

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

CRIMINAL APPLICATION (APL) NO.378 OF 2018

1. Ghanshyam s/o Krushnaji Dhadake,
Aged : 60 years, Occupation : Service,
Resident of Gopal Smruti Complex,
B-Wing Flat No.104, New Shukrawari
Road, Model Mill Chowk, New Shukrawari,
Mahal, Nagpur 440032.
2. Nita Vinod Jumle,
Aged : 30 years,
Occupation : Clerk,
Resident of 24, Nehru Ward,
Sindpuri, Sindhpuri Paoni,
Bhendala, Bhandara 441910.
3. Amit s/o Hukumchand Gaidhane,
Aged : 35 years, Occupation : Director,
Resident of Samarth Nagar (East),
Murmadi, Bhandara 441804.

... **APPLICANTS**

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Paoni Police Station,
District Bhandara.
2. Kum. Komal D/o Manohar Wanjari,
Aged : 21 years, Occupation : Student,
Resident of Kanalgaon, Tahsil Paoni,
District Bhandara.

... **NON-APPLICANTS**

Shri U. P. Dable, Advocate for applicants.

Shri T. A. Mirza, Additional Public Prosecutor for Non-applicant
No.1 - State.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 13/01/2021.

ORAL JUDGMENT : (PER AMIT B. BORKAR, J.)

1. Heard.

2. Rule. Rule is made returnable forthwith. Heard by consent of the learned Advocate for the applicants and learned APP appearing for the respective parties.

3. This is an application filed under Section 482 of the Code of Criminal Procedure challenging First Information Report bearing No.51/2018 dated 3.3.2018 registered by the non-applicant no.1 – Police Station, for offences punishable under Sections 407 and 420 read with 34 of the Indian Penal Code and consequent upon Charge-sheet bearing no.31/2018 filed by the non-applicant no.1 before the Judicial Magistrate First Class, Paoni, District Bhandara.

4. The First Information Report No.51/2018 was registered against the applicants on 3.3.2018 with the accusation that the applicants in collusion with each other, accepted examination fees of the students and did not transfer the said amount to the concerned University, with the result, the students

were deprived of their right of appearing in the examination. The offence was, therefore, registered against the applicants under Sections 307, 420 read with 34 of the Indian Penal Code. It is further alleged that the applicants have cheated the students by accepting Rs.1000/-.

5. The applicants, therefore, filed the present application challenging registration of First Information Report. This Court, on 2.5.2018 issued notice to the non-applicants, and by way of ad-interim relief, it was directed that the Charge-sheet should not be filed till the returnable date. In spite of the ad-interim order, the Investigating Officer on 7.5.2018 filed charge-sheet, which was recorded by this Court on 28.11.2018.

6. The non-applicant no.2 filed her reply and submitted that she alongwith other five students had deposited necessary fees for examination alongwith application forms with the applicant no.2, who works as Clerk in the office of the said college. When they did not receive their admission cards till 23.2.2018, the students contacted the applicant no.2 regarding status of their admission cards. The applicant no.2 casually informed them that the admission cards are not received. When

the students inquired with the applicant no.1, who is Principal of the said college, he informed the non-applicants that they would not be able to appear for examination scheduled to be held in March 2018, as their admission cards are not received. The applicant no. 2, therefore, has filed the First Information Report that the applicants in spite of receipt of examination fees have failed to transfer it to the University, with the result, the students could not appear for the examination to be conducted in the month of March 2018.

7. We have carefully considered the contents of the First Information Report. Section 407 of the Indian Penal Code requires entrustment with property in the capacity, as a carrier, wharfinger or warehouse-keeper and if such carrier commits criminal breach of trust, a person can be convicted of offence under Section 407 of the Indian Penal Code.

8. In the facts of the present case the applicants are neither carrier nor wharfinger or warehouse-keeper. There is no property entrusted to carrier, wharfinger or warehouse-keeper. Therefore, assuming that the allegations in the First Information

Report to be correct, still ingredients of offence under Section 407 of the Indian Penal Code are not fulfilled.

9. Insofar as Section 420 of the Indian Penal Code is concerned, the essential ingredients of offence of cheating is that there should be fraudulent or dishonest inducement of a person by deceiving him. The person, so deceived should be induced to deliver any property to any person.

From the accusations made in the First Information Report, both the above essential ingredients of Section 420 of the Indian Penal Code are absent. Therefore, from the allegations in the First Information Report, the ingredients of Section 420 of the Indian Penal Code are not fulfilled.

10. We have considered the material produced in the Charge-sheet. From the material produced in the Charge-sheet, we do not find any accusation in FIR to fulfill ingredients of Sections 407 and 420 of the Indian Penal Code in the present case. After carefully considering the entire material in the Charge-sheet, we are satisfied that there is no evidence to prove the ingredients of Sections 407 and 420 of the Indian Penal Code. Therefore, we are satisfied that the First Information Report and consequent

Charge-sheet filed against the applicants deserve to be quashed and set aside.

11. We, therefore, pass the following order:

First Information Report bearing No.51/2018 dated 3.3.2018 registered by the non-applicant no.1 - Police Station under Sections 407 and 420 read with Section 34 of the Indian Penal Code alongwith consequent Charge-sheet bearing no.31/2018 filed by the non-applicant no.1 before the Judicial Magistrate First Class, Paoni, District Bhandara is quashed and set aside.

Rule is made absolute in the aforesaid terms.

JUDGE

JUDGE

Ambulkar