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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4235 OF 2015

Gopkumar Krishna Pillai

..Petitioner.

V/s.

State of Maharashtra and Anr.

..Respondents.

Mrs.Vrishali Raje for the petitioner.

Mrs.S.D. Shinde, APP for the respondent-State.

Mr.Hrishikesh Ambre for respondent No.2.

**CORAM : NARESH H.PATIL AND
A.M.BADAR, JJ.**

DATED : 15TH APRIL, 2016

P.C. : -

1. By this petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, the petitioner / accused in Crime No.284/2015 for offence punishable under section 420 of the Indian Penal Code, 1860 is praying for quashing and setting aside the F.I.R. Lodged by respondent No.2 Sanjog Parab as well as the consequent charge-sheet filed with the learned Metropolitan Magistrate, 31st Court, Kurla, Mumbai.

2. Facts in brief leading to the institution of the present petition are that on 10th September, 2015, respondent No.2 Sanjog Parab who happens to be an Advocate had lodged the F.I.R. with Sion police station, Mumbai against present petitioner on averment that he had read from daily newspaper "*Daily Mirror*" that in recognition of contribution of 60 years to Indian Cinema by Ms.Usha Mangeshkar, People's Arts Centre had decided to felicitate her and to conduct Marathi Musical concert (Superhit Marathi Music Masti) on 10th September, 2015 at 7.30 p.m. at Shanmukhananda Hall, Kings Circle, Mumbai. Respondent No.2 / informant further averred that his wife Mrs.Sakshi Sanjog Parab had purchased two tickets, each costing Rs.1,200/- of that show. According to the informant, on 10th September, 2015 he along with his wife Mrs.Sakshi Sanjog Parab had been to the Shanmukhananda Hall at 8.00 p.m. for attending that concert. The security personnel present there informed him that the show had been cancelled. Informant Sanjog Parab further averred in the F.I.R. that the show was cancelled at the eleventh hour without any prior intimation and in such manner, the petitioner-accused Gop Kumar Pillai had cheated him. On the basis of this F.I.R.,

crime No.284/2015 for offence punishable under section 420 of the Indian Penal Code came to be registered at the Sion Police Station, Mumbai and on completion of investigation, charge-sheet came to be filed in the Court of the learned Metropolitan Magistrate, Mumbai against the petitioner.

3. Heard the learned counsel appearing for the petitioner. She vehemently argued that People's Arts Centre who had arranged the said cultural programme is a Cultural Association of repute in Mumbai and has arranged several such programmes, including honouring Music Maestros like Illia Raja, Yesudas, Dr. Balmurlikrishna, T..M.Sundar Rajan, Laxmikant Pyarelal, Asha Bhosale, Anup Jalota, etc. Learned counsel for the petitioner further argued that in order to honour the contribution of 60 years of Ms.Usha Mangeshkar to Indian Cinema, Marathi Musical concert was arranged on 10th September, 2015 at Shanmukhananda Hall to felicitate her. However, on account of unavoidable circumstances, that show was required to be cancelled on 10th September, 2015 itself. Learned counsel for the petitioner further argued that notice was displayed at the venue intimating cancellation of the show as well for the refund of the amount of tickets. Even

notice was published in the newspaper "*Mumbai Mirror*" on 11th September, 2015 itself requesting the purchaser of tickets to get back the refund. However, still respondent No.2 has lodged the F.I.R. According to learned counsel for the petitioner, even if the averments made in the F.I.R. are accepted in toto, then also, no offence much less an offence punishable under section 420 of the Indian Penal Code is made out. She further argued that even respondent No.2 / informant through his wife had received the refund of the amount of the two tickets purchased by them. Hence, according to the learned counsel for the petitioner, the F.I.R. and the resultant charge-sheet needs to be quashed.

4. We have also heard the learned APP appearing for the State. According to the learned APP, despite sale of tickets and arranging the show on 10th September, 2015 at Shanmukhananda Hall, all of a sudden the petitioner cancelled the show and thereby cheated large number of public who purchased tickets at heavy price of Rs.1,200/ per ticket.

5. We also heard learned counsel for respondent No.2, who contended that the F.I.R. came to be lodged by respondent No.2 because of cancellation of the show abruptly

at the time of the show itself though he had purchased the tickets for a valuable consideration.

