

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

CRIMINAL WRIT PETITION NO.483 OF 2015

Ku. Neha d/o Vijaykumar Taori,
Aged about 28 years,
Occ: Household,
C/o Vijaykumar Sitaram Taori,
R/o Ramnagar, Akola as well as
Shivar, P.S. Civil Lines, Akola,
Tah. & Dist. Akola. **PETITIONER**

...V E R S U S...

1. Rahul s/o Ashok Malu,
Aged about 30 years,
Occ: Service.
2. Ashok s/o Radhakisan Malu,
Aged about 60 years,
Occ: Business.
3. Sau. Jyoti w/o Ashok Malu,
Aged about 55 years,
Occ: Household.
4. Suresh s/o Radhakisan Malu
(Now deceased).
5. Sau. Dipali Manoj Malu,
Aged about 32 years,
Occ: Household.
6. Ravi Khatod,
Aged about 41 years,
Occ: Business.

(Except No.4 now deceased)

All Resident of Jeevan Mitra
Apartment, New VHB Colony,

Jyoti Nagar, Aurangabad,
Tah. & District Aurangabad.

..... **RESPONDENTS**

Mr. S.A. Mohta, Advocate for Petitioner.
Mr. J.B. Gandhi, Advocate for Respondents.

CORAM: **ROHIT B. DEO, J.**
DATE: **4th JANUARY, 2021.**

ORAL JUDGMENT:

The petitioner is assailing the judgment dated 01.04.2015 rendered by the Principal District and Sessions Judge, Akola in Criminal Revision 20 of 2014 whereby the order dated 08.11.2013 rendered by the learned Judicial Magistrate, Akola in RCC 794 of 2013 issuing process against the respondents for offence punishable under section 420 of the Indian Penal Code, is set aside.

2. The petitioner married respondent 1 Rahul on 29.06.2012. It is common ground that the petitioner sought dissolution of marriage vide HMP 219 of 2012 alleging that her husband smoked and consumed alcohol and that he was a non-vegetarian, and further that due to depression he was not in a position to establish sexual relations. Respondent 1 apparently admitted the allegations and a decree of annulment of marriage

was passed on 24.08.2012.

3. The petitioner lodged police report alleging cheating and breach of trust and since the police did not act she filed an application under section 156 (3) Cr.P.C. which was treated as a private complaint. The learned Magistrate issued process only as regards offence punishable under section 420 IPC although the petitioner – complainant sought prosecution for offence punishable under sections 406 and 496 in addition to section 418 and 420 IPC. Be that as it may, it is not in dispute that the petitioner did not challenge the order of the Magistrate whereby the process was restricted to section 420 and it was the respondents who filed the revision questioning the order of issuance of process. As noted, the revision is allowed.

4. I do not find any infirmity in the order of the revisional court. All that it is said in the complaint is that the petitioner – complainant was assured that respondent 1 did not smoke or consume liquor and that he is a vegetarian. The next allegation is that she came to know that respondent 1 consumed liquor and also smoked. The other allegation is that the respondent 1 was not in a position to fulfill marital obligations.

5. The learned Magistrate recorded the verification statement of the complainant – petitioner herein who stated that she noticed liquor bottle and a packet of cigarette in the house and that in the short co-habitation with her husband, he drank liquor in her presence. The allegations in the complaint fall woefully short of making out a case of a false representation which was made to induce the complainant to act to her detriment.

6. In so far as the failure to issue process for offence punishable under section 406 etc. is concerned, I need not to look into that aspect since the petitioner did not challenge the order of issuance of process, and as a fact, has filed a civil suit in which this allegation shall be duly considered on its own merit. However, in so far as offence punishable under section 420 IPC is concerned, there is no infirmity in the revisional court's order which dismisses the complaint to that extent, since holistically read and understood the complaint does not make out a case of cheating.

7. The petition is dismissed.

JUDGE