

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4554 OF 2017

Nikhil Mohan ... Petitioner

VS.

1. The State of Maharashtra

2. Mohan Krishnan ... Respondents

Mr. Vijay Hiremath, Advocate for the petitioner.

Mrs. Veera Shinde, APP for respondent No. 1/State.

Mr. Hemang A. Jariwala i/b. Auroma Law, Advocate for respondent No. 2.

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: 9th January, 2019

JUDGMENT

1. This Petition, invoking the writ jurisdiction of this Court under Article 227 of the Constitution of India and inherent powers of this Court under section 482 of Cr. P.C., is filed by the petitioner-son against the respondent no.2-father with prayer to quash and set aside the order of issuance of process and orders dated 1st January, 2016, 2nd February, 2017 and 8th June, 2017.

2. Rule. Rule made returnable forthwith. Notice is served on the other side. In view of the short issue involved in this Petition, it is decided at the stage of admission by consent of the parties.

3. Respondent No. 2 has filed a private complaint against the petitioner for the offences of criminal breach of trust and cheating under sections 406, 417, 418 and 420 of Indian Penal Code on the ground that the petitioner has borrowed time to time money from the respondent No. 2, i.e., total amount of Rs.29 lakhs from May 2004 till March 2009. The petitioner went to United States and money was spent on his education. He completed his education in the year 2009, however, though the petitioner promised to repay the money, he did not repay it till today. Along with the complaint the respondent No. 2/original complainant has filed the letter dated 27th June, 2008 written by the petitioner to respondent No. 2 wherein he has promised to repay the said amount of Rs.29 lakhs along with compounding interest @10.50%. The learned Magistrate, after going through the complaint and the documents, issued process under sections 406, 417, 418, 420 of Indian Penal Code. Hence, this Petition.

4. The learned counsel for the petitioner has submitted that the petitioner is a son of respondent No. 2. however, respondent No. 2/complainant did not disclose this relation throughout the complaint. He has not mentioned about the relationship in the

verification also. The learned counsel has submitted that the petitioner never wanted to cheat his father and has not committed any offence of criminal breach of trust because the money was spent on the education of the petitioner/son. The learned counsel has further submitted that the date of birth of petitioner is 21st January, 1986 and in the year 2004 when he went to United States for further education, he was 18 years old. Today, he is 32 years old. The learned counsel submitted that the petitioner is ready to take responsibility of his father. The relations between the parents of the petitioner turned bitter and they took divorce in the year 2014. In that legal battle, the petitioner stood by the side of his mother and, therefore, out of vengeance, father has filed this complaint in the year 2015 against his son. It is submitted that the petitioner has shouldered the financial responsibility of his sister's education in United States.

5. The learned counsel for respondent No. 2 has submitted that this matter is not to be looked emotionally or by keeping the relationship on the background. The matter needs very practical approach, as it is a monetary transaction between two adults and therefore, the respondent No. 2/complainant did not mention about

the relationship between the petitioner and respondent No. 2. The learned counsel submitted that the petitioner had breached the trust reposed on him by respondent No. 2 while giving him loan of huge amount of Rs.29 lakhs. He has submitted that the petitioner has initially promised respondent No. 2 that he would repay the entire amount and relying on this promise, respondent No. 2 went on lending money time to time to the petitioner. The learned counsel pointed out the list of financial obligations of the petitioner towards respondent No. 2 from 21st January, 2004 till September 2008. He further submitted that the loan amount of Rs.2.50 lakhs was paid in March, 2009. He placed heavy reliance on the letter dated 27th June, 2008 written by the petitioner to respondent No. 2 wherein the petitioner has admitted the loan and promised to repay Rs.29 lakhs to respondent No. 2 alongwith compounding interest @10.50%. As per the said letter, he has promised to repay total amount of Rs.29 lakhs along with interest latest by 1st January, 2010. The learned counsel has submitted that the petitioner thereafter has refused to repay this loan while giving reply to the lawyer's notice of demand sent by the respondent. He relied on Section 415 especially illustration (f) which states that:

“A intentionally deceived Z into a belief that A means to

repay any amount that Z may lend to him and thereby dishonestly induced Z to lend him money. A not intentionally to repay it, A cheats.”

