

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

CRIMINAL APPLICATION (APL) NO. 450 OF 2018

1) Padmakar s/o Devidas Dharmadhikari,
Aged 75 years, Occupation – Retired,

2) Sau. Sweta w/o Sagar Dharmadhikari,
Aged about 34 years,

Both R/o Sagarika Bld-39, Putala Nagar,
Wadgaon, Yavatmal, Tq. and District
Yavatmal.

.... **APPLICANTS**

VERSUS

1) State of Maharashtra,
through PSO Wadgaon Road, Yavatmal
Police Station, Yavatmal, Tq. and
District Yavatmal.

2) Ku. Priyanka Sudhakar Rao Gadgil,
Aged 29 years, R/o Chotabazar
Paratwada, Tq. Achalpur, District -
Amravati.

.... **NON-APPLICANTS**

Mr. A.V. Bhide, Counsel for the applicants,
Mr. N.S. Rao, Additional Public Prosecutor for non-applicant 1,
Mr. Mahesh Rai, Counsel for non-applicant 2.

CORAM : ROHIT B. DEO, J.

DATED : 25th JUNE, 2021

ORAL JUDGMENT :

Applicant 1-Mr. Padmakar and applicant 2-Mrs. Sweta are
the father and wife respectively of Mr. Sagar Dharmadhikari.

2. Ms. Priyanka Gadbail lodged report dated 03-3-2009 with Wadgaon Road Police Station, Yavatmal alleging that Mr. Sagar Dharmadhikari induced her and similarly situated aspirants, to part with substantial amounts on the basis of false representation that the Convergence School of Air Hostess is recognised by the Government, and that the applicant and other similarly situated aspirants to the job of air hostess would do well to enroll in the institute.

3. On the basis of the report lodged by Ms. Priyanka Gadbail, offence punishable under Section 420 read with Section 34 of the Indian Penal Code is registered against Mr. Sagar Dharmadhikari and the applicants Mr. Padmakar and Mrs. Sweta.

4. Applicants Mr. Padmakar and Mrs. Sweta preferred an application under Section 239 of the Criminal Procedure Code ("Code" for short) seeking discharge. The learned Magistrate was pleased to reject the application and an attempt to persuade the revisional Court to intervene failed.

5. The short submission of the learned Counsel Mr. A.V. Bhide is that even if the final report and the documents filed therewith are holistically considered, the charge is groundless and that there is no

material to warrant a trial. The learned Additional Public Prosecutor Mr. N.S. Rao and the learned Counsel Mr. Mahesh Rai would obviously disagree.

6. Mr. A.V. Bhide took me through the contents of the first information report and Priyanka's statement recorded under Section 161 of the Code. Neither the report nor the statement can be the basis of arousing even a strong suspicion that applicants Mr. Padmakar and Mrs. Sweta have committed an offence punishable under Section 420 read with Section 34 of the Indian Penal Code. Every overt act is attributed to Mr. Sarang Dharmadhikari and there is only a sentence in the passing that Mr. Sagar Dharmadhikari and the applicants have acted hand-in-glove to cheat the applicants.

7. I, therefore, called upon the learned Counsel Mr. Mahesh Rai for the complainant to bring to my notice the material in the final report and the documents therewith as would warrant raising a presumption of commission of offence. In addition to the report and the statement of Priyanka, Mr. Mahesh Rai invited my attention to the statement of Malti Bundele who also enrolled in the institute alongwith Priyanka. All that is said in the statement is that the applicants Mr. Padmakar and Mrs. Sweta also conducted classes. In my considered view, even if the

statement is accepted at face value, by no stretch of imagination can the conducting of classes be an incriminating material. Malti Bundele, like Priyanka, attributes every overt act to Sarang Dharmadhikari. Neither the father nor the wife can be hauled up to face the trauma of unnecessary trial due to the alleged misdeeds of Sarang Dharmadhikari.

8. It is well settled that compelling a person to face trial is a serious matter. While the test is not whether the accused must have committed the offence, and that the test is whether the accused might have committed an offence, it is equally well settled that the strong suspicion on the basis of which the accused can be put to trial must be a suspicion which is founded on some tangible and credible material.

9. In the factual matrix of the present case, neither the learned Additional Public Prosecutor Mr. N.S. Rao nor the learned Counsel Mr. Mahesh Rai have brought to my notice any material other than the first information report, and the statements of Priyanka and Malti. In my considered view, even if the said material is holistically considered and taken at face value, the trial would only be an empty and ritualistic formality and there is no reason to compel the applicants to face such farcical trial.

10. The orders impugned are quashed. The applicants are discharged from Crime 202/2009 registered with Wadgaon Road Police Station, Yavatmal.

11. The application is allowed in the afore-stated terms.

JUDGE

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