

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

CRIMINAL APPLICATION (APL) NO. 719 OF 2014

1. Tolaram s/o Nenumal Bholani,
Aged about : 64 yrs, Occu : Business,
R/o Near Prem Prakash Ashram,
Kachi Kholi, Sindhi Camp,
Akola - 04.
2. Priya D/o Kishore Karde,
Aged about : 28 Yrs.,
Occu : Service,
3. Sarvesh s/o Satish Joshi,
Aged about : 35 Yrs,
Occu : Service.
4. Hemant s/o Ulhas Manchekar,
Aged about : 39 Yrs,
Occu : Service.

All R/o C/o Kuoni Travels (I)
Pvt. Ltd., 8th Floor, Urmi Estate,
95, Ganpatrao Kadam Marg,
Lower Parel (West),
Mumbai - 400013.

... **APPLICANTS**

V E R S U S

1. State of Maharashtra,
Through Police Station Officer,
Khamgaon Police Station (Urban),
Khamgaon, Dist. Buldhana,
2. Ashok s/o Gopichand Taori,
Aged about 52 yrs, Occ : Medical
Practitioner, R/o Raigadh Colony,
Khamgaon, Dist. Buldhana.

... **NON-APPLICANTS**

Shri R. K. Tiwari, Advocate for applicant Nos.1 to 4.
Shri T. A. Mirza, Additional Public Prosecutor for non-applicant
No.1-State.
Shri Alok Daga, Advocate for non-applicant No.2.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 10/02/2021.

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

1. This is an application under Section 482 of the Code of Criminal Procedure challenging the registration of First Information Report No.191/2014 with the non-applicant No.1 - Police Station for the offences punishable under Sections 420, 506 and 34 of the Indian Penal Code.

2. First Information Report came to be registered against the applicants with the accusations that the applicants published an advertisement in local newspaper on 08/01/2014 about Europe Tour and accepted amount of Rs.4,70,860/- from the non-applicant No.2 and the non-applicant No.2 was not allowed on the said tour. It is further alleged that the applicants have not returned the amount accepted by them from the non-applicant No.2 and have, therefore cheated the non-applicant No.2.

3. The applicants have, therefore, filed present application challenging registration of First Information Report. This Court on 17/11/2014 issued notice to the non-applicants. In the meantime, by way of ad-interim relief, it was directed that the applicants should not be arrested during pendency of present application. This Court on 20/03/2015 issued Rule in the present application and recorded undertaking on behalf of the applicants that they shall deposit amount of Rs.2,07,522/- in this Court within two weeks.

4. The non-applicant No.1 in pursuance of notice, filed reply and has stated that the applicants had published an advertisement dated 08/01/2014 in Daily "Lokmat" named as "Avismarniya Europe Tour" which was to be commenced from 21/05/2014 for a period of 14 days. The non-applicant No.2 has paid amount of Rs.4,70,860/- to the applicants, but the non-applicant No.2 was not allowed to travel for the said Tour. It is further stated that the applicants have not returned the amount to the non-applicant No.2 and has, therefore, cheated the non-applicant No.2.

5. Learned Advocate for the applicants submitted that the visa of the non-applicant No.2 had been rejected by the British Consulate on 30/04/2014 and the same was communicated to the non-applicant No.2 on his address. He further submitted that since the visa application of the non-applicant No.2 and his wife was rejected by the British Consulate, the non-applicant No.2 and his wife could not have travelled to the Europe Tour. He further submitted that since the booking was for a group, there were special concessions given to the applicants by the Touring Company. The applicants have filed additional affidavit and on Page No.53 of the paper book, the applicants have given details of the expenses incurred by the applicants for the non-applicant No.2 which is as under :-

Sr.No.	Particulars	Amount INR
1.	Air tickets for London for Mr. & Mrs. Taori.	91,310=00
2.	Visa Fees for Mr. & Ms. Taori for UK.	17,430=00
3.	Air tickets For Shenegan Countries for Mr & Mrs. Taori.	1,02,784=00
4.	Visa Fees Mr & Mrs. Taori for SHENEGAN Countries.	9,400=00
5.	Travel Insurance Mr & Mrs. Taori.	1,552=00
	Total	2,22,476=00

6. It is submitted by the applicants that after deducting the expenses incurred by the applicants, the applicants have refunded the remaining amount of Rs.2,63,360/- to the non-applicant No.2.

7. We have carefully considered the contents of First Information Report and the reply filed by the non-applicant No.1. We have also considered the additional affidavit filed by the applicants. After careful perusal of ingredients of the First Information Report, we are satisfied that essential ingredients of Section 420 of the Indian Penal Code are not fulfilled. We do not find that there was dishonest intention at the inception of transaction on the part of the applicants and the material on record does not show that the non-applicant No.2 was dishonestly induced to part with the amount. It is pertinent to note that the visa application of the non-applicant No.2 and his wife was rejected by the British Consulate and therefore, the non-applicant No.2 was not able to travel for the Tour. One more circumstance which weighs in favour of the applicants is the judgment delivered by the District Consumer Disputes Redressal Forum, Buldhana dated 20/06/2017 wherein the Consumer Court in paragraph No.7 had relied upon the condition of agreement between the

applicants and the non-applicant No.2 that it is only after the grant of visa, the non-applicant No.2 was entitled to travel to Europe Tour. The Consumer Court had recorded finding that since the non-applicant No.2 could not get visa from the British Consulate, there was no deficiency of service on the part of the applicants for refusing to allow the non-applicant No.2 to travel to Europe. The order of Consumer Court is not challenged by the non-applicant No.2 and has attained finality.

8. On overall consideration of the facts of the case and in particular, refusal of visa by the British Consulate which was beyond control of the applicants, we do not find that the prosecution against the applicants is a legitimate prosecution. We are of the view that the continuation of prosecution against the applicants would amount to abuse of process of Court.

9. By way of order dated 20/03/2015, this Court had directed the applicants to deposit an amount of Rs,2,07,522/- in this Court. The said amount was directed to be invested in the fixed deposit. In view of reasons stated above, the applicants will be entitled to refund an amount of Rs.2,07,522/- along with interest accrued thereon.

10. We, therefore, pass the following order :-

i] First Information Report No.191/2014 registered with the non-applicant No.1 - Police Station for the offences punishable under Sections 420, 506 and 34 of the Indian Penal Code is quashed and set aside.

ii] The applicants be refunded an amount of Rs.2,07,522/- along with interest accrued thereon.

11. Rule is made absolute in the above terms.

JUDGE

JUDGE

Choulwar