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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1130 OF 2014

1. M/s. Bharatmatrimony.com
2. Mr. Aashish Bhargava
3. Mr. Alex George ….Applicants

versus

1. The State of Maharashtra
2. Smt. Vandita Sharma/Khot ….Respondents

Mr. Satyaram R. Gaud, advocate for the applicants.
Mr. K. V. Saste, APP for the State.
Ms. Vandana P. Santara, advocate for respondent No.2.

CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.

DATE OF RESERVATION : 18th February, 2015.

DATE OF PRONOUNCEMENT : 23rd March, 2015.

ORAL ORDER : (Per Ranjit More, J.)

Heard learned counsel and learned APP for the respective parties.

2. This application is filed under the provisions of Section 482 of the Code of Criminal Procedure, 1973 for quashing C.R.No.I 277 of 2014 dated 7th August, 2014 registered with Kashimira Police Station. The said C.R. is lodged against the applicants and other two accused viz. Michael Williams and Sofia Bajaj, at the instance of respondent No.2 for the offences punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860. The allegations made by respondent No.2 in her FIR are as follows:

Applicant No.1 is a private limited company incorporated under the provisions of the Companies Act, 1956 and applicant Nos. 2 and 3 are the employees of applicant No.1-Company. Applicant No.1-Company acts as a platform to enable any customer who registers with it to search for a prospective alliance for marriage from the profiles in its database that were registered by other members.

Respondent No.2 is a divorcee and wanted to remarry. On 1st June, 2014, she procured address and phone number of one marriage listing portal viz. Matrimony.com and contacted them and showed her willingness to register herself with such marriage listing portal. The portal company informed respondent No.2 that applicant No.1 is having its office at shop No.9 located at Shailesh Apartment, S.V.P.Road, Borivali (West), Mumbai 400103 with further information that a boy from the above office would come to her and she may pay the registration fee through cheque and, accordingly, her name would be registered in the website of the applicant No.1-company.

On 2nd June, 2014, a boy attached to Borivali office of the applicant No.1-company went to the house of respondent No.1 and she handed him a cheque for an amount of Rs.2,800/- and thereafter, her name got registered with applicant No.1-Company.

Subsequent to the registration, respondent No.2 started using the website of applicant No.1-Company. On 12th June, 2014, respondent No.2 received profile of one person by name – Michael Williams on her mobile phone through applicant No.1-Company. It is alleged that after gathering all the necessary information about the said profile, respondent No.2 learnt that the said Michael Williams is a citizen of England (U.K.) and thereafter she started communicating with the said person over his email ID. The said Michael Williams informed respondent No.2 that he is going to land at Mumbai Airport on 21st July, 2014 for marriage and also for investing a sum for business in India.

On 21st July, 2014 at 12.00 noon, respondent No.2 reached at Chhatrapati International Airport, Mumbai to receive Michael Williams and while waiting for him, respondent No.2 received a phone call on her mobile from the caller who introduced herself as Sofia Bajaj. She told respondent No.2 that she is speaking from Custom Department of Delhi Airport and informed that Michael Williams has come to Delhi Airport and he is having some luggage and respondent No.2 will have to pay custom duty. Respondent No.2 thereafter spoke to Michael Williams over the phone and he informed her that he is having foreign currency and for that reason, custom duty has to be paid. Respondent No.2 thereafter deposited an amount of Rs.24,500/- through her bank i.e. Abhyudhaya Bank with Custom Department Account as informed by Sofia Bajaj, who in turn, mailed the custom duty receipt towards payment of custom duty to respondent No.2.

On 22nd July, 2014, Sofia Bajaj again called respondent No.2 and informed her that Michael Williams has Rs.6 crores worth foreign currency and her department is going to issue Anti Terrorist Certificate to see that such money carried by him is not used for wrong purpose and, therefore, respondent No.2 needs to pay Rs.79,500/- and, accordingly, respondent No.2 deposited Rs.79,500/- with Custom Department Bank Account.

Thereafter again on 23rd July, 2014, Sofia Bajaj called respondent No.2 and informed her that Michael Williams is still in their custody and his case is being forwarded to the Ministry of Foreign Affairs for approval and the amount carried by him is required to be transferred to RBI and for that reason, she needs to deposit an amount of Rs.1,89,500/- and at that time, respondent No.2 spoke to the said Michael Williams and again deposited an amount of Rs.1,89,500/- in the account of Custom Department. Respondent No.2 thereafter received an email from the RBI informing her that the amount transferred by her is deposited with the RBI and directed her to fill one registration form by making payment of Rs.55,000/-. Respondent No.2, this time, sensed something wrong and did not pay the said amount.

