



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

**CRIMINAL APPLICATION NO.1819 OF 2020**

1. Dr. Deepa d/o Mohan Sharma,  
age 34 yrs, Occ. Doctor.
2. Mohan s/o Ravidutta Sharma,  
age 60 yrs, Occ. Business.
3. Geeta w/o Mohan Sharma,  
age 55 yrs, Occ. Household.

Applicant nos.1 to 3 are resident  
of Sumit Apartment, 37, Huda Heights,  
Near Lotus Pond, Banjara Hills,  
Hyderabad - 500034.

4. Vijay s/o Ravidutta Sharma,  
age 55 yrs, Occ. Business,  
N-1, 137 Sector -A,  
Cidco, Aurangabad.

Applicants  
(orig accused 1 to 4)

**VERSUS**

Kishorilal Bablani,  
adult, Indian Inhabitant,  
Age 67 yrs, Residing at 401,  
Kalika Plot no.12-A, Greater Bombay,  
Co-operative Housing Society Ltd.,  
Gulmohar Cross Road, No.4, JVPD  
Scheme, Juhu,  
Mumbai - 400049.

Respondent  
(complainant)

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Mr. A.D. Soman, Advocate for Applicants.  
Mr. P. G. Godhamgaonkar, Advocate Respondent.

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**WITH**

**CRIMINAL APPLICATION NO.9 OF 2023**

Mr. Kishorilal Bablani  
Adult, Indian Inhabitant  
Age: 70 years, residing at 401  
Kalika Plot N. 12-A, Greater Bombay  
Coop. Housing Society Ltd,  
Gulmohar Cross Road, N-4  
JYPD Scheme Juhu  
Mumbai – 400 049

Applicant  
(orig. complainant)

**VERSUS**

1. Dr. Deepa d/o Mohan Sharma  
Age : 34 years, occu. Medical  
Practice.
2. Mohan s/o Ravidutta Sharma  
Age : 60 years, occu: Business
3. Geeta w/o Mohan Sharma  
Age: 55 years, occu. Household  
Nos.1 to 3 are resident of  
Summit Apartments, 37, HUDA  
Heights, Near Lotus Pond  
Banjara Hills, Hyderabad, 500 034
4. Vijay s/o Ravidatta Sharma,  
Age : 55 years, occu: Business  
r/o : 137, Sector – A, N-1,  
Cidco, Aurangabad.

Respondents  
(orig. accused no. 1 to 4)

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Mr. P.G. Godhamgaonkar Advocate for Applicant  
Mr. A.D. Soman & G.V. Padalkar For Respondents.

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**CORAM : S. G. CHAPALGAONKAR, J.**

**Dated : JANUARY 08, 2024.**

**JUDGMENT :-**

1. Heard finally with consent of the parties.

2. The applicants seek to invoke jurisdiction of this court u/s 482 of Criminal Procedure Code to quash the complaint and challenged order dated 6.1.2020 passed by the Judicial Magistrate First Class, Aurangabad in Criminal M.A.No.2728 of 2018 thereby issuing process against the applicants/accused for the offences punishable under sections 465, 466, 468, 470, 471, 474 and 120-B of the Indian Penal Code and section 23 of Registration of Birth and Death Act, 1969 (for short 'the Act').

3. Facts leading to present case can be stated as under :-

The respondent/original complainant approached the Court of JMFC, at Aurangabad vide Criminal MA. No.2728 of 2018 with prayer to issue directions to police station officer under sections 156 (3) of the Criminal Procedure Code for registration of the offence against applicants/accused. In alternative, to issue process for the aforesaid offences. It is the contention of the complainant that in year 2013 his son Sahil married with accused no.1-Dr. Deepa. However, marriage could not be consummated as accused no.1 was allergic to be touched by any male counterpart and she used to repel any advances made by the Sahil. She told Sahil that her parents have forcibly got her married. She always had repulsion to sexual intercourse. Even, she refused to go on tour with Sahil as per pre-booked honeymoon package. After few days of marriage, accused no.1 joined fellowship course at Bangalore. Sahil also shifted to Bangalore and stayed with her in a flat but

