

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1995 OF 2020

- 1) Liladhar S/o Tulshiram Date,
Age-50 years, Occu:Teacher,
R/o-Sagoda, Danapur, Sangrampur,
Dist-Buldhana,
- 2) Sagar S/o Liladhar Date,
Age-28 years, Occu:Pvt. Service,
R/o-As Above,
- 3) Ajay S/o Liladhar Date,
Age-26 years, Occu:Business,
R/o-As Above,
- 4) Sapna W/o Vishal Wankhede,
Age-32 years, Occu:Housewife,
R/o-"Gurukrupa", Near Hanuman Temple,
Hanuman Nagar, Umari, Dist-Akola,
- 5) Vishal S/o Vijay Wankhede,
Age-41 years, Occu:Govt. Servant,
R/o-As Above,
- 6) Pratima @ Pritama @ Pratibha
W/o Gajanan Kalpande,
Age-52 years, Occu:Housewife,
R/o-Nimkhed Bazar, Anjangaon Murji,
Dist-Amravati,
- 7) Gajanan S/o Shriram Kalpande
Age-60 years, Occu:Agriculture,
R/o-As Above.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
- 2) Gajanan S/o Tulshiram Ingle,
Age-57 years, Occu:Pvt. Service,
R/o-Plot No.29, Jaiswal Plotting,
Guru Ganesh Nagar, Pahadsinghpura,
Tq. & Dist-Aurangabad.

...RESPONDENTS

...
Mr.Balraj P. Pande Advocate for Applicants.
Mr.M.M. Nerlikar, A.P.P. for Respondent No.1 – State.
Mr.G.J. Pahilwan Advocate for Respondent No.2.
...

**CORAM: SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 26th JULY, 2022

ORDER :

1. By invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, the applicants seek quashment of the First Information Report (for short "FIR") vide Crime No.290 of 2020 registered with Begampura Police Station, Aurangabad, for the offence punishable under Sections 406, 500 read with Section 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, and by way of amendment the applicants pray for quashment of further proceedings of R.C.C. No.1152 of 2021 pending before the learned Judicial Magistrate First Class, Aurangabad.

2. Heard learned Advocate Mr. Pande for the applicants, learned APP Mr. Nerlikar for respondent No.1 – State and learned Advocate Mr. Pahilwan for respondent No.2.

3. It has been vehemently submitted on behalf of the applicants that reading of the FIR on its face value does not attract the definition of criminal breach of trust as provided in Section 405 of the Indian Penal Code and therefore, it cannot be said that the applicants have committed offence under Section 406 of the Indian Penal Code. Same is the case with Section 500 of the Indian Penal Code. The facts of the case are that the marriage between the daughter of the informant was settled with applicant No.2. Even the engagement ceremony was performed on 1st March 2020 and the marriage was to be performed on 17th May 2020. However, as per the allegations in the FIR, applicant No.7 and applicant No.1 made demand of Rs.15,00,000/- after the engagement ceremony. That demand was refused by the informant and then it is alleged that by giving false reasons the marriage was broken. Section 500 of the Indian Penal Code requires private complaint and it cannot be part of the said case or FIR under Section 154 of the Code of

Criminal Procedure. Ingredients of Section 4 of the Dowry Prohibition Act will also not be attracted since the marriage itself is not performed. The allegations are vague and general in nature. No role is attributed to the applicants and it appears that the FIR has been lodged only with an intention to teach lesson as the marriage has been broken. The charge-sheet would also show that no specific role has been attributed and all the statements are of the relatives of the informant. In these circumstances, it would be a futile exercise to ask the applicants to face the trial. Learned Advocate therefore prayed for quashment of the FIR as well as entire proceedings.

4. Per contra, the learned APP as well as learned Advocate representing respondent No.2 – informant strongly opposed the Application and submitted that evidence has been produced to the effect that engagement ceremony took place after the approval was made by applicant No.2 and the daughter of respondent No.2. It is not a one day process but it requires dialogues which go on since prior time to the actual ceremony of engagement. After the engagement, there was demand of Rs.15,00,000/- but then the marriage could not have been broken on that ground. It was stated by the applicants that there

is defect in the eyes of the daughter of the informant and on that count to be bride-groom is not approving to the to be a bride. Even the father i.e informant had taken the daughter to an eye specialist and got her examined. The eye specialist has stated that there is no defect in her eyes. Still the marriage was broken. It has caused defame in the society and also the hurdle for her future. It is a bad practice prevailing in the society and the daughters / girls are required to suffer for the same. By making representations in favour of the approval of marriage, the applicants had caused respondent No.2 to spend at the time of engagement ceremony and then they have not performed the marriage. It amounts to misappropriation and also what was demanded was "dowry" as defined under the Dowry Prohibition Act. Even the illegal demand of money prior to the marriage is governed under the said Act and therefore, this cannot be the case where the inherent powers of this Court should be used.

5. At the outset it is to be noted that the FIR came to be lodged by respondent No.2 and on the basis of the contents of the same the police had registered the offence under Section 406, 500 read with Section 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. The investigation was

carried out and the charge-sheet is also filed under the said Sections. However, the Courts of law are not bound by the conclusion drawn by the Police authorities. If the evidence that has been produced by way of charge-sheet including the FIR disclose any other offence also, then the Courts of law i.e. especially the Magistrates or the Courts having power to take cognizance, can take cognizance of those offences also, which are not added or invoked by the Police authorities. From the facts of the case and the material that has been produced in the charge-sheet, *prima facie* case is made out to take cognizance of the offence under Section 415 read with Section 420 of the Indian Penal Code. It is to be noted that as per the contents of the FIR and the statements of witnesses, immediately after the engagement ceremony was over the demand of Rs.15,00,000/- was put by the father and the relatives of the boy. It is then stated that, at that time itself all the applicants started saying that they are not approving the girl since there is defect in her eyes. The FIR as well as statements of witnesses including the statement of the girl would show that the eyes of the girl were checked with Dr. Shobhane and it was certified that she does not have any defect in her eyes. Yet the marriage is said to have been broken. In the FIR, the informant has stated that he has

been cheated, yet the Police had not invoked Section 420 of the Indian Penal Code, but that option is still with the concerned Magistrate.

6. Coming towards Section 405 made punishable under Section 406 of the Indian Penal Code, the said Section requires entrustment of the property or dominion over the property, then dishonestly misappropriates or converts the said property to his use or dishonestly uses or disposes of that property in violation of any direction of law or of any legal contract expressed or implied. Even if we consider that there was no specific entrustment of the property, it was then asked to the learned Advocate for the applicants, as to whether engagement ring has been returned. He submitted that he will have to take instructions. Definitely that engagement ring appears to be a gold ring and it is a property.

7. When some facts are disclosing offence punishable under Section 500 of the Indian Penal Code, then the FIR under Section 154 of the Code of Criminal Procedure would be maintainable. Definitely it would be the painful event in the life of the girl when it is told to her that her proposed marriage is broken. Herein this case firstly it was tried to be broken on the basis of non

fulfillment of dowry and secondly by putting a reason that there is defect in the eyes of the girl. It appears that the second reason was tried to be negated by getting the girl checked through an expert. Still the marriage has been broken. Even now in our society, especially in the middle income group, such event is taken with defame to the side of the girl. People do not ask reason but would definitely discuss about it and blame the girl for the same. From this angle if we consider that respondent No.2 and his family members, if are feeling that they have been defamed by the acts of the applicants, then it can be said that they have chosen their right to knock the doors of the law. Under such circumstance, taking into consideration the material that has been collected, this cannot be a case to exercise the inherent powers of this Court under Section 482 of the Code of Criminal Procedure to quash the FIR as well as the entire proceedings. It is for the applicants to prove that with some *mala fide* intention the proceedings have been filed. That cannot be a point to be considered at this stage. Hence the following order:-

ORDER

(I) The Application stands dismissed.

(II) It is clarified that the observations made in the above order are restricted to the decision of this Application only and the trial Court shall not get influenced by the same and can come to its own conclusion during trial.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/AUG22