Respondent No.2 in order to ascertain the fact went to Delhi Airport on 25th July, 2014 and called Sofia Bajaj on her phone and while making enquiry about Michael Williams, Sofia Bajaj informed her that Michael Williams is proceeding to RBI Delhi. However, when respondent No.2 contacted Michael Williams and told him that she has come to Delhi and asked him to meet her, he told her that he cannot meet her and asked her to return home.

Respondent No.2 thereafter went to RBI Delhi and made inquiry with an officer showing the e-mail which she had received and receipts of deposit of the amounts. However, she was informed that the said emails did not belong to the RBI and the same are fabricated and fake.

Respondent No.2 tried to contact Michael Williams, however, she could not contact him. Thereafter, respondent No.2 went to the office of applicant No.1 – Company at Borivali – West and upon making enquiry about Michael Williams, she was informed that the profile of Michael William was suspended on 21st June, 2014.

In the above circumstances, FIR as referred above came to be filed against the applicants, Michael Williams and Sofia Bajaj for offences punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860 on allegation that though applicant No.1-Company suspended the profile of Michael Williams on 21st June, 2014, respondent No.2 did not get any information about that. It is alleged that

Michael Williams, Sofia Bajaj and applicants with their common intention cheated respondent No.2 for an amount of Rs.2,93,500/-.

3. Mr. Gaud, learned counsel for the applicants submitted that applicant No.1-Company acts as a platform to enable its customers to search for a prospective alliance for marriage from the profiles in the database that have been registered by other members. He further submitted that after registration, it is the responsibility of the member to carry search on their own and take it forward by establishing contact with a prospective match. He submitted that in order to safeguard the interest of its customers, the applicant No.1-Company has provided certain safety tips and made the customers aware of the common scams and fraud. He submitted that respondent No.2 was cheated by Michael Williams and Sofia Bajaj because of her negligence and carelessness. He further submitted that respondent No.2 has not parted any money to the applicants nor the applicants represented respondent No.2 to make payment to Michael Williams and Sofia Bajaj. The offence under Section 420, therefore, cannot be alleged against applicants. He lastly submitted that the entire reading of the FIR does not disclose any offence as against the applicants and, therefore, the same deserves to be quashed and set-aside.

4. Ms.Santara, learned counsel for respondent No.2 opposed the application vehemently. She submitted that though the profile of Michael

Williams was suspended by applicant No.1-Company on 21st June, 2014, she was not informed about the same and, therefore, it must be inferred that the applicants were in collusion with Michael Williams and Sofia Bajaj and consequently, respondent No.2 got cheated. She submitted that the crimes such as the present one are on increase as is evident from daily newspapers and in order to save customers from similar crimes in future, FIR and thorough investigation is necessary which is not possible without the applicants' interrogation.

5. Mr. Saste, learned APP submitted that the investigation into the FIR lodged by respondent No.2 is in progress and, therefore, the same deserves to be continued so as to find out the real culprits.

6. Having considered the rival submissions and having gone through the complaint along with the terms and conditions, usage of the site of the applicant No.1's company, we find merit in the criminal application.

7. The legal position with regard to exercise of jurisdiction of the High Court for quashing the FIR is by now well settled. The following propositions of law are laid down by the Apex Court in ***R.Kalyani v.Janak C. Mehta (2009) 1 SCC 516:-***

> *(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the*

allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

8. In ***Mahesh Chaudhary v.State of Rajasthan (2009) 4 SCC 443,*** the Apex Court stated the law thus :

"11. The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence."

9. Learned counsel for respondent No.2 does not dispute that the applicant-company acts as a platform to enable any customers who registered with it to search for a prospective alliance for marriage from the the profiles registered by other members. It is also not disputed that respondent No.2 registered her name with applicant No.1- Company's website and thereafter she was assigned I.D.number which was generated automatically. The case of the applicants is that upon registration, it is the prerogative of the members/customers to carry out search on their own and establish contact with prospective match. This case is also not denied by respondent No.2. The grievance of respondent No.2 seems to be that she was not informed about suspension of the profile of Michael Williams by the applicant No.1-Company and, therefore, it is alleged that the applicants in collusion with Michael Williams and Sofia Bajaj cheated her.

10. Perusal of the terms and conditions governing the use of the applicant No.1-Company's website makes it clear that the applicant No.1-Company has provided certain safety tips and warns every customers/members to be aware about common scams and frauds so that they are not cheated by others, which are as follows:

> *“Do not share your login information with anyone when you are using the public computer, ensure you log off completely.*

> *Do not reply to emails asking for personal banking information. Beware of fake emails that appear to come from banks or other businesses to lure you into supplying personal data over the web. Fraudsters have come up with new tricks to steal identities online.*
>
> *Do not provide any sensitive information about yourself via e-mail. If you have any doubts at all about the contents of an email, contact the company directly.*
>
> *Never give your credit card number over the phone unless you make the call.*
>
> *Use your intuition and gut feeling when you know that something is too good to be true.*
>
> *Don't pay money under any circumstances. Quite likely it is a fraud."*

The applicant No.1-Company has also provided its Disclaimer of Warranties and Limitation of Liability enumerated in the terms and conditions applicable to every customer who signs up with the Company in its website which are as below:

> *"10. Disclaimer of Warranties and Limitation of Liability:*
>
> *This site is provided by BM on an "as is" and "as available" basis. BM makes no representations or warranties of any kind, express or implied, as to the operation of this site or the information, content, materials, or products included on this site. You expressly agree that your use of this site is at your sole risk.*
>
> *To the full extent permissible by applicable law, BM disclaims all warranties, express or implied, including, but not limited to, implied warranties or merchantability and fitness for a particular purpose. BM does not warrant that this site, its servers, or e-mail sent from BM are free of*

viruses or other harmful components. BM will not be liable for any damages of any kind arising from the use of this site, including but not limited to direct, indirect, incidental, punitive, and consequential damages.

Notwithstanding anything contrary contained anywhere, under no circumstances, BM shall be held responsible or liable whatsoever or howsoever, arising out of, relating to or connected with:

any act or omission not done by BM;

any untrue or incorrect information submitted by you or on your behalf;

any decision taken by you or on your behalf or any consequences thereof, based on any information provided by any other user;

any unauthorized or illegal act done by any third party relating to or connected with any information submitted by you or on your behalf;

any cybercrime attempted or committed by anyone;
any incident of force-amjeure or 'act of god'."

11. Respondent No.2 got registered herself on applicant No.1-Company's website after accepting the above referred terms and conditions which provided safety tips as well as Disclaimer of Warranties and Limitation of Liability. Despite the safety instructions provided by the applicant No.1-Company, respondent No.2 put herself in the present situation due to her own negligence and carelessness.

12. Perusal of the entire FIR makes it abundantly clear that representation was made to respondent No.2 by Michael Williams that

he is coming to Mumbai Airport for marriage and also to invest money in business. Thereafter, Michael Williams and Sofia Bajaj from time to time made false representations to respondent No.2 and extracted an amount of Rs.2,93,500/- from her. It is not the case of respondent No.2, neither an allegation is made in FIR that she parted with the money on applicants' representation. It is not the case of respondent No.2 that she made payment to any of the applicants. It is also not the case of respondent No.2 that any of the applicants induced her to part with the said amount or false representations was made by them which resulted in parting with the money by her. In order to make out the offence of cheating against the applicants, respondent No.2 must show that the applicants fraudulently or dishonestly induced her to part with the above mentioned amount. In the present case, respondent No.2 has not made any allegation against the applicants that they induced her to part with the money much less fraudulently or dishonestly. The allegations in the complaint are made against Michael Williams and Sofia Bajaj. The applicants have shown their readiness and willingness to co-operate with the investigation agency and, in fact, already all necessary documents are made available to the police authorities. The applicants cannot be held responsible for respondent No.2's negligence and carelessness. Even assuming that it was the obligation on the part of the applicants to inform respondent No.2 about the suspension of Michael Williams' profile, in that case also, the applicants cannot be held criminally liable for respondent No.2's cheating in the absence of any inducement by the applicants fraudulently or dishonestly to part with the money to respondent No.2.

13. Looking at the controversy involved in the matter from each and every angle, we find that the FIR does no disclose any offence as against the applicants and, therefore, the same deserves to be quashed and set-aside qua the applicants. The application is, accordingly, allowed in terms of prayer clause (b) and is disposed of as such.

(ANUJA PRABHUDESSAI, J.) **(RANJIT MORE, J.)**