in separate room. In March, 2014 accused no.1 accompanied with accused no.2 started residing separately at Bangalore. In December 2014, accused nos.2 and 3 send E-mails seeking divorce by mutual consent. The complainant and his son Sahil agreed for the same. However, accused no.2 put pre-condition raising demand of Rs.4 crores, but, finally agreed to settle at Rs.50 Lakhs. Complainant accepted their proposal. Thereafter, accused no.2 expressed his desire to exchange major gift items of Gold, Silver and cash. Accordingly, receipts were generated regarding handing over of the gift items. However, accused persons in their subsequent mails and telephonic conversations continued with demands for money and issued threats of filing false complaints. When the complainant refused to agree with the illegal demands, false complaints under section 498-A of the IPC and Protection of Women From Domestic Violence Act came to be filed. It is the contention of the complainant that there was nagging suspicion about conduct of accused no.1/Dr. Deepa that she was something amiss. The complainant obtained a copy of original birth register concerning accused Dr. Deepa. The entry dated 25.10.1984 appears at serial no.440 at page no.467 of Birth Register at Aurangabad Municipal Corporation. The birth entry shows male "M" child born to Gita Mohan Sharma at Dumir Maternity and Nursing Home. It is contention of complainant that on 7.4.1994 accused nos. 2 and 3 illegally obtained the birth certificate from Ward Office No.5-B/Zone-7, Aurangabad Municipal Corporation depicting sex of the child as Female. The birth register maintained at head office do not show issue of any

birth certificate against said entry at serial no.440 of page 467 which is a false and fabricated document. Complainant attempted to obtain information under RTI regarding the application submitted by accused for issuance of birth certificate dated 7.4.1994, however, it is not provided. Even his attempt to obtain computerized birth certificate of child born and registered at serial no.440 of birth register for the month of October, 1984 are not responded. It is the contention of the complainant that as per RTI information received to him on 29.11.2016, an application was submitted by Shri Vijay Ravidutta Sharma for issue of birth certificate of Deepa Mohan Sharma alongwith Aadhar card and SSLC certificate etc. Gender is mentioned as 'Female'. The application is filed in the name of Shri Mohan Ravidutta Sharma. The birth certificate dated 14.12.2016 has been prepared and issued dishonestly and fraudulently by the Clerk and Ward Officer of the Municipal Corporation, Aurangabad. Even, application in the name of Mohan Ravidutta Sharma bears forged signature which has been done by Vijay Ravidutta Sharma/accused no.4.

4. It is further contention of complainant that birth certificate dated 14.12.2016 has been prepared by officer of the Municipal Corporation i.e. accused nos.5 and 6. As such, accused nos.1 to 7 have committed the offence of forgery as per section 465 and 466 of the IPC in connivance with each other. False evidence in the form of birth certificate dated 14.12.2016 is prepared by accused nos.1 to 4 in connivance with the officers of the Municipal Corporation. The contention of the

complainant is that birth certificate dated 7.4.1994 and 14.12.2016 are inconsistent with entries in the statutory records and have been illegally and fraudulently issued by the Municipal Corporation ward Officer. Further, forwarding letter and form no.2 prescribed under the Act regarding Child delivered by Smt. Gita Mohan Sharma on 25.10.1984 at Dumir Maternity and Nursing Home, Aurangabad has been caused to disappear and destroyed by accused persons in connivance with each other. As such, accused persons have committed the aforesaid offences.

5. The learned Magistrate initially directed the complainant to examine himself and other witnesses while negated the prayer to issue directions under sections 156 (3) of the Criminal Procedure Code. The complainant recorded his statement under section 200 of the Cr.P.C. in tune with the contentions raised in the complaint. Accordingly, the learned Magistrate observed that birth certificate dated 18.12.2016 appears inconsistent with Form No.C of birth register maintained by Aurangabad Municipal Corporation, Aurangabad as regards to the entry of sex of accused no.1, therefore, prima faice, there is forgery. Accordingly, issued process against accused nos. 1 to 4 while declined to do so in respect of the accused nos. 5 to 7 for want of necessary sanction in terms of section 197 of the Criminal Procedure Code.

