

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 759 OF 2020

Sunil Panditrao Shinde and Ors.	...Petitioners
vs.	
The State of Maharashtra and Anr.	...Respondents

Mr. Piyush R. Toshniwal - Advocate for the Petitioners.
Mr. J. P. Yagnik – APP for the Respondent No. 1
Mrs. Prabha Uday Badadare - Advocate for the Respondent No. 2

CORAM :	PRASANNA B. VARALE & S. M. MODAK, JJ.
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DATE :	07th MARCH, 2022
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P.C. :-

1. An offence was registered at Shahapuri Police Station, District Kolhapur bearing C.R. No. 397/2019, dated 04/07/2019, at the instance of one Kum. Vidya Suresh Tejam. She is Respondent No. 2. Offence was registered against the Petitioner Nos. 1 to 6. It is for the offence punishable under Sections 420, 499, 509, 506 r/w 34 of Indian Penal Code.

2. There was a proposal to perform a marriage of Respondent No. 2 with Petitioner No. 1 – Sunil Shinde. Initial meetings took place and both have given consent to perform the marriage. There was an engagement ceremony arranged at Kolhapur on 26/06/2019.

3. The Petitioner and his relatives have visited Kolhapur and their stay arrangement was made in hotel Panchaganga. However, the Petitioner and his relatives have refused to perform the engagement ceremony arranged on 26/06/2019 by making grievance about non-fulfillment of certain demands. They have a grievance about inadequate arrangement for stay and not giving sufficient gifts to Petitioner. There was allegations that the Respondent No. 2 is not having good character. So the Petitioner and his relatives left Kolhapur without performing the engagement.

4. The Respondent No. 2 and her relatives through a middleman Parshuram Patil made an attempt to convince the Petitioner but the attempt was un-successful. As a result, a complaint was lodged with Shahupuri Police Station on 04/07/2019 and an offence came to be registered under the sections as mentioned above.

5. By this Petition, the Petitioners are praying for quashing of the F.I.R. and Charge-sheet filed. We have heard Mr. Piyush Toshniwal, learned counsel for the Petitioners, Mr. J. P. Yagnik, learned APP for Respondent No.1 and Mrs. Prabha Badadare, learned counsel for the Respondent No. 2. With their assistance, we have also perused the record.

6. The learned counsel for the Respondent No. 2 vehemently opposed for allowing the present petition. According to her, there was an element of cheating and offence is disclosed against all the Petitioners and they

need to be tried as per law.

7. For the offence punishable under Section 420 of Indian Penal Code, offence must fall initially under Section 415 of Indian Penal Code and if there is delivery of property on the basis of dishonest mis-representations, offence under Section 420 of Indian Penal Code is said to have been committed. Whereas offence under Section 499 of Indian Penal Code is said to have been committed when harm is caused to the reputation of another in the manner prescribed in that Section. Section 506 of Indian Penal Code is an offence of Criminal intimidation. When modesty of women is insulted is offence under Section 509 of Indian Penal Code.

8. It may be true that there may be exchange of articles in between the Petitioners and the Respondent No. 2 for the purpose of arranging a marriage. The said act simply does not fall within the purview of Section 415 of Indian Penal Code. When the papers comprising charge-sheet are perused, one does not find that there was an intention to deceive the Respondent No. 2 and her relatives. There is no material to suggest that the meetings were conducted and there were talks about the marriage only for the purpose of inducing the Respondent No. 2 and her relatives to part away for the gift articles. Merely because the Petitioners have changed their decision to have a marital relationship with the family of Respondent No. 2, it cannot be said that the provisions of Section 420 of

Indian Penal Code are attracted. Papers do suggest that the Petitioners have gone to Kolhapur on 25/06/2019 and stayed in hotel Panchganga. The statements of the witnesses do suggest that the Respondent No. 2 was labelled as 'bold girl' and she was not having good character and that allegations has to be considered alongwith the decision of the Petitioners not to perform the marriage.

9. It is true that once there was decision to perform an engagement and once the Petitioners have gone to Kolhapur, it is but natural for the family of Respondent No. 2 to have an expectation that engagement will be performed. It was expected from the Petitioner to abide to the commitments. It is true that as per Hindu law, marriage is not considered as a contract.

10. So what we feel is that at the most Respondent No. 2 could have taken a Civil action for not performing the engagement ceremony as agreed by the Petitioners. Certainly setting the Criminal law in motion is not the proper remedy. One can understand that canceling an engagement ceremony must have hurted the sentiments of Respondent No. 2 in particular and her family. But filing police complaint cannot be the remedy and remedy lies elsewhere.

10. We do not find that the acts alleged against the Petitioner also fall within the purview of Sections 499, 506, 509 of Indian Penal Code. It can

certainly be said to be an abuse of process of law and as such it requires interference at the hands of this Court. If the Respondent No. 2 will adopt other course of action permissible by law, that Court will decide the same as per the merits without being influenced by the observations of this Court.

11. For the above reasons, the following Order is passed:

ORDER

- (a) The Writ Petition No. 759 of 2020 is allowed.
- (b) The F.I.R. bearing C. R. No. 397/2019 dated 04/07/2019 registered at Shahupuri Police Station, District Kolhapur Charge-sheet bearing of RCC No. 91 of 2020 is quashed and set aside against all the Petitioners.
- (c) If the Petitioners have furnished bail, it stands cancelled.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)