

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

**924 CRIMINAL APPLICATION NO.2024 OF 2021
WITH
APPLN/3702/2022 IN APPLN/2024/2021**

**SUKHDEO MARUTI GAWALI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Advocate for Applicant: Mr. Subham Jaybhar h/f Mr.Kaldate Sunil D.
APP for Respondents-State : Mr.M.M.Nerlikar
Advocate for Respondent No. 2 : Mrs. Sonawane Sunita G.

...

**CORAM : SMT. ANUJA PRABHUDESSAI &
R.M. JOSHI, JJ.**

DATE : 03.03.2023.

PER COURT :

1. At the very outset, the learned counsel for the applicant stated that in prayer Clauses (C-1) and (C-2) RCC number 37 of 2022 is wrongly typed instead of RCC No. 97 of 2022. He seeks leave to amend the aforesaid prayer clauses. Leave granted. Amendment to be carried out forthwith.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973, for short (Cr.P.C.) for quashing the FIR No. 208 of 2021 registered with Supa Police Station, Tq. Parner, District Ahmednagar and RCC No. 97 of 2022 pending on the file of Judicial Magistrate (F.C.), Parner for the offences under Section 420, 506 of

the Indian penal Code.

3. Learned counsel for the applicant submits that the allegations in the FIR and other material do not constitute an offence of cheating. He submits that the agreement which has entered into between the applicant and the respondent No. 2 is void and the same is not enforceable. He therefore, submits that this is a fit case to quash the criminal proceedings in exercise of powers under Section 482 of the Cr.P.C. He also states that there is delay in lodging the FIR and the delay is not a ground to quash the FIR.

4. Per contra, learned APP submits that the allegations made in the FIR disclose the offence of cheating hence the FIR cannot be quashed. He further submits that apart from the respondent No. 3 the applicant has also cheated four others on the pretext that he could provide job in Railway department and hence proceedings cannot be quashed in exercise of powers under Section 482 of the Cr.P.C.

5. We have perused the record and considered the submissions of the learned counsel for the respective parties. The only question for consideration is whether the allegations made in the FIR and other material on record prima-facie disclose offence of cheating.

6. The aforesaid crime was registered pursuant to the FIR lodged by the respondent No. 2. The applicant is a retired army person, who is related to respondent No. 2. It is the case of the respondent No. 2 that the applicant/accused himself and his brother promised to provide a job in the Railway Department, on payment of Rs. 10,00,000/- each.

7. Accordingly the father of respondent No. 2 paid to the applicant an amount of Rs. 6,50,000/- by cheque and Rs. 3,50,000/- in cash. He further stated that the balance amount of Rs. 10,00,000/- was to be paid on receipt of the appointment letter.

8. It is stated that the applicant neither secured the job nor returned the money. The respondent No. 2 claims that the applicant subsequently agreed to repay the money and accordingly repaid an amount of Rs. 4,00,000/- and entered into an agreement with his father agreeing to repay the balance amount on the condition that they should not file a complaint against him. The complainant has stated that the applicant failed and refused to repay the balance amount, and also threatened to cause their death. On the basis of the allegations, the aforesaid crime came to be registered.

9. Before adverting to the facts it would be relevant to refer to the decision of the Hon'ble Apex Court in **Geo Verghase Vs. State of**

Rajasthan & Anr., 2021 SCC Online SC 873, wherein the Apex Court while considering the scope and ambit of Section 482 of Cr.P.C. has observed thus :

35. The scope and ambit of inherent powers of the Court under Section 482 CrPC or the extra-ordinary power under Article 226 of the Constitution of India, now stands well defined by series of judicial pronouncements. Undoubtedly, every High Court has inherent power to act ex debito justitiae i.e., to do real and substantial justice, or to prevent abuse of the process of the Court. The powers being very wide in itself imposes a solemn duty of the Courts, requiring great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power vested in the Court should not be exercised to stifle a legitimate prosecution. However, the inherent power or the extra-ordinary power conferred upon the High Court, entitles the said Court to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court, or the ends of justice require that the proceeding ought to be quashed.

36. The following observations made by this Court in the case of State of Karnataka Vs. L. Muniswamy & Ors. (1997) 2 SCC 699 may be relevant to note at this stage :-

“The wholesome power under Section 482 CrPC

entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent power, both in civil and criminal matters, to achieve a salutary public purposes. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to the laws made by the legislature. ”

10. In the instant case, the applicant is alleged to have committed offence punishable under Section 420 of the I.P.C. which 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.”

11. Cheating is defined in Section 415 of the IPC, which reads thus :

“Section 415 of Indian Penal Code. "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."

12. In the case of **Deepak Gaba Vs. State of Uttar Pradesh,**

2023 SCC OnLine SC 3, the Hon'ble Apex Court held thus:

“16. In order to apply Section 420 of the IPC, namely cheating and dishonestly inducing delivery of property, the ingredients of Section 415 of the IPC have to be satisfied. To constitute an offence of cheating under Section 415 of the IPC, a person should be induced, either fraudulently or dishonestly, to deliver any property to any person, or consent that any person shall retain any property. The second class of acts set forth in the section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do, if she were not so deceived. Thus, the sine qua non of Section 415 of the IPC is “fraudulence”, “dishonesty”, or “intentional inducement”, and the absence of these elements would debase the offence of cheating. Explaining the contours, this Court in Mohd. Ibrahim and Another v. State of Bihar and Others, observed that for the offence of cheating, there should not only be cheating, but as a consequence of such cheating, the accused should also have dishonestly adduced the person deceived to deliver any property to a person; or to make, alter, or destroy, wholly or in part, a valuable security, or anything signed or sealed and which is capable of being converted into a valuable security.”

13. In the instant case the FIR and other material record prima-facie reveals that the applicant herein had deceived respondent No. 2 and others by falsely promising to provide jobs in the Railway Administration and by such deception he induced respondent No. 2 and others to pay money for the said purpose. The material on record in the form of Bank entries indicate that the victims have transferred money in the account of applicant. The applicant neither secured the job nor repaid the money. Thus, the allegations made in FIR and other material on record prima-facie disclose offence of cheating punishable under Section 420 of IPC. The contention of the learned counsel for the applicant that the entire transaction is void and for these reasons no offence is disclosed is devoid of merits.

14. Under the circumstances, this is not a fit case to exercise the discretion under Section 482 of the Cr.P.C., accordingly the application is dismissed.

15. Pending Criminal applications, if any, stands disposed of.

(R.M. JOSHI)
JUDGE

(SMT. ANUJA PRABHUDESSAI)
JUDGE