6. Mr. Soman, learned counsel appearing for the applicants would submit that there is matrimonial dispute

between applicant no.1-Dr. Deepak and Sahil i.e. son of respondent/complainant. Proceedings are pending before the Courts at Hyderabad for divorce/dissolution/invalidation of marriage. He would submit that so far as entry in register of births and deaths regarding applicant no.1 is concerned, there was a clerical/typographical mistake while entering sex. Necessary application was moved for correction of the entry in terms of section 15 of the Registration of Births Act, 1969 read with Maharashtra Rules 2000. Registrar had referred applicant no.1 for medical examination. The Expert's Committee at Sasoon General Hospitals and B.J. Government Medical College and Hospital, Pune as well as Government Medical College and Hospital, Aurangabad have submitted their expert reports of examination confirming sex of applicant to be 'female'. In spite of receipt of said reports, competent authority had not acted upon the reports. Therefore, writ petition no.3914 of 2019 was filed before this Court, in which directions were issued to the competent authority/Registrar to take decision upon the application of the petitioner within the period of three months. Competent authority has accordingly allowed the correction in the entry in the birth register and sex of the applicant no.1 is entered as 'female' by replacing incorrect entry. He would submit that aforesaid decision of the Registrar is challenged by the respondent/complainant in writ petition no.1694 of 2020. However, till this date, no further orders are passed by this Court. He would therefore urge that allegations in the complaint are baseless. No offence can be made out against the applicants. The learned Magistrate was not apprised with

the judgment of the Division Bench of this Court in Writ Petition No.3914 of 2019 which is instrumental in carrying corrections in the records. He would submit that so-called birth certificates dated 7.4.1994 or 14.12.2016 never being used in any proceeding, particularly, it is not case of the complainant that such document was ever used or acted upon in any manner to prejudice anyone. He would, therefore, submit that the complaint is nothing but misuse of the process of law.

7. Per contra, Mr. P. G. Godhamgaonkar, learned advocate appearing for the respondent/complainant vehemently opposed the prayers in application. He would submit that systematic fraud has been exercised by accused persons causing great mental torture and loss to the complainant and his family members. He would point out that original birth record of applicant/accused clearly depicts entry of 'male'. However, suppressing this fact and her repulsion to sexual intercourse, marriage was solemnized only with intention to extract money from the complainant and his family members. Life of Sahil has been ruined due to greed of accused persons. He would submit that while original birth record dated 25.10.1984 continuous to depict birth of applicant no.1 as 'male', manipulated birth certificates dated 7.4.1994 and dated 14.12.2016 have been prepared dishonestly and fraudulently in connivance of all accused persons. He would further submit that although in writ petition no.3914 of 2019 this Court had issued directions to decide application received from the accused for correction of entry in the register of birth

in terms of the procedure laid down under section 15 of the Act, correction is carried dehorse the procedural compliance's. He would therefore submit that the learned Magistrate has rightly applied his mind to the material on record and rightly issued the process against the applicants/accused.

8. Mr. Godhamgaonkar, would further submit that the applicants have approached this Court without availing the remedy of revision before the Sessions Court. The powers under section 482 of the Cr.P.C. can be exercised in exceptional cases. In the present case, no such grounds are available. To buttress his submissions, he relies upon various judgments of the Supreme Court of India to contend that the powers under section 482 of the Cr.P.C. cannot be exercised as the Court of appeal or revision but for a caution to do real and substantial justice when no offence is disclosed by the complaint. In present case averments in complaint clearly makes out offences alleged.

9. Having considered the submissions advanced and after going through the record of this application, apparently, there is serious matrimonial dispute between son of complainant and applicant no.1. Admittedly, matrimonial proceedings are pending before the Court of competent Jurisdiction at Hyderabad. Son of the complainant i.e. Sahil has filed a proceedings under section 11 of the Hindu Marriage Act seeking declaration of nullity of the marriage vide MCA No.4548 of 2016 and applicant no.1-Dr.Deepa has filed petition

under section 13 (i)(ia) of Hindu Marriage Act seeking decree of divorce on the ground of cruelty. Both proceedings are instituted in the year 2016. In nutshell, allegations in the complaint are that accused no.1 is born male. Original entry in birth register depicts said fact. However, accused persons in connivance with the officers of the Municipal Corporation obtained birth certificates depicting accused no.1 to be 'female'. When proposal for marriage of accused no.1 with son of complainant was discussed, the aforesaid facts were suppressed. It is only after marriage, complainant and his family members came to know her reluctance to consummate the marriage and her problem on sex issue. According to the complainant, systematic fraud has been exercised by accused persons only with intention to extract money.

