

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 1454 OF 2005

1. Purushottam s/o Kanhaiya Yempal,
Age. 40 years, Occ. Business,
R/o. Sahakar Nagar, Aurangabad.
 2. Kanhaiya s/o Pochaiya Yempal,
Age. 72 years, Occ. Retired,
R/o. Sahakar Nagar, Aurangabad.
 3. Parmeshwar s/o Kanhaiya Yempal,
Age. 45 years, Occ. Service (WALMI)
R/o. Dashmeshnagar, Aurangabad.
 4. Rajmani (Rani) w/o Parmeshwar Yempal,
Age. 38 years, Occ. Household,
R/o. Dashmeshnagar, Aurangabad
- ... PETITIONERS**

VERSUS

1. Asha @ Jayshree d/o Govind Ida,
Age. 34 years, Occ. Household,
R/o. Prlhad Nagar, Bhusawal,
District Jalgaon.
 2. The State of Maharashtra.
(Copy to be served on the
Public Prosecutor, High Court
of Bombay, Bench at Aurangabad.
- ... RESPONDENTS**

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Mr. H. F. Pawar, h/f Mr. A. H. Kapadia, Advocate for Petitioners.
Mrs. Seema T. Pawar h/f Mr. A. G. Talhar, Advocate for Respondent No.1
Mr. G. O. Wattamwar, APP for Respondent No. 2 / State.

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CORAM : **V. K. JADHAV, J.**
DATE : 03rd October, 2017.

ORAL JUDGMENT:

. By this criminal application, the Petitioners / original accused seek quashing of the order of taking cognizance of complaint bearing R.C.C. No. 129 of 2004 filed by Respondent No. 1.

2 Brief facts giving rise to the present criminal application are as follows.

On 15th March, 2004, the engagement of Petitioner No.1 with Respondent No.1 was performed and the date of marriage also came to be fixed as 29th April, 2004. Consequent to the said engagement ceremony and date of marriage has been fixed, Respondent No.1 / original Complainant has booked the marriage hall and also purchased costly items like T.V., fridge, cooler, washing machine etc. by incurring expenses to the tune of Rs.50,000/-. Even Respondent No.1 / original Complainant has also printed the marriage invitation cards. However on 13th April, 2004, the Petitioners in collusion with each other, demanded certain more amount and also certain articles and informed to Respondent No.1 / original Complainant that if their

demands are not fulfilled, they would perform the marriage of Petitioner No.1 with other girl from Beed. Respondent No.1 / original Complainant and her relatives tried their level best to convince the Petitioners, however, in vain. Consequently, the Respondent / original Complainant has instituted Regular Civil Suit No.62 of 2004 for injunction to prevent Petitioner No.1 from getting married with another girl. The Respondent / original Complainant has also filed a private complaint before Magistrate against the Petitioners for having committed an offence punishable under Sections 420, 520, 427 read with 34 of the Indian Penal Code.

3 The learned counsel for Petitioners submits that during the pendency of this criminal application, Petitioner Nos.2 and 3 died. Petitioner No.1 is the bridegroom and Petitioner No.4 is the paternal aunt of Petitioner No.1. The learned counsel submits that as per the allegations made in the complaint, the engagement ceremony was performed by consent and accordingly, the date of marriage was fixed. The learned counsel submits that breach of promise may give rise to the civil cause as well as criminal prosecution. The learned counsel submits that in the instant case, there are no allegations to indicate that right from inception the Petitioners were having

dishonest intention to cheat Respondent No.1 / original Complainant. The learned counsel submits that in the given set of allegations, ingredients of Section 415 hardly attract. The learned counsel submits that so far as said Regular Civil Suit No.62 of 2004 is concerned, the same has been dismissed in default long back and the Respondent / original Complainant has never tried to restore the same. The learned counsel, on instructions, submits that the Respondent / original Complainant got married and Petitioner No.1 also got married after the alleged incident.

4 The learned counsel for Petitioners in order to substantiate his contentions placed his reliance in the case of **Sharad Prabhakar Ambadkar & Anr. Vs. Arun Shardram Deshpande & Anr.**, reported in, **2005 All.M.R. (Cri.) 601.**

5 The learned counsel for Respondent / original Complainant submits that *prima-facie* case is made out under Sections 420, 500 and 427 of the Indian Penal Code and the Magistrate has therefore, rightly issued the process against the Petitioners.

6 By accepting the allegations made in the complaint as it is, I do not think that the ingredients of Sections 420, 500 and 427 stand attracted in this case. There are no allegations in the complaint that right from inception, Petitioner No.1 was having the dishonest intention to cheat the Respondent / original Complainant. It also appears that both the parties have lost their interest in the litigation. Petitioner No.1 and Respondent / original Complainant got married with other partners. Even though Regular Civil Suit No.62 of 2004 came to be dismissed in default long back, the Respondent / original Complainant never tried to restore the same.

7 In the case of *Sharad Prabhakar Ambadkar & Anr. Vs. Arun Shardram Deshpande & Anr.* (supra), relied up by learned counsel for Petitioners, this Court (Coram : Anoop V. Mohta, J.) in the identical facts, in paragraph No.8 has made the following observations:

“8. In the present case there is nothing which entitles the complainant to proceed against the petitioner under Section 420 of I.P.C. The complaint, admittedly, has not been filed by the daughter of the complainant with whom petitioner No.1 was engaged. Petitioner No.2 is the father of petitioner No.1. The allegation against

petitioner No.2 has been that he was unable to convince petitioner No.1 and to give reason to break the engagement. On the face of the complaint itself it is clear that the complainant has incurred expenses after the engagement. The expenses have been incurred by the complainant at their end. There is no wrongful loss to or gain by the petitioners. No case is made out that the petitioners have dishonestly earned and or received some property out of this engagement. The grievance of the complainant with respect to the expenses incurred is of at the most civil in nature. It does not fall within the ambit of ingredients of cheating as per Sections 415 to 420 of I.P.C. Therefore, the criminal prosecution cannot be proceeded against the petitioners. There is no case of any criminal conspiracy or misrepresentation or mistrust made out in the complaint. The things were smooth between petitioner No.1 and the daughter of respondent No.1 till the break of the engagement on 24.8.1997. The complainant's case is that in spite of the legal notice, as money was not paid the petitioners have committed the offence of cheating. Considering the ingredients as required to be invoked as per the above provisions, the issuance of the process on the private complaint in this case is unjustified and incorrect."

8 In view of the above discussion, I proceed to pass the following order:

ORDER

- I. Criminal application is hereby allowed. Rule is made absolute in terms of prayer clause (B).
- II. Criminal application is accordingly disposed of.

[V. K. JADHAV, J.]

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