

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.3661 OF 2015

Rohit Ravindra Bukate & Ors. Petitioners
Vs.
The State of Maharashtra Respondent

Mr. Umesh R. Mankapure for the Petitioners.
Ms S.V. Gajare, APP, for the Respondent-State.

CORAM: A.V. NIRGUDE, J.

DATED: NOVEMBER 30, 2015

P.C:

1. This petition challenges an order rejecting the petitioners' request seeking discharge from Regular Criminal Case No.6 of 2013, which is pending in the Court of the learned Judicial Magistrate, First Class, Ajara, District Kolhapur.

2. The facts leading to this litigation are full of drama.
Petitioner No.1 is the son of petitioner No.2 and relative of the other petitioners. Petitioner No.1 was unmarried

in 2012 and therefore the complainant, Bhalchandra, proposed his daughter's wedding to petitioner No.1, as per the customs of the community. The marriage was fixed and both the groom and the bride agreed to get married. Necessary rituals were performed and the date of the wedding was fixed as 10-12-2012. Both sides invited all their relatives by sending them printed wedding cards. All the preparations were made. But, on 9-12-2012, it was found that the groom, i.e. petitioner No.1 had left his parents' house for an unknown place. It was also learnt that he had love affair with another girl and he, at the eleventh hour, left his parents' house for getting married to that girl. The complainant made a phone call on 9-12-2012 to the house of the petitioners when he learnt this. He felt cheated and, therefore, lodged a complaint on 11-12-2012 with Ajara Police Station, alleging that the petitioners cheated him and even caused defamation, etc.. The police registered an offence, investigation took place and charge-sheet was filed. The petitioners then sought discharge from the case, but failed. Even their revision before the learned Sessions Judge failed.

3. The questions that arise for my consideration are:

- (i) Whether petitioner No.1 committed offence of cheating?
- (ii) Whether petitioner Nos.2 to 7 committed any offence?

4. I would first discuss question No.(ii). From the tenor of the complaint it is clear that even the relatives of petitioner No.1 were unaware of petitioner No.1's plan to elope with some other girl and not to marry the proposed bride. They had also undertaken all the preparations for the proposed wedding on 10-12-2012. On 9-12-2012, when they learnt that petitioner No.1 would not marry the bride, as proposed, they were also surprised. So, it cannot be said in the light of the facts that are disclosed in the complaint as well as in the police papers that petitioner Nos.2 to 7 had committed any offence. In fact, they were also victims of the breach of promise made by petitioner No.1.

5. As regards question No.(i), it is petitioner No.1 who had wronged all the concerned parties, including his own

parents. It is he who had committed breach of promise to get married to the complainant's daughter. The question is, whether such breach would amount to an offence punishable under any provision of the IPC? The answer is in the negative. Petitioner No.1 agreed to marry the complainant's daughter. It cannot be said that since the beginning he had intention not to marry her and cause loss to her or her parents. I am assuming that even at the time when petitioner No.1 agreed for the proposed wedding, he was going steady with some other girl. In such situation, petitioner No.1 had choice of getting married to the girl with whom he was already in love or to the proposed bride. He agreed for the latter choice, most probably because of parental or societal pressure. But ultimately, better sense prevailed and he left the parents' house to be with his love. If we go by the provisions of Section 415 of the IPC, it would be revealed that all breaches of promise would not amount to cheating. To constitute cheating, deception or fraud ought to be present since the beginning.

6. In this case, the prosecution must indicate that petitioner No.1 had fraudulently induced the complainant and his daughter to enter into this matrimony. Therefore, even petitioner No.1 cannot be accused of cheating. No doubt, due to breach of promise, loss is caused to the complainant and his daughter. But such loss would, at the most, give rise to a cause of action for a civil suit.

7. I fail to understand why offence under Section 499, punishable under Section 500 of the IPC, is alleged in the complaint as well as the other police papers. As said above, this is a case of breach of promise. No doubt, such breach would cause loss to the victim. But such loss cannot be equated to defamation. The main ingredient of Section 499 of the IPC is, that one has to make visible representation or publish an imputation concerning the victim. Here the petitioners did not make any representation or did not publish any imputation concerning the complainant or his daughter. This part of the allegation is misconceived. The Courts below did not realize

this. The impugned orders are erroneous and deserve to be set aside. The petition is, therefore, allowed. The impugned orders are set aside. The petitioners/accused stand discharged. The petition accordingly stands disposed of.

(A.V. NIRGUDE, J.)