He has submitted that the learned trial Judge has rightly issued the process and is justified.

6. It is most unfortunate litigation which should not have filed by respondent No. 2 before the Magistrate. All the facts are admitted except that the petitioner had promised the father to repay the amount when he was 18 years old and so also the allegations of criminal breach of trust and cheating are denied.

7. By the letter dated 27th June, 2008 undoubtedly the son has acknowledged the loan given by the father. The submissions of learned senior counsel that the relations between the two parties is immaterial and is not to be taken into account, are not only baseless but absurd. Undoubtedly, respondent No. 2 gave money to the petitioner for his education because he is his son who went to United States and completed his education in 2009. Thus, the petitioner has spent money for proper cause and he did not misuse the money. Thus, even though it is assumed that Rs.29 lakhs was

the entrustment of the property by respondent No. 2 to the petitioner, there is no question of breach of the said entrustment. The money was spent for the cause for which it was given. It is true that the exchange of messages between the father and the son reveals that the son has always accepted the money given by his father. By the letter dated 27th June, 2008, the petitioner-son has acknowledged the said loan, thus, he has expressed gratitude towards his father. He has also stated that he is ready to take responsibility of his father. The respondent-father though is retired is well educated person. Though the petitioner, in reply given by him to the legal notice sent by his father, has refused to acknowledge the loan and the repayment of it, it does not mean that he threw away his responsibility towards his father. In fact in the course of arguments, the learned counsel for the petitioner has expressed that the petitioner is ready to repay Rs.15,00,000/- to his father which his father has paid from June 2008, i.e., when he sent the letter of acknowledgement.

8. For cheating, the person should have an intention to cheat right from the beginning. There should be inducement to part money with intention to cheat. There is a difference between

acknowledgment and inducement. To educate a child and spend money on his education as per the capacity is an obligation of the parents and if it is discharged, then the child should be grateful and it is not a legal issue. Such monetary transactions are out of love, affection, care and concern, which should not be transformed into the litigations.

9. No suggestion of settlement could work in the present matter, as the respondent-father wanted his money back immediately.

10. Today the learned counsel has filed an Application about the said payment along with Annexure-I, i.e. e-mail sent by the petitioner to his counsel dated 8th January, 2019 undertaking to pay Rs.15,00,000/- in three installments each of Rs.5,00,000/- on 25th January, 2019, 25th February, 2019 and 25th March, 2019 and clear the loan which he has acknowledged to his father. The Application about the said payment along with Annexure-I, i.e. e-mail sent by the petitioner to his counsel dated 8th January, 2019 is taken on record and marked as "Exhibit-1".

11. Pursuant to this undertaking, the learned counsel for the respondent No. 2/father gives the bank details of respondent No. 2 along with copy of blank cheque, which is taken on record and marked as “Exhibit-2”. The bank details are as under:

Name of Bank	:	Bank of India
Branch	:	Dahisar, Mumbai
Address	:	Suyog Apartment, Mandapeshwar Rd Dahisar, Mumbai
Telephone No.	:	+91-22-28932985 or 28935751
Email	:	Dahisar.MumbaiNorth@bankofindia.co.in
IFSC Code	:	BKID0000093
MICR Code	:	400013060
Customer ID	:	105191006
Account No	:	009310110003657
Name	:	Mohan Krishnan

12. The petitioner shall make repayment of Rs.15,00,000/- on or before the stipulated date, as the Court considers this e-mail, i.e., Annexure-1 as an undertaking. The respondent no. 2-father shall not file such frivolous cases hereafter.

13. The Court matters reflect mirror image of the culture, maturity and problem areas of the Society in the country. The present litigation speaks in volume about the deterioration of the social values on which exclusively the legal relationships stand. Filing of such litigations is a root cause of piling of cases in the Courts.

14. Writ Petition is allowed.

15. Rule is made absolute in terms of prayers made in the Petition.

16. The order of issuance of process passed by the learned Metropolitan Magistrate, 68th Court, Borivali, Mumbai in C.C. No. 94/SW/2015 is hereby quashed and set aside.

(MRIDULA BHATKAR, J.)