

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

CRIMINAL APPLICATION NO.721 OF 2022

1. Shrihari Bhanudas Jadhav,
Age : 55 years, Occ. Agri.,
2. Sangita Shrihari Jadhav,
Age : 48 years, Occ. Household,
3. Prashant Shrihari Jadhav,
Age : 29 years, Occ. Agri.,

r/o. Chikhli, Tq. and Dist. Osmanabad

..Applicants

Vs.

1. The State of Maharashtra
2. XYZ

..Respondents

Mr.Satej Jadhav, Advocate for applicants

Mr.N.T.Bhagat, APP for respondent no.1

Mr.A.B.Chalak, Advocate for respondent no.2

CORAM : R.G.AVACHAT AND

SANJAY A. DESHMUKH, JJ.

DATE : JUNE 21, 2023

PRONOUNCED ON : JUNE 28, 2023

ORDER :-

Heard finally with the consent of learned counsel for the parties.

2. This application has been moved for quashment of the First Information Report (FIR) being Crime No.0477 of 2021, registered with Vivekanand Chowk Police Station, Latur, for the offences punishable under Section 376(2)(N), 420, 493, 495, 496 and 506 read with Section 34 of Indian Penal Code and the consequential proceedings, i.e. R.C.C. No.1684 of 2021.

3. The case of prosecution, as is disclosed from the FIR, is as follows:-

The informant (name withheld) married Pravin (co-accused) on 30.01.2021 at Kalamgaon. The marriage expenditure was incurred by the parents of the informant. Pravin was given dowry of Rs.9,63,400/-. Said amount was transferred in his bank account on 21.01.2021. A sum of Rs.1,57,600/- was paid to him in cash. Gold ornaments of 22 Tolas were purchased from jeweler (Chandukaka Saraf) in the name of Pravin, the father of informant and her father-in-law. On marriage, the informant started residing at her matrimonial home at village Chikhali, Tq. and Dist. Osmanabad. Thereafter, all of them started residing in Police quarters at Latur. Pravin had physical relationship with her many a

time. The informant noticed some change in the behavior of Pravin. She checked his cell-phone to find that he would chat with one lady. She further found photograph of Pravin with that lady. The lady in the photograph was sporting *Mangalsutra*. On inquiry with Pravin, he disclosed her the name of lady in the photograph and claimed to have friendship with her. Pravin, thereafter, started assaulting the informant on account of his cell-phone to have been checked by her. The parents-in-law of the informant, therefore, brought her to their house at Chikhali. Her father then took her to his house at Kalamgaon. After a stay of few days there, her father brought her back to her matrimonial home. When the informant refused to keep physical relationship with Pravin, he started illtreating her.

4. It is further case of the informant that when she reported about the same to her parents-in-law and brother-in-law (applicants herein), they asked her to keep quite and not to disclose the same to anyone lest they would kill her parents. It is further her case that in the month of March, Pravin relieved the informant of her gold ornaments and driven her out of house after having been beaten her. It is further averred in the FIR that Pravin was previously married. It was a registered marriage. Applicant no.3 –

Prashant had signed the marriage registration certificate as an attesting witness.

5. In short, the case of the prosecution against the present applicants is that they concealed the first marriage of Pravin from the informant and induced her to enter into marriage with Pravin. As such, the applicants, allegedly, committed offence of cheating. On investigation of the crime, charge sheet came to be filed. The statements of the relations of the informant are on the lines of the averments in the FIR.

6. Learned counsel for the applicants would submit that for the offence of cheating, dishonest intention on the part of the applicants has to be from inception. Applicant no.3 did not sign the marriage registration certificate. The parents-in-law of the informant, on having been informed about the ill-treatment, brought her to their residence. The same suggests their innocence. According to learned counsel, the husband of the informant is not before the Court. He may face the prosecution. According to him, allowing the prosecution to proceed against the applicants would be an abuse of process of the Court. He, therefore, urged for allowing the application.

7. Learned APP and learned counsel representing the informant would, on the other hand, submit that the co-accused – Pravin was previously married. The statement of a Clerk in the office of the Sub-Registrar was adverted to, to point out that applicant – Prashant had signed as attesting witness for registration of the first marriage of Pravin on 26.02.2020. A copy of the marriage certificate was adverted to, to indicate that the name of applicant no.3 was appearing therein as an attesting witness, though it was, lateron, scored out. According to learned counsel, the applicants being close relations of the co-accused – Pravin, must be presumed to have in the know of Pravin's first marriage. Still, they allowed Pravin to enter into the second marriage with the informant. The applicants had duty to disclose all the facts before settlement of Pravin's second marriage. According to learned counsel, no mini-trial can be conducted in this proceedings. There is, *prima facie*, material to proceed against the applicants. They, therefore, urged for rejection of the application.

8. Considered the submissions advanced. Perused the FIR and related papers. Section 415 of Indian Penal Code defines the offence of cheating, which reads thus :-

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

9. There is ample material to indicate that the co-accused – Pravin was previously married with “X”. The marriage certificate indicates him to have married on 26.02.2020. He, thereafter, married the informant. It was a registered marriage and the second was in the celebratory form. The averments in the FIR indicate that gold ornaments were purchased in the names of the co-accused – Pravin, father-in-law of the informant (applicant no.1) and her father. The same suggests that Pravin’s father had active role in arranging Pravin’s second marriage with the informant.

10. The FIR is, however, conspicuously silent to aver therein that the applicants - Sangita and Prashant had any role in settlement of her marriage with Pravin. There is no whisper against them.

Although all of them knew Pravin to have been previously married, there is nothing in the FIR or even in the police papers, to indicate them to have made any representation to the informant, so as to induce her to give consent for her marriage with the co-accused - Pravin. For lack of necessary ingredients of the offence of cheating against these applicants, in our view, allowing these applicants (applicant nos.2 and 3) to face the trial would be an abuse of process of Court. We are, therefore, inclined to allow their application.

11. In the result, the application is partly allowed in terms of the following order:-

(i) The application of applicant no.1 - Shrihari Bhanudas Jadhav is rejected.

(ii) The application of applicant no.2 - Sangita Shrihari Jadhav and applicant no.3 - Prashant Shrihari Jadhav is allowed.

(iii) The FIR, being Crime No.0477 of 2021, registered with Vivekanand Chowk Police Station, Latur, for the offences punishable under Section 376(2)(N), 420, 493, 495, 496 and 506 read with

Section 34 of Indian Penal Code and the consequential proceedings, i.e. R.C.C. No.1684 of 2021, qua applicant no.2 - Sangita Shrihari Jadhav and applicant no.3 - Prashant Shrihari Jadhav, stand quashed.

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP