

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

CRIMINAL WRIT PETITION NO.366 OF 2019

Shri. Chandrakant Pandurang Koli & Anr. ..Petitioners
Versus
The State of Maharashtra & Ors. ..Respondents

Mr. Shivaji Masal a/w Manasi Pawar, for the Petitioners.
Mr. J. P. Yagnik, APP for the Respondent/State.

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATE : 7th JUNE, 2023

PC.

1. Heard respective counsels.
2. Counsel for the petitioners has placed on record the photocopy of the death certificate of Chandrakant Pandurang Koli i.e. petitioner No.1 herein. The death certificate issued by the competent authority of Municipality, Karad on 1st June, 2023 is taken on record. In view of above, counsel for the petitioners submits that petition at the behest of petitioner No.1 stood abated and same be disposed of accordingly.
3. That being so, the petition stands disposed of as abated at the behest of petitioner No.1.
4. The respondent No.3/complainant though served none appears.

5. We have heard the respective counsels.

6. The prayer is for quashing of the FIR in Crime No.437 of 2018 registered with Powai Police Station for the offence punishable under Section 420 r/w 34 of the IPC.

7. The genesis of the offence is based on the complaint dated 20th August, 2018, lodged by the respondent No.3 against the petitioners, wherein it is alleged that the respondent No.3 *vide* cheque dated 3rd March, 2018 paid an amount of Rs.16,00,000/- to petitioner No.1 so as to purchase half kilogram of gold. Since neither the gold was delivered nor the amount was returned, the respondent No.3 alleged commission of offence punishable under Section 420 of the IPC.

8. Counsel for the petitioners made two fold submissions; (a) that but for the statement in the FIR, there is no material to infer that petitioner No.2 was party to the alleged transaction of purchase of gold and assurance of delivery of gold or in alternate the return of the amount; and (b) an amount of Rs.16,00,000/- was delivered by the petitioner No.1, who is informed to have expired on 15th May, 2023.

9. Mr. J. P. Yagnik, learned APP submits that since the contents of the FIR discloses cognizable offence, the crime came to be registered.

10. We have appreciated the rival submissions.

11. The petitioner No.2 is the son of deceased petitioner No.1. The deceased petitioner No.1 was having certain business relation with the respondent No.3/complainant, out of which the respondent No.3 appears to have paid an amount of Rs.16,00,000/- allegedly for purchase of the gold as could be appreciated from the contents of the FIR.

12. It is claimed that neither the gold was delivered nor the amount was returned. Photocopy of the Demand Draft dated 2nd January, 2019 for an amount of Rs.16,00,000/- is placed on record, wherein amount is allegedly paid to the respondent No.3/complainant. Perusal of the reply dated 3rd January, 2019 to notice dated 24th May, 2018 issued by respondent No.3 under Section 138 of the Negotiable Instruments Act contains a specific endorsement of acknowledgment. The aforesaid factual matrix are not disputed by the respondent No.3 by putting his appearance before the Court. As such, inference that could be drawn from the available material on record is that respondent No.3/complainant has received an amount of Rs.16,00,000/- which is subject matter of the offence from the petitioner No.1 through the aforesaid Demand Draft.

13. As far as petitioner No.2 is concerned, the allegations are that of his participation in the aforesaid transaction, but for the bare statement of the respondent No.3/complainant, there is no

evidence on record to infer or justify the offence of cheating punishable under Section 420 of the IPC.

14. After having considered the references *qua* the allegation of offence of cheating, what can be noticed is, the necessary ingredients of the offence of cheating defined under Section 415 of the IPC cannot be inferred against the petitioner No.2, as there is no material to infer that the petitioner No.2 at any point of time has induced the respondent No.3 by a fraudulent or dishonest act to deliver any property. All such allegations could be noticed from the FIR against the petitioner No.1 only, who is already informed to be dead.

15. Apart from above, the petitioner No.2 never assured to deliver gold as against the amount of Rs.16,00,000/- accepted by the petitioner No.1. The fact remains that there is no material to infer the fraudulent or dishonest inducement on the part of the petitioner No.2 so as to deliver the property.

16. As such, the satisfaction of necessary ingredients of the offence punishable under Section 420 of the IPC cannot be inferred against the petitioner No.2. Perhaps the respondent No.3 has impleaded the petitioner No.2 as accused, he being son of the petitioner No.1 with whom the respondent No.3 had transactions. The necessary ingredients of the offence for punishing the petitioner No.2 under Section 420 of the IPC cannot be inferred. A support can

be drawn from the judgment of Apex Court in the matter of ***S. W. Palanitkar Vs. State of Bihar*** reported in ***(2002) 1 SCC 241***, so as to substantiate the aforesaid findings.

17. That being so, the petition in our opinion needs to be allowed and accordingly allowed in terms of prayer clause (a) to the extent of petitioner No.2.

[SHARMILA U. DESHMUKH, J.]

[NITIN W. SAMBRE, J.]