



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1185 OF 2022

1. Premala Narayan Chavan,
age 60 years, Occ. Household,
R/o Paanchincholi, Tq. & Dist. Latur.
At present, Manas Complex, A-201,
Kotwal Nagar, Karjat, Tq. Karjat, District. Raigad.
2. Umesh Narayan Chavan,
age 40 yrs, Occ. Service,
R/o. Paanchincholi, Tq. & Dist. Latur.
At present, Manas Complex, A-201,
Kotwal Nagar, Karjat, Tq. Karjat,
Dist. Raigad. Petitioners.

Versus

1. The State of Maharashtra,
through Police Station,
Gangakhed, Tq. Gangakhed,
District Parbhani.
2. Madhukar Dhanu Rathod,
age 46 yrs, Occ. Agriculture,
R/o Godavari Tanda, Tq. Gangakhed,
District Parbhani. Respondents.

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Advocate for Petitioners : Ms. M.S. Mhase

APP for Respondents : Mr. G A Kulkarni

Advocate for Respondent no.2 : Mr. J.M. Murkute

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CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.

Dated : October 21, 2024.

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

1. The petitioners have approached this Court under
Section 482 of the Criminal Procedure Code for quashment of

the FIR in crime no.11 of 2021 registered with police Station, Gangakhed, District Parbhani for the offences punishable under sections 420, 506 r/w 34 of the Indian Penal Code and consequential proceeding in pursuance to charge-sheet no.256 of 2021 dated 29.10.2021 for the offences punishable under section 420, 406, 506 r/w 34 of the IPC filed before the Judicial Magistrate First Class, Gangakhed.

2. The Respondent no.2 lodged a report with police station Gangakhed dated 5.1.2021 alleging that a proposal for marriage of his daughter was received through Shri Shivaji Pawar. Considering background of the groom and his family, on 4.2.2008 engagement programme was performed. At that time, a gold ring was offered to the Groom. Amount of Rs.2.00 Lakh was spent towards other arrangement. As per settlement, amount of Rs.7.00 Lakh was paid to the accused persons in presence of the witnesses towards advance of marriage expenses. Marriage was proposed to be held on 10.5.2018 at Krushnadas Mangal Karyalaya. Thereafter, an amount of Rs.3.00 Lakh was demanded by accused persons towards advance deposit of marriage hall. Since amount as per the demand could not be arranged, he informed accused persons that he has already paid agreed amount and requested them to arrange for the expenses. Since the amount was not paid, accused persons fixed marriage of groom with one Karishma Raghunath. Thereafter, accused persons were persuaded for refund of Rs.7.00 Lakhs paid in advance. They killed the time and lastly refused to pay the amount. Consequently, he has

been cheated and his daughter is made to suffer due to breach of engagement.

3. On the basis of aforesaid report, crime no.11 of 2021 came to be registered with police station, Gangakhed for the offences punishable under sections 420, 506 r/w 34 of the IPC. Investigation progressed. Finally charge-sheet has been filed in the Court of Judicial Magistrate First Class, at Gangakhed. Consequently, RCC is registered and pending for trial.

4. Learned advocate M.S. Mhase appearing for the petitioners submits that petitioner no.1 is mother of the groom and applicant no.2 is his brother. Other four accused persons are not before this Court. By inviting attention of this Court to the contents of FIR, she would submit that petitioners have been falsely implicated in the aforesaid crime. Although, marriage was fixed between son of petitioner no.1 and daughter of respondent no.2, it could not be carried forward. The son of petitioner no.1 married to other girl, whereas respondent no.2 has also performed marriage of his daughter elsewhere. She is blessed with a son out of her matrimonial relationship. Although, alleged incident is of the year 2018, present FIR is filed in the year 2021 on the basis of false allegations. She would submit that even assuming contents of the FIR and charge-sheet are true and correct, ingredients to make out the offences under sections 420, 406 cannot be made out against the petitioners. She would submit that there are omnibus allegations in the FIR against the petitioners. No

specific role is attributed against them. Consequently, she would urge to quash the FIR and further proceedings.

5. Per contra, Mr. G.A.Kulkarni, learned APP and Mr. J.M. Murkute, learned advocate appearing for respondent no.2 vehemently opposed the petition contending that, there is ample evidence to show that marriage of son of petitioner no.1 and daughter of respondent no.2 was fixed. Engagement programme took place on 4.2.2018. Marriage was to be solemnized on 10.5.2018. Amount of Rs.7.00 Lakh was paid by way of advance towards marriage expenses to the accused persons. They have cunningly performed marriage of groom elsewhere so also retained the amount received from respondent no.2. According to them, contents of the FIR and material collected during investigation is sufficient to bring home the ingredients of cheating and criminal breach of trust.

6. Section 405 of the IPC defines the criminal breach of trust, which 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".

Explanation [1]— A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution

from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.— A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

7. Punishment for offence of criminal breach of trust is provided under section 406 of the IPC. To bring home the aforesaid offence, it is necessary to prove that there has to be entrustment of the property and there must be dishonest misappropriation.

8. In the present case, there is vague and omnibus statement that as per the agreement, amount of Rs.7.00 Lakh was handed over to the petitioners. Statement of the witnesses, however, suggests that amount of Rs.4.00 Lakh was handed over to the groom at the time of engagement and later on an amount of Rs.3.00 lakh was paid to him at Karjat. There is absolutely nothing in the FIR or the charge-sheet to

show entrustment of the amount to the petitioners i.e. mother and brother of the groom. We are, therefore, convinced to hold that there is no triable material against the petitioners to make out the offence punishable under section 406 of the IPC.

9. So far as the charge under section 420 of the IPC, it is necessary to bring home the ingredients of cheating as defined under section 415 of the IPC. Section 415 reads thus :-

Section 415 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.

10. Apparently, to make out the offence of cheating, an inducement with dishonest intention so as to deceive any person is necessary.

11. In this case, the amount was entrusted to groom as per agreement at the time of engagement. Further, to hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making promise, to retain the property. It is well settled that in absence of delivery of the property to any person, by inducing him to hand over the same with dishonest intention to retain the property is necessary.

12. As observed in the aforesaid paragraphs, no specific role is attributed against the petitioners in so-called negotiations nor any allegation is employed that the petitioners have involved themselves in inducement for delivery of the property. As per the allegations against the petitioners, it is difficult to bring home ingredients of cheating against them.

13. Overall survey of the matter depicts that, it is unfortunate case of breakage of the marriage. Incident appears to have been occurred sometimes between March to May, 2018. However, FIR is lodged in January, 2021. Had there been the case of cheating or intention of accused persons to cheat respondent no.2, the engagement ceremony would not have been performed in presence of large gathering. Respondent no.2 would have came in prompt action immediately when the accused persons denied performance of marriage of groom with daughter of respondent no.2. Delay of more than 30 months in lodging the FIR is unexplained. At the most, it would be the case of civil dispute that is failure to refund amount, if any, received by the accused at the time of engagement. The intention to deceive at the inception cannot be carved out from the factual scenario surfaced on the record. Pertinently, petitioner no.1 is a lady i.e. mother of the groom, petitioner no.2 is brother of the groom, who is in service. There is nothing on record to depict their participation in the negotiations with respondent no.2 or receiving the amount at the time of engagement.

14. Apparently, from the contents of the FIR, necessary ingredients of cheating i.e. intention of the petitioners at the

inception to cheat respondent no.2 cannot be drawn on the basis of the material in the charge-sheet. We, therefore, hold that there is no propriety in continuing the criminal proceeding against the petitioners for want of ingredients of offences alleged. At this stage, we are guided by the principles of law espoused by the Supreme Court of India in case of **State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors** reported in **AIR 1992 SC 604** for exercise of powers under section 482 of the Cr.P.C., which reads thus :-

“108.In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.”*

15. In that view of the matter, we proceed to pass the following order in exercise of inherent powers under section 483 of the Criminal Procedure Code.

ORDER

- i. Criminal writ petition is **allowed**.

ii. The First Information Report in crime no.11 of 2021 registered with police Station, Gangakhed, District Parbhani for the offences punishable under section 420, 506 r/w 34 of the Indian Penal Code and consequential proceeding in charge-sheet no.256 of 2021 filed before the Judicial Magistrate First Class, Gangakhed for the offences punishable under section 420, 406, 506 r/w 34 of the Indian Penal Code is hereby quashed and set aside as against the petitioners herein.

iii. Criminal Writ Petition **disposed off.**

(S. G. CHAPALGAONKAR)
Judge

(SMT. VIBHA KANKANWADI)
Judge

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