

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

CRIMINAL APPLICATION NO. 644 OF 2021

Mr.Pratap Singh Lohmorh & Anr. ...Applicants
vs.
The State of Maharashtra & Anr. ...Respondents

Mr.Ganesh Gole with Mr.Aarif Ali M. Ali for Applicants.
Mr.J.P. Yagnik, APP for Respondent No.2-State.
Mr.Jainendra Maldahiyar for Respondent No.2.

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATED : 31 JANUARY 2022

P.C. :

. The Applicants, by way of this application filed under Section 482 of Cr.P.C., are seeking for quashment of FIR registered vide Crime No.1075 of 2020 dated 15.10.2020, at Bharati Vidyapeeth Police Station, Pune and further proceedings pursuant thereof.

2. Brief facts of the present case are that Respondent No.2 lodged the criminal complaint against the Applicants and their son Deven, alleging therein that first informant and accused no.1 Deven used to stay in same building and at that time, the first informant got acquainted with Deven, who used to go to her house. It is further alleged that one day, accused No.1 Deven gave her juice by mixing stupefying drugs in it and thereafter, established physical relation with the first informant without her consent. After becoming conscious and on inquiry, accused no.1 promised her to marry.

3. It is further alleged that thereafter, on many occasions, accused no.1 Deven established physical relations with the first informant on a false promise of marriage.

4. On lodging of the complaint, it was registered against accused no.1 for the offence under Sections 376 and 328 of IPC, on 15 October 2020.

5. Thereafter, during the investigation, on 30 December 2020, the first informant gave supplementary statement to the police alleging that the Applicants promised the complainant and her relatives that they will perform her marriage with their son. It is alleged that the Applicants asked her sister to book a wedding hall. On such promise, the complainant and her sister booked a hall and made arrangements. However, twice the dates fixed for marriage were changed and lastly, it was informed by the Applicants that marriage between the complainant and accused no.1 is cancelled and thereby, the Applicants have cheated the complainant.

6. On such supplementary statement recorded by the police, the offences punishable under Sections 420 and 34 of IPC, were added by impleading the present Applicants. Hence, this proceeding for quashing the FIR and chargesheet in question.

7. We have heard learned Counsel for the respective parties.

8. Learned Counsel for the Applicants submits that after going through the FIR, it is clear that mainly, the allegations are against accused No.1 Deven and nothing has been alleged against the Applicants. It is,

therefore, submitted that Sections 376 and 328 would not attract against the present Applicants.

9. It is further submitted that even after going through the supplementary statement of the complainant recorded by the police during the investigation, on 30 December 2020, no allegations are made against the Applicants which would attract Section 420 against the Applicants.

10. It is submitted that the pre-requisites for attracting the offence of cheating, are absent in the present matter and thus, even Section 420 will not attract against the Applicants. In the backdrop of the above referred contentions, learned Counsel for the Applicants prays for quashing of FIR and chargesheet in question.

11. Learned APP appearing for the Respondent – State vehemently opposes the present application and state that though Sections 376 and 328 do not attract against the Applicants, however, Section 420 attracts in this matter.

12. While justifying his argument, he submits that there was a promise given by the Applicants to the complainant for performance of marriage of their son with the complainant and this fact can be seen from the act of the Applicants whereby they asked the sister of the complainant to book a wedding hall. It is submitted that even date of marriage was also fixed which was subsequently changed on two occasions and lastly, the Applicants informed the complainant and her family that the marriage between the complainant and Deven is not possible.

13. It is argued that because of such promise, the complainant and her sister have spent lakhs of rupees in booking the wedding hall and making necessary arrangements for the wedding. It is further submitted that withdrawal of promise of marriage after asking the complainant and her sister to book the wedding hall, would attract Section 420.

14. Learned Counsel appearing for Respondent No.2 fairly states that though Sections 376 and 328 do not attract against the Applicants, however, Section 420 attracts against the Applicants. Learned Counsel for Respondent No.2, complainant has drawn attention of this court to the supplementary statement and thereby he points out how the promise was made by the Applicants about marriage of the complainant with their son Deven and withdrawal of such promise.

15. The learned Counsel for Respondent No.2 reiterated the submissions made by learned APP and pointed out that the Applicants have repeatedly changed the date of marriage and lastly, refused to perform marriage of their son with the complainant. It is submitted that the allegations made in the supplementary statement are sufficient to attract offence under Section 420 of IPC. It is submitted that the law is clear that on the face of FIR if the alleged offence attracts, the court should not interfere under Section 482 of Cr.PC. quashing the FIR, the present application needs to be dismissed.

16. To consider the rival contentions of the parties, we have perused the record with the help of both the parties.

17. In the present matter, undisputedly the FIR was initially

registered for the offences under Sections 376 and 328 of IPC against accused no.1 Deven only.

18. Furthermore, in the complaint lodged on 15 October 2020 by the first informant, no allegations were made against the Applicants. The allegations which were made, were against accused no.1 Deven that, he had established sexual relations with the first informant on many occasions by giving her a false promise of marriage. There are no allegations of cheating or otherwise against the present Applicants.

19. It has further come on record that for the first time, after a period of about 2 and half months from the date of registration of offence against accused no.1 Deven, on 30 December 2020, the supplementary statement was given by Respondent No.2 impleading the Applicants in the alleged offence and thereby levelling the charges of cheating.

20. On page no.12 of supplementary statement recorded by the police, the gist of allegations against the Applicants is stated. It is reproduced hereinunder in vernacular, which reads thus:

"अशाप्रकारे, देवेन व देवेनचे आई वडिल (प्रतापसिंह लोमोर आणि अरुणा लोमोर) खोटं बोलून आम्हाला खुप दिवसांपासून आशेवर ठेवून/ विश्वासात घेवून लग्नासाठी गुंतवुण ठेवली की लग्न करून देतो ह्या फसवणुकीत मी व माझे कुटुंबिय आले. देवेन व देवेनच्या आई-वडिल मला मानसिक त्रास देत राहिले. आणि लग्नाचे तारिख सारखे चेंज करून माझ्या जीवनाशी खेळत राहिले.

देवेन आणि देवेनचे आई- वडिल माझ्या लग्नाची तारिख स्वतः काढून देत होते आणि कोणत्याही फालतु कारणाने पुढे ढकलायचे . आणि नंतर दिलेली तारिख देवेन व त्याचे आई-वडिल स्वतःच रद्द करत होते. नंतर नवीन तारिख लग्नाची देत राहिले...

सगळं हे लोक स्वतःच्या मर्जीने करत होते आमची मर्जी कुठेच ठेवत नव्हते. सगळ्या लंगनाचे निर्णय हे स्वतःच घेत होते.

ह्या षडयंत्र मध्ये देवेन आणि त्याचे आई -वडिल देवेन चा मित्र कन्हया जो वकिल आहे त्याचा विचार घेत होते. जेव्हा मी २२/१२/२०१९ देवेनच्या घरी गेले होते तेव्हा तो त्यांच्या घरी होता.

शेवटी आपल्याला मी हे निवेदन करते की , देवेनच्या आई-वडिलांवर विश्वासघातचा आणि देवेनने माझ्याबरोबर रेप **rape** केला. ह्या सर्व गोष्टींमध्ये त्याची चूक असुनही देवेनच्या आई-वडिलांनी त्याला साथ दिली . हि गोष्ट मला तेव्हा कळली जेव्हा मी दिनांक १७/११/२०१९ च्या दिवशी देवेनच्या आई -वडिलांना फोन केला तेव्हा ते बोलले की देवेन आणि तुझ्या संबंधाविषयी पहिल्या दिवसापासुन मला माहित आहे.

मी तुम्हाला अनुरोध करते की देवेनच्या आई-वडिलांवर (प्रतापसिंह लोमोर व अरुणा लोमोर) कडक कारवाई केली जावी.”

21. The essence of supplementary statement dated 30 December 2020 is that the Applicants, who are the father and mother of accused no.1 Deven, had promised Respondent No.2 that they would perform her marriage with their son Deven and subsequently, they cancelled the marriage and thereby the Applicants have committed breach of trust and cheating.

22. It is a well settled law as held by the Hon'ble Supreme Court of India in various judgments that jurisdiction to quash FIR can be exercised under Section 482 of Cr.PC. only, if no offence is made out on reading the allegations in FIR as they stand.

23. In the recent judgment in the case of **Veena Mittal vs. State of Uttar Pradesh**¹ dated 24 January 2022, the Hon'ble Supreme Court of India

¹ Order passed by Hon'ble Supreme Court of India in Cri.Appeal No.122/2022 dt.24.1.2022

has held thus :

“It is well-settled that at the stage when the High Court considers a petition for quashing criminal proceedings under Section 482 of the CrPC, the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the Court may be justified in exercising its jurisdiction to quash. The parameters of the jurisdiction under Section 482 have been reiterated in a consistent line of authorities and, at this stage, it may be material to refer to the recent decision of this Court in **Neeharika Infrastructure v. State of Maharashtra [(2021) SCC OnLine SC 315)**.

24. In the teeth of aboveresferred well settled law, we have no hesitation in this matter to hold that the offences punishable under Sections 376 and 328 do not attract against the Applicants as no allegations were made against the Applicants attracting the said offences.

26. As regards offence under Section 420 is concerned, it would be relevant to refer the said provision for proper appreciation of the controversy involved in this case. Section 420 reads thus :

420. Cheating and dishonestly inducing delivery of property — Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

26. On reading of Section 420 of IPC, it is clear that where there is delivery or destruction of any property or alteration or destruction of any valuable security resulting from the act of a person deceiving, this section would come into picture.

27. For an offence under Section 420 of IPC, it must be proved that the complainant parted his/her property acting on a representation which was false to the knowledge of the accused and that the accused had a dishonest intention from the outset.

28. If we go through the allegations made against the Applicants in the supplementary statement of Respondent No.2, dated 30 December 2020, the allegations speak about promise given by the Applicants to perform marriage of their son, accused no.1 Deven, with Respondent No.2 and with the said promise, the Applicants asked her to book wedding hall and subsequently, the date of marriage was changed twice and lastly, it was informed by the Applicants to Respondent No.2 and her family, about the cancellation of marriage.

29. The fact that the Respondent No.2 or her family spent some amount in booking the wedding hall or for making preparation for marriage, in our considered view, also do not fulfil the pre-requisites for attracting offence under Section 420 of IPC.

30. It is pertinent to note that after going through the allegations made in the FIR and in the supplementary statement dated 30 December 2020, it can be revealed that there are no allegations made by Respondent No.2 that, the Respondent No.2 being put to wrongful loss or there is any

delivery or destruction of any property or alteration or destruction of any valuable security resulting from the acts of the Applicants as well.

31. In the above referred backdrop, we do not find that any case is made out by Respondent No.2 against the Applicants under Section 420 of IPC.

32. In the circumstances, if it is permitted to conduct the trial against the Applicants, it would cause great prejudice to the Applicants and therefore, for the ends of justice, we are of the opinion that the FIR in question and further proceedings need to be quashed and set aside.

33. Accordingly, we pass the following order :

ORDER

The application is allowed. The FIR registered against the Applicants vide Crime No.1075 of 2020 dated 15.10.2020 at Bharati Vidyapeeth Police Station, Pune and further proceedings pursuant thereof are hereby quashed and set aside qua the Applicants only.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)