6. With the assistance of the learned counsel appearing for the parties, we have carefully perused the charge-sheet so also the annexures to the petition. It is seen that the petitioner herein is the Founder and Secretary of the Cultural Association named and styled as People's Arts Centre, Mumbai. From the annexure to the petitioner, it is writ large that the said Cultural Association had arranged several cultural programmes at Mumbai as well as at Nagpur. Be that as it may, undisputedly, the People's Arts Centre, Mumbai of which the petitioner is a Fonder and Sectetary has arranged Marathi Musical concert on 10th September, 2015 at Shanmukhananda Hall, Mumbai on the eve of contribution of 60 years of Ms.Usha Mangeshkar to Indian Cinema. Ms.Usha Mangeshkar was to be felicitated at that programme. It is not in dispute that the petitioner through his wife had purchased two tickets for that show and that his wife Mrs.Sakshi Sanjog Parab had obtained refund of the entire amount of the tickets so purchased. Undisputedly, a notice by way of an advertisement came to be published in local daily informing

the public at large that because of cancellation of the Musical concert, the customers would get refund of the entire amount of tickets purchased by them. They were requested to collect the amount of refund. With this backdrop, let us examine whether prosecution of the petitioner at the instance of respondent No.2 / informant for the offence punishable under section 420 of the Indian Penal Code amounts to abuse of process of the Court and whether for securing ends of justice, prosecution so initiated needs to be quashed.

7. As mentioned in the foregoing paras, the F.I.R. lodged by the present petitioner is to the effect that upon reading advertisement in the newspaper, his wife purchased two tickets of the Superhit Marathi Music Masti for a consideration of Rs.2,400/- but on the day of that event, the security personnel at Shanmukhananda Hall had informed that the show is cancelled. Respondent No.2 further averred in the F.I.R. that the present petitioner has thus deliberately cheated him by cancelling the show. This F.I.R. is as vague as it can be, apart from it being cryptic based only on the fact that the event organized by the petitioner was cancelled at the eleventh hour.

8. Charge-sheet against the petitioner filed by the Investigating Officer contains statement of witnesses recorded by the prosecution. Statement of Leo Francis, Manager of the Shanmukhananda Hall goes to show that he received rent amounting to Rs.3 lacs in advance from the petitioner for the event scheduled to be held on 10th September, 2015. Charge-sheet also contains receipts of the amount of rent paid to Shanmukhananda Hall by the petitioner. Charge-sheet also contains statement of Manasi Ingle, the event organizer, stating that that she has received an amount of Rs.2 lacs in advance from the petitioner for organization of the event Superhit Marathi Music Masti on 10th September, 2015. Her statement further makes it clear that she had in turn distributed the amount so received amongst several Artist such as Swapnil Bandekar and Smt. Vaishali Shinde, etc., who were to participate in the said concert scheduled to be held on 10th September, 2015. Charge-sheet further contains statement of Artists Swapnil Bandekar and Smt.Vaishali Shinde that they had received advance payments for participating in the show of 'Superhit Marathi Music Masti' scheduled to be held on 10th September, 2015. Suffice to

mention that the petitioner, who according to prosecution case, as reflected from the F.I.R., has received an amount of Rs.65,000/- to Rs.70,000/- from sale of tickets had spent amount many more times then what is received, for arranging the show on 10th September, 2015. It is seen from the charge-sheet itself that well in advance, payments were made to various persons and authorities for arranging the show by the petitioner.

9. Keeping in mind this aspect, now let us turn to the provisions of section 415 of the Indian Penal Code, 1860 which defined the terms cheating. It reads thus :-

“415. Cheating - *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*

Bare perusal of definition of the term cheating as envisaged in section 415 of the IPC makes it clear that

deception of a person by fraudulently or dishonestly inducing that person to deliver any property to any person is the main ingredient of such offence. If examined in the light of this requirement of offence of cheating, the case in hand reflects that though the petitioner through his Cultural Association has sold tickets for Marathi Musical Concert, he has made all necessary arrangements for that show. There is no iota of evidence on record as seen from the entire charge-sheet to *prima facie* indicate that the petitioner / accused had dishonestly or fraudulently induced the customers to purchase tickets of the Musical Concert so as to deceive them by not arranging the said concert. As such, even remotely there is no element of deception played by the petitioner. Moreover, no damage is caused to respondent No.2 / informant and his wife who had purchased the tickets as entire amount of tickets for that show has been refunded to them.

10. In the light of these facts as reflected from the charge-sheet, it cannot be said that there was any fraudulent or dishonest inducement by the petitioner to the patron of concert and that too right at the inception.

11. Net result of the foregoing discussions makes it

clear that even if the allegations in the F.I.R. and other materials collected by the prosecution leading to the filing of the charge-sheet against the petitioner is accepted in its entirety, it does not disclose the offence of cheating punishable under section 420 of the Indian Penal Code. In such circumstances, permitting continuation of prosecution of the petitioner would certainly amount to abuse of process of the Court and, therefore, this is a fit case to exercise inherent powers of this Court for securing the ends of justice. Hence the order.

- (i) The writ petition is allowed.
- (ii) F.I.R. bearing Crime No.284/2015 dated 10th September, 2015 registered at the instance of respondent No.2 / informant for offence punishable under section 420 of the Indian Penal Code with Sion Police Station, Mumbai and resultant charge-sheet against the petitioner pending before the Court of the learned Metropolitan Magistrate, 31st Court, Kurla, Mumbai is quashed and set aside.

(A.M. BADAR, J.)

(NARESH H.PATIL, J.)