

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1097 OF 2021

Ghanshaym Magan Chavan .. Applicant

Versus

The State of Maharashtra and anr. .. Respondents

Mr A.D. Sonar, Advocate for applicant
Mr S.P. Deshmukh, A.P.P. for respondent no.1
Mr Ganesh Gadhe, Advocate for respondent no.2

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 6th August 2021

PER COURT :

1. Heard finally with the consent of the parties at admission stage.
2. The applicant is an accused in connection with Crime No.180/2021, registered with Shahada Police Station for the offences punishable under Sections 420 and 494 of the Indian Penal Code.
3. The applicant has approached to this Court by filing this Criminal Application for quashing the said F.I.R.
4. The learned Counsel for the applicant/original accused no.1 submits that the respondent no.2 is the legally wedded wife of the applicant. It has been alleged in the complaint that the applicant has performed the marriage with the co-accused no.2/Nalini Tandekar during subsistence of their marriage. The learned Counsel submits that so far as the charge under Section 420 of the Indian Penal Code is concerned, the same is not attracted even if the allegations made in the complaint are accepted as it is.

5. The learned Counsel for respondent no.2 submits that respondent no.2 is legally wedded wife of the applicant/original accused no.1 and during the subsistence of their marriage, the applicant has performed the marriage with co-accused no.2 Nalini. The applicant has not only committed the offence punishable under Section 494 of the Indian Penal Code, but he has also committed an offence punishable under Section 420 of the Indian Penal Code.

6. We have also heard the learned A.P.P. for the State.

7. In a case of **State of Haryana and Ors. Vs. Ch. Bhajanlal and Ors.**, reported in **AIR 1992 SC 604** in para 108 of the judgment, the Supreme Court has framed the guidelines pertaining to the categories of the cases by way of illustration wherein the powers under Section 482 of the Cr.P.C. could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In terms of those guidelines, Clauses (1) and (2) are relevant for the present case and the same are reproduced thus :

" (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code."

8. In the instant case, the respondent no.2/informant has made the allegation about cheating. We reproduce Section 420 of the Indian Penal Code as under :

"420. Cheating and dishonestly inducing delivery of property : Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The ingredients of the offence of cheating are as under :

- (i) There should be fraudulent or dishonest inducement of a person by deceiving him;
- (ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so CC no. 199/2008 Page no. 6 of 9 deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and
- (iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

As per the observations made by the Supreme Court in a case of **S.W. Palanitkar vs . State Of Bihar, 2002 SCC (Cri.) 129.**

9. We have also gone through the definition of Cheating under Section 415 of the Indian Penal Code. Even accepting the allegations made in the complaint as it is, we do not think that the same discloses the offence of cheating in any manner. Consequently, in terms of Clause (2) of the guidelines framed by the Supreme Court in case of **State of Haryana and Ors. Vs. Ch. Bhajanlal and Ors.**, reported in **AIR 1992 SC 604** (supra), the allegations in the F.I.R. do not disclose the cognizable offence and, therefore, the criminal proceedings in terms of registration of the Crime No.0180 of 2021 is nothing but the abuse of the Court process. However, considering the allegations in respect of the second marriage attracting the penal provision of Section 494 of the Indian Penal Code are concerned, we grant liberty to respondent no.2 to file a private complaint before the concerned Magistrate. Hence, the following order :

ORDER

- (I) The Criminal Application is allowed in terms of prayer clause (B).
- (II) The Criminal Application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV , J.)

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