



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.689 OF 2022**

1. Manisha W/o Shrikrishna Mengade
Earlier Manisha W/o Vyankatesh Tripathi,
Age 43 years, Occ. household,
R/o. Abhiyanta Colony, Gajanan Park,
Mahabal, Jalgaon, Dist. Jalgaon

2. Ashish S/o Ratanlal Rana,
Age-50 years, Occu- Service,
R/o-16, Kolipeth, Rath Chowk, Jalgaon,
Dist- Jalgaon

..Applicants

Versus

1. The State of Maharashtra
Through The Police Inspector,
M.I.D.C. Police Station, Jalgaon,
Dist. Jalgaon

2. Shrikrishna S/o Tukaram Mengade,
Age-38 years, Occu- Business,
R/o- Plot No. 41, Ayodhya nagar,
Jalgaon, Dist- Jalgaon

(A) Nitin Sahitya Nagar, Supreme Colony, Jalgaon.

(B) do Jyotiba fruit co., opp. Chaitanya Kirana, soni Nagar,
Pimprala, Jalgaon.

..Respondents

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Mr. B. R. Warma, Advocate for the Applicants.

Mr. A. M. Phule, APP for Respondent No.1.

Mrs. A. A. Lomte, Advocate for Respondent No.2. (Appointed)

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATED : 03rd SEPTEMBER, 2024.

ORDER (Per S. G. Chapalgaonkar, J.):

1. The applicants have approached this Court under Section 482 of the Criminal Procedure Code for quashing of the charge-sheet no.278/2020 (now RCC No.273/2021) pending before C.J.M. Jalgaon for offence punishable under Section 406, 424 r/w 34 of the Indian Penal Code.

2. The respondent no.2 had lodged report dated 18.08.2019 with Police Station MIDC, Jalgaon alleging that he is a registered owner of Swift Desire car bearing Registration No.MH-19-CD-4222. In the year 2015, he purchased said car availing finance from Shriram Finance Company, Jalgaon. Since 2016 he had love affair with applicant no.1, however, relation came to an end. On 26.07.2019, he left the home to attend his work, his car was parked in front of his house. At about 03.50 pm his wife informed him that applicants have unlocked the car and removed it using crane inspite of her resistance. It is alleged that certain photographs have been snapped through mobile instrument while car was being removed. On enquiry with the crane service provider, he informed that at the instance of applicant no.1 the said car has been removed and dropped in front of her house. Although he requested applicant no.1 to hand over car to him, she refused. Consequently, he lodged report against applicants, which has been culminated into FIR vide Crime No.613/2019 for offences punishable under Section 406, 424 r/w 34 of the Indian Penal Code.

3. In pursuance of the aforesaid crime, investigation progressed, supplementary statement of informant has been recorded on 22.08.2019, which discloses that his car was located in front of house of applicant no.1 and same has been seized by the police. After completion of investigation, charge-sheet bearing no.278/2021 came to be filed in the Court of C.J.M., Jalgaon. Eventually, RCC No.273/2021 has been registered for offence punishable under Sections 406, 424 r/w 34 of the Indian Penal Code.

4. Mr. Warma, learned Advocate appearing for the applicants invites attention of this Court to the photographs and the documents to contend that applicant no.1 had married with

respondent no.2 as per Hindu rites and customs. They lived together as husband and wife. However, suppressing aforesaid fact, FIR has been lodged. He would submit that taking the contents of the FIR as it is, ingredients of Section 424 or 406 would not attract in the facts of the case. The continuation of the proceeding/trial on the basis of impugned charge-sheet would be abuse of process of law. Mr. Warma would further contend that considering the sacred relationship as husband and wife between applicant no.1 and respondent no.2 no charge can be framed against applicants for alleged offence. He would, therefore urge to quash the charge-sheet and consequential proceeding in R.C.C. No.273/2021 pending before C.J.M. at Jalgaon.

5. Mr. Phule, learned APP as well as Mrs. Lomte, learned Advocate appearing for respondent no.2 would submit that ownership of vehicle as per registration particulars is with respondent no.2. The statement of crane service provider supports the contents of the FIR that vehicle was removed at the instance of applicant no.1. The ingredients of Section 424 are eminent from the contents of the FIR. The learned APP would also submit that charge can be altered at any stage of the proceeding. Even this Court comes to the conclusion that ingredients of offence punishable under Section 406 is not attracted, the ingredients of Section 478 of the Indian Penal Code are very much discernible from the contents of the FIR and charge-sheet. They would, therefore, urge to reject the application.

6. We have considered the submissions advanced by the learned Advocate appearing for the respective parties. The allegations in the FIR clearly stipulates that car owned by respondent no.2 was removed by applicants using crane without consent and knowledge

of respondent no.2. The contents of the FIR are supported by the registration documents that confirms ownership of respondent no.2 in relation to car, so also statement of crane service provider affirms the narration given in the FIR. The applicants are charge-sheeted for offence punishable under Section 406, 424 r/w 34 of the Indian Penal Code. At this stage, reference needs to be given to the ingredients of Section 405 of the Indian Penal Code to find out exact requirements for making offence of criminal breach of trust. Section 405 reads thus:

“405. Criminal breach of trust —

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".”

7. Bare reading of aforesaid section two important ingredients are necessary to make out offence of criminal breach of trust. Firstly, there must be entrustment with property or any domination over the property to the accused. In present case, neither there is entrustment with the property nor any domination over the property. The Supreme Court of India in case of ***Roshan Lal Raina Vs. State Of Jammu & Kashmir***¹ emphasized on requirements of entrustment to make out breach of trust within the meaning of Section 405 of the Indian Penal Code. In facts of the present case, ingredients of Section 405 of the Indian Penal Code cannot be persuaded. Consequently, we have no hesitation to hold that on the basis of contents of the FIR and charge-sheet offence punishable under Section 406 of the Indian Penal Code cannot be made out against the applicants. However, we find merit

¹ AIR 1983 SC 631.

in contentions of the learned APP that ingredients of Section 378 can be traced out in the facts of this case. We find that FIR or charge-sheet nowhere asserts commission of offence punishable under Section 379 of the Indian Penal Code against the applicants. However, fact remains that charge can be altered at any point of time during the course of trial. Therefore, at this stage, we refrain from making any further comment on this aspect. Suffice to state here that, *prima facie*, contents of FIR are sufficient to make out cognizable offence against accused.

8. The applicants are also charged for offence punishable under Section 424 of the Indian Penal Code. *Prima facie*, we are of the view that ingredients constituting offence under Section 424 may attract in the facts of the present case against both the applicants on the basis of material in the charge-sheet. In present case, there is clear stipulation in the FIR that there was fraudulent concealment or removal of the property with the assistance of applicant no.2. Therefore, *prima facie*, we are not inclined to accept the contentions of Mr. Warma, learned Advocate appearing for the applicants. In that view of the matter, we are inclined to partly allow the application. Hence, following order:

ORDER

- a. Criminal Application is partly allowed.
- b. The proceeding in RCC No.273/2021 pending before C.J.M., Jalgaon is hereby quashed and set aside to the extent of offence punishable under Section 406 of the Indian Penal Code as against the applicants. However, prosecution can continue for other offence/offences against the applicants and learned Magistrate shall be at liberty to add or alter charge if so required without impeded by this order.

c. Criminal Application is disposed of.

d. Since Mrs. A. A. Lomte, learned Advocate is appointed through legal aid to represent respondent no.2, the Secretary, High Court Legal Services Sub-Committee, Aurangabad Bench do pay the fees of the appointed counsel for respondent no.2 as per schedule.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE