

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

CRIMINAL APPLICATION (APL) NO.599 OF 2016

1. Khushalrao Pundlikrao Kamble,
Aged 67 years, Occ. - Retired,
Tapovan Complex, Amravati.
2. Jyoti Khushalrao Kamble,
Aged 35 years, Occ.- LPC Amravati,
South of Maltakadi, Amravati.

....APPLICANTS

----- VERSUS -----

1. The State of Maharashtra,
Through Police Station Gadgenagar,
Amravati.
2. Bharat Vishwanath Harne,
Aged 35 years, Occ.-Contractor,
Rahul Nagar, Bicchutekdi Camp,
Gadge Nagar, Amravati.

.... NON-APPLICANTS

Shri Mir Nagman Ali, Advocate for the applicants.
Shri S. D. Sirpurkar, A.PP for the non-applicant No.1/State.
Ms. D. V. Sapkal, Advocate (Appointed) for non-applicant No.2.

CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.

DATE : 11.03.2021.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard.
2. By this application under Section 482 of the Code of Criminal Procedure, the applicants have challenged registration of the First Information Report No.529/2016 registered with the non-

applicant No.1-Police Station for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

3. The First Information Report came to be registered against the applicants with the accusations that the non-applicant No.2 is in business of construction and takes contract for centering work. It was alleged that the non-applicant No.2 completed the work of applicants as per contract and hence, submitted total bill of the Rs.2,38,500/- for work done by the non-applicant No.2. It is alleged that out of said bill, the applicants paid an amount of Rs.88,500/- to the non-applicant No.2 but the applicants refused to pay an amount of Rs.1,50,000/- to the non-applicant No.2. The non-applicant No.2 therefore, filed an application with the Superintendent of Police and after the intervention of the Superintendent of Police, the First Information Report came to be lodged against the applicants. The applicants have therefore, challenged registration of the First Information Report by filing the present application.

4. This Court on 25.08.2016 issued notice to the non-applicants and directed that no coercive steps shall be taken against the applicants. This Court on 05.01.2017, issued Rule and stay further proceedings in relation to the investigation.

5. The non-applicant No.1 has filed reply stating that Investigating Agency recorded statements of complainant and other labourers, who worked with the non-applicant No.2. It is stated that the witnesses categorically stated about the threats hurled by the applicants and duping the non-applicant No.2 of his right full bill amount. It is therefore, stated that there is sufficient material against the applicants and the application deserves to be dismissed.

6. The non-applicant No.2 has also filed reply and has stated that the applicants have intentionally failed to pay amount to the non-applicant No.2. From the averment in the complaint, it is stated that the essential ingredients of the offence under Section 420 of the Indian Penal Code are fulfilled.

7. Ingredients of cheating are:

(i) deception of a person either by making a false or misleading representation or by other action or omission; and

(ii) fraudulent or dishonest inducement of that person to either deliver any property to any person or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act of omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

A bare perusal of Section 415 read with Section 420 of the Penal Code would clearly lead to the conclusion that fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage.

8. We have carefully considered the allegations in the First Information Report. From the allegations in the First Information Report, we do not find any material that at the inception of the contract, there was dishonest intention on the part of the applicants not to pay amount to the non-applicant No.2. There is no material produced alongwith the First Information Report nor there is any statement by witnesses that at the inception of the transaction between the applicants and the non-applicant No.2, there was dishonest intention on the part of the applicant not to pay said amount. It appears from the record that though the work which was done by the non-applicant No.2 was of Rs.2,38,500/-, the applicants have undisputedly paid an amount of Rs.88,500/- to the complainant. The said fact shows that at the inception, there was no dishonest intention on the part of the applicants not to pay said amount to the non-applicant No.2. In absence of the said essential ingredients, we are satisfied that the registration of the offence against the applicants under Section 420 of the Indian Penal Code were not proper. We are therefore,

satisfied that the continuation of the present proceedings against the applicants would amount to abuse of process of Court.

9. We therefore, pass the following order.

The First Information Report No.529/2016 registered with the non-applicant No.1-Police Station against the applicants for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code is quashed and set aside.

Rule is made absolute in the above terms.

JUDGE

JUDGE

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