovered that in fact Aparna was a patient of Schizophrenia. This came to be revealed only when Aparna was taken to Dr. Bhargava's Clinic in Munirka on 27.12.2003 and there she disclosed to the doctor that she has been suffering from Schizophrenia for the last about 5-6 years. It has also been alleged in the complaint that after marriage, when the complainant and his family members found Aparna behaving violently, they took up the matter with Smt. Shakuntala Jayant, her brother Abhisar and middleman Sh. R.P. Singh, her relatives Shri Dinesh Kumar and Shri B.L. Bhartiya (petitioners before this court), to let them know about such a rude behavior on the part of Aparna and all these

persons told them that there was nothing wrong with Aparna except that she had depression.

2. This is not the case of the complainant anywhere in the complaint that petitioner B.L. Bhartiya had told him, at any point of time before the marriage of Aparna with his son, that she had no problem or that she was having only depression. There is no allegation in the complaint that the petitioner had even met the complainant at any point of time before the marriage of his son with Aparna and had played any role in marriage of Aparna with the son of the complainant. In order to constitute cheating, the complainant is required to allege and prove a dishonest misrepresentation or dishonest cancellation on the part of the petitioner before the marriage of Aparna was solemnized with his son. If, after solemnization of marriage, the petitioner represented to the complainant that Aparna was not having any problem other than depression, it would not constitute cheating because that would be statement after the alleged cheating had already been committed by getting Aparna married to the son of the complainant. If the petitioner, at some point of time after the marriage, told the complainant that Aparna had no problem other than depression, that by itself does not show that he was a party to

a criminal conspiracy pursuant to which the complainant / or his son was cheated by solemnizing the marriage of Aparna with the son of the complainant. Moreover, being only a neighbour, the petitioner would necessarily not be aware of the disease from which Aparna was suffering. Therefore, the allegations made in the complaint, even if taken on their face value, do not make out any case of cheating against the petitioner.

3. Though in his statement before the learned Metropolitan Magistrate, at the time of preliminary evidence, the complainant made a bald allegation that Smt. Shakuntala, in union of her son Abhisar, her relative Dinesh Kumar and B.L. Bhartiya hatched a conspiracy of fraudulently marrying Aparna, a mentally disordered woman with his son, no criminal proceeding could have been initiated against the petitioner on such a bald allegation when there was no foundation for making such an allegation, in the criminal complaint filed in the court. Moreover, the complaint does not allege any such fact as would show the petitioner to be a party to the alleged conspiracy.

4. The scope of exercise of power under Section 482 Cr. P.C. and the categories of cases where the High Court may exercise power under it, relating to cognizable offences, to prevent abuse of

process of any court or otherwise to secure the ends of justice were set out in *State of Haryana v. Bhajan Lal*; AIR 1992 SC 604. The illustrative categories indicated by the Hon'ble Supreme Court included as following:

“(1) where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence any make out a case against the accused.

In the present case, the complaint even if taken as absolutely true, does not disclose commission of a cognizable offence by the petitioner. Hence, the case is squarely covered by the above referred decision.

5. For the reasons given in the preceding paragraphs, criminal complaint case titled as “Dr. Om Prakash Maurya vs. Smt. Shakuntala Jayant and Others”, to the extent it pertains to the petitioner Mr. B.L. Bhartiya, is quashed. However, quashing of the

proceedings qua the petitioner would not affect continuance of the same against the other accused persons.

With these orders, Crl. M.C. No. 98/2007 & Crl. M.A. 323/2007 stand disposed of.

V.K. JAIN, J

NOVEMBER 18, 2009
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