

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

CRIMINAL APPLICATION NO. 1272 OF 2023

1. Shilpa w/o Santosh Andure
 2. Prashant s/o Prakash Gadekar
 3. Baban s/o Ramdas Khutale
 4. Usha w/o Baban Khutale
- ... APPLICANTS

VERSUS

Subhash s/o Govindrao Gargade

... RESPONDENT

Mr. K. D. Khade, Advocate for the applicants
Mr. R. P. Dhase, Advocate for the respondent/State

CORAM : R. M. JOSHI, J.
RESERVED ON : 25/10/2023
PRONOUNCED ON : 30/10/2023

ORDER :-

1. This application is filed under Section 482 of Code of Criminal Procedure (for short 'Cr.P.C.') for challenging order of issuance of process dated 18th December, 2019 passed by JMFC, Shirur Kasar, District Beed in R.C.C. No. 07/2013 for the offences punishable under Sections 420, 500 read with 34 of the Indian Penal Code (for short 'IPC').

2. It is the case of applicants that a complaint came to be filed by respondent on 15th January, 2013 before JMFC, Shirur Kasar, District

Beed being RCC No. 7/2013 alleging that marriage was fixed of the son of respondent with applicant No.1 but there after her marriage was performed with another person. It is also alleged by the respondent that in the engagement ceremony, gift articles such as golden necklace, golden ring, silver anklets, diamond necklace and mobile hand set were gifted to applicant No.1. It is claimed by the respondent that on account of performance of marriage of applicant No.1 with another person, defamation has been caused of respondent and his son in the society. It is also contended that the applicants have cheated respondent. On the basis of these amongst other allegations complaint came to be filed. By order dated 7th August, 2013 process was issued against the applicants. The said order came to be challenged by filing an application before this court bearing Criminal Application No. 2145 of 2016. By order dated 26th August, 2016 the order of issuance of process was set aside and the matter was relegated back to the JMFC, Shirur Kasar for passing order afresh considering the law laid down by the Division Bench of this Court in case of ***State of Maharashtra*** Versus ***Shashikant Eknath Shinde***, ***2013 All M.R. (Cri.) 3060***.

3. Learned counsel for the applicants submits that learned Magistrate has committed error in not considering the contents of the

complaint which do not show commission of any offence being committed by the applicants. It is submitted that there is no case made out to attribute offence of cheating or defamation against the applicants. It is submitted that perusal of the complaint itself sufficiently indicates that the marriage was not performed at the instance of respondent and hence performance of marriage by applicant No.1 thereafter cannot be considered as cheating since inception. It is also submitted that the contents of the complaint do not disclose any defamation being caused of respondent. In response to the submissions made on behalf of the learned counsel for other side about maintainability of the application it is contended that the jurisdiction of this Court under Section 482 of Cr.P.C. is wide enough to sustain challenge to order of issuance of process. Order passed by this Court in the same matter in Criminal Application No. 2145 of 2016 is also relied upon for the purpose of supporting this submission.

4. Learned counsel for the respondent/original complainant submits that the remedy of revision under Section 397 of Cr.P.C. is available and hence without exploring the said efficacious said remedy, present application is not maintainable. To support his submissions he placed reliance on following judgment:

(i) *State of Telangana V. Habib Abdullah Jeelani, AIR*

2017 supreme Court 373,
(ii) Pandey Ajay Bhushan, Collector and District
Magistrate, Jalgaon and others V. Shri Sureshkumar
Bhikamchand Jain and another, 1994 Cri.L.J. 1726,
(iii) V. K. Jain and ors. Vs. Pratap V. Padode and Anr,
2005(3) Mh.L.J. 778.
(iv) Pushpa Ashok Singh Thakur Vs. Shri Kishan
Karamchand Lalwani and Ors., 2014 BCI 172.

5. On merit it is submitted that at this stage the Court cannot go into the correctness of allegations made in the complaint as it would be a subject matter of evidence during trial, and *prima facie* contents of the complaint indicate that offences alleged under Sections 420, 500 of IPC are made out against the applicants. According to him no case is made out to cause interference in the order of issuance of process.

6. At the outset this Court would like to deal with the objection raised to the maintainability of the application. No doubt this Court has entertained Criminal Application No. 2145/2016 against the order dated 7th August, 2013 passed in RCC No. 7/2013, however, said order does not show that any objection was raised by the respondent regarding maintainability thereof. Here in this case however, specific plea has been raised in this regard. The order impugned is of issuance of process. Maintainability revision application under Section 397 of Cr.P.C. for challenge to such order is no more res-integra. Thus, efficacious remedy is available for the applicants to take exception to

the said order before the Sessions Court by invoking provisions of Section 397 of Cr.P.C.

7. There cannot be any of doubt that having regard to the powers of this Court under Section 482 of Cr.P.C. an application is certainly maintainable for taking exception to the order of issuance of process. Thus, there is no substance in the contention that the application is not maintainable. However, question arises as to whether this Court is excepted to exercise its discretion to entertain such application. It would be fruitful to make reference to the judgment in case of ***Superintendent of Taxes, Dhubri and others, AIR 1964 SC 1419***, five judges bench of the Hon'ble Apex Court has observed in paragraph No. 7 read thus:

"7. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally

enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court to appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

8. The aforesaid discussion of the Hon'ble Apex Court though pertains to Article 226 of Constitution of India clearly lays down ratio that when there is efficacious alternate remedy available then extraordinary powers are not expected to be exercised ordinarily by High Court. No doubt in extraordinary circumstances such powers can be exercised.

9. This Court though finds no substance in the objection raise to the maintainability of application, however, unless extraordinary circumstances exist present application cannot be entertained. In the instant case this Court does not find existence of any exceptional/extra ordinary circumstances in order to make an exception to the rule that ordinarily remedy made available by statute cannot be bypassed for

exercising the inherent jurisdiction of this Court. It is open for the applicants to avail remedy under Section 397 of Cr.P.C. if so desire. Since the applicants were prosecuting this application bonafide, Revisional Court to condone delay caused in filing revision if the same is filed within one month from today. In case such reivision is filed, considering the fact that the proceeding in question is of the year 2012, the Revisional Court is directed to dispose of the such application if filed within a period of six (06) months.

(R. M. JOSHI, J.)

ssp