

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

CRIMINAL WRIT PETITION NO.893 OF 2018

Sandipkumar Ganpatrao Mudholkar
and ors.

..Petitioners

Vs.

The State of Maharashtra and anr.

..Respondents

Mr.V.S.Kadam, Advocate for petitioners
Mr.M.M.Nerlikar, APP for respondent no.1
Mr.Y.B.Bolkar, Advocate for respondent no.2

**CORAM : SMT. ANUJA PRABHUDESSAI
AND R.M.JOSHI, JJ.
DATE : FEBRUARY 09, 2023**

ORDER :-

At the outset, learned counsel for the petitioners seeks leave to amend prayer clause (BB) as to incorporate R.C.C. number. Leave granted. Amendment be carried out forthwith.

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

3. This Writ Petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure is filed for quashing FIR bearing Crime No.23 of 2018 registered with Police

Station, Loha, Dist. Nanded, for the offences punishable under Sections 420, 406 and 500 read with Section 34 of Indian Penal Code, Charge Sheet bearing No.33 of 2018 as well as the criminal proceedings, i.e. R.C.C. No.390 of 2018, pending on the file of learned Judicial Magistrate, First Class, Loha, Dist.Nanded.

4. Heard learned counsel for the petitioners, learned APP for respondent no.1 and learned counsel for respondent no.2.

5. The record indicates that marriage of the respondent no.2 was fixed with the petitioner no.1. The engagement ceremony was held on 21.05.2017. Subsequently, the marriage was called off. The respondent no.2 lodged the complaint, alleging that her father had spent a substantial amount on the engagement and that he had given gold ring, clothes, etc., to the petitioner no.1. She claimed that the marriage was called off since they were unable to fulfill the unlawful demand of dowry made by the parents of the petitioner no.1. The respondent no.2, therefore, claimed that she has been cheated by the petitioner no.1 and hence, filed the FIR, on the basis of which the aforesaid crime came to be registered.

6. It is seen that the FIR has been lodged only on the ground that the marriage has been called off though the family of the respondent no.2 had incurred considerable expenditure for the engagement ceremony. It is further stated that the petitioner no.1 has not returned the gold ring given to him at the time of the engagement.

7. Learned counsel for the petitioners, on instructions, submits that the petitioner no.1 is ready to pay the respondent no.2 an amount of Rs.60,000/- towards the value of the gold ring. The statement is accepted.

8. On going through the entire record, we are of the view that calling off the marriage after engagement, does not amount to an offence of cheating within the meaning of Section 415 of Indian Penal Code. Even if the allegations made in the FIR as well as other documents filed along with the charge sheet are considered, the same do not disclose an offence of cheating or misappropriation. In such circumstances, compelling the petitioners to face the criminal prosecution, would be an abuse of process of Court. Hence, in our considered view, this is a fit case to exercise the powers under Section 482 of the Code of Criminal Procedure, to prevent abuse of process of Court.

9. Hence, the Writ Petition is allowed in terms of prayer clause (BB). Consequently, FIR bearing Crime No.23 of 2018, registered with Police Station, Loha, Dist. Nanded, for the offences punishable under Sections 420, 406 and 500 read with Section 34 of Indian Penal Code, Charge Sheet No.33 of 2018 as well as the criminal proceedings, i.e. R.C.C. No.390 of 2018, pending on the file of learned Judicial Magistrate, First Class, Loha, Dist.Nanded, shall stand quashed. The petitioner no.1 to pay the respondent no.2 a sum of Rs.60,000/- (Rupees Sixty Thousand) towards the value of the gold ring, within one week from today.

[R.M. JOSHI, J.]

[SMT. ANUJA PRABHUDESSAI, J.]

KBP