10. Careful consideration of contents of the complaint would show that there are no allegations/avermments to indicate that birth certificates dated 18.12.2016 or 7.4.1994 were used by accused persons as against the complainant or his family members as an instrument in commission of offence. There are no details as regards to birth certificate dated 7.4.1994 being used by the accused persons in any proceeding or at the time of marriage. The certificate dated 18.12.2016 is alleged to have obtained subsequent to the marriage, however, complainant nowhere prescribes that such certificate was used knowing it to be false for any purpose. Pertinently, entry in original birth certificate dated 25.10.1984 is now corrected and sex of accused no.1 is shown as 'female'. The change is effected

under the orders of the competent authority, who had referred accused no.1 for medical examination to Sasoon General Hospitals and B.J. Government Medical College and Hospital, Pune as well as Government Medical College and Hospital, Aurangabad. The reports of medical examination, which are based on scientific and physical tests depicts sex of applicant no.1 to be 'female.' Although, decision of competent authority is further subjected to challenge mainly on procedural grounds before this Court, no further orders are passed in the said writ petition.

11. The learned Magistrate while issuing the process observed that the birth certificates issued in the year 1994 and 2016 showing sex of accused no.1 as female are contrary to the birth register maintained by the Aurangabad Municipal Corporation. Pertinently, when impugned order of issuance of process was passed on 6.1.2020, the order dated 6.9.2019 passed by this Court in Writ Petition No.3914 of 2019 and consequential correction in the birth register dated 18.11.2019 was not brought to the notice of Magistrate. Apparently, the order is passed in ignorance of supervening events surfaced after filing of the complaint. Had the aforesaid material have been brought to the notice of the learned Magistrate, possibilities would have been different.

12. Since this Court is dealing with prayer for quashing of complaint and consequential order of issuance of process, it would not be necessary to much delve deep into matrimonial

dispute going on between the parties or even validity, legality or correctness of the order regarding correction of birth records. This Court would limit its consideration to the basic averments in the complaint and would endeavor to find out if any offence under sections 465, 466, 468, 470, 471, 474 and 120-B of the IPC and section 23 of the Registration of Births and Deaths Act, 1969 can be made out against accused persons and whether there are fair chances of conviction based on such averments. As noted above, most part of the complaint which runs into almost 21 pages is devoted to the background of matrimonial dispute between the parties. From paragraph no.13 of the complaint, allegations are made regarding birth certificate dated 7.4.1994 and 14.12.2016 being fabricated and manipulated documents inconsistent with original birth record. In entire complaint it is not alleged as to how these two documents have been fabricated by accused or used by them to prejudice the complainant or his family members. The complaint merely state that such certificates were obtained in connivance with the officers of the Municipal Corporation, which are inconsistent with original birth record. However, unless specific averments are made to show that such certificates were prepared or obtained with intention to cheat the complainant or for commission of any further offence, it would be difficult to hold that the offences for which process has been issued can be made out against the applicants/accused.

13. The Sections 465 and 466 of Indian Penal Code prescribes punishment for forgery and forgery of public record. The allegation of complaint in this regard may attract penalty against officer of Municipal Corporation, who was in-charge of public record or who prepared and issued birth certificates, but no process has been issued against any officer. Allegations in complaint are insufficient to bring home ingredients of dishonest or fraudulent intention of applicants when nothing is stated in complaint that document alleged to have been forged have been used for any purpose. Similarly, Section 468, 471 and 474 would not attract in facts of this case unless fraudulent or dishonest intention of accused persons to use forged document is specifically spelled out in complaint. The Division Bench of this court while deciding with similar situation in case of **Syed Farooque V/s State of Maharashtra (AIR Online 2023 Bom 587)** observed as under:

*“7. In absence of any material on record to indicate that the petitioners had committed forgery within the meaning of Section 463 of the Code of Criminal Procedure, the charges under Sections 465, 468 and 471 would not sustain. There is also no material on record to suggest that the petitioners herein had induced or deceived any person with dishonest or fraudulent intention. Hence, in our considered view, the allegations made in the First Information report as well as the other material collected in the course of the investigation, do not disclose offences as alleged. In such circumstances, continuation of the proceedings would be sheer abuse of the process of Court.”*

14. The Supreme Court of India in the matter of **State of Haryana and others v/s Ch. Bhajan Lal** reported in **AIR 1992 Supreme Court 604**, laid down broader principles for exercise of inherent powers u/s 482 of Criminal Procedure Code which reads as under :-

*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.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the [FIR](#) do not disclose a cognizable offence, justifying an [investigation](#) by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient*

*ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

15. Further recently in case of **Salib @ Shalu @ Salim V/s State of Uttar Pradesh and others** (2023 SCC Online SC 947) Supreme Court observed as under :-

*28. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under [Section 482](#) of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under [Article 226](#) of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking*

*personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under [Section 482](#) of the CrPC or [Article 226](#) of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.*

16. In this backdrop, keeping in mind principles of law enunciated in aforesaid judgments, it can be gathered from the documents on record that complainant had apprehension that such certificates would be used in defence by accused no.1 in the proceeding seeking nullity of the marriage. Therefore, in the year 2019 he instituted the present complaint. Pertinently, the issue as to whether marriage between applicant no.1 and her husband Sahil is vitiated by fraud would be dealt with by competent Court of jurisdiction in the pending proceeding seeking nullity of marriage. Original record regarding birth of accused no.1 as well as subsequent changes therein can be

appropriately considered in such proceeding. Therefore, further deliberation on this aspect would not be necessary while deciding the present proceeding. However, on consideration of contents of the complaint, apparently, ingredients of the intentional forgery or forgery for cheating or forgery of public record or register does not attract. Even in absence of use of the document, ingredients of section 474 of IPC would not attract.

17. The Section 23 of Registration of Birth and Death Act would not attract against applicants/accused on basis of allegations in complaint which are bereft to bring home necessary ingredients to constitute such offence. The section 23 provides for penalties for defaults in complying various requirements mandated under the scheme of the Act. The wording of Section can be given here for ready reference.

*Section 23 in The Registration of Births and Deaths Act, 1969*

*23. Penalties —*

*(1) Any person who—*

*(a) fails without reasonable cause to give any information which it is his duty to give under any of the provisions of sections 8 and 9; or*

*(b) gives or causes to be given, for the purpose of being inserted in any register of births and deaths, any information which he knows or believes to be false regarding any of the particulars required to be known and registered; or*

*(c) refuses to write his name, description and place of abode or to put his thumb mark in*

*the register as required by section 11, shall be punishable with fine which may extend to fifty rupees.*

*(2) Any Registrar or Sub-Registrar who neglects or refuses, without reasonable cause, to register any birth or death occurring in his jurisdiction or to submit any returns as required by sub-section (1) of section 19 shall be punishable with fine which may extend to fifty rupees.*

*(3) Any medical practitioner who neglects or refuses to issue a certificate under sub-section (3) of section 10 and any person who neglects or refuses to deliver such certificate shall be punishable with fine which may extend to fifty rupees.*

*(4) Any person who, without reasonable cause, contravenes any provision of this Act for the contravention of which no penalty is provided for in this section shall be punishable with fine which may extend to ten rupees.*

*(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this section shall be tried summarily by a Magistrate.*

The perusal of allegations in the complaint nowhere makes out any offence against the applicants/accused. Therefore, order issuing process for the aforesaid offences cannot be justified. Continuation of the criminal proceedings in such cases would be abuse of process of law. The complaint being bereft to make out offences alleged is liable to be quashed and set aside. Resultantly, criminal application no.1819 of 2020 succeeds.

18. So far as criminal application no.9 of 2023 is concerned, since complaint in Criminal M.A. No.2728 of 2018 dated 24.12.2018 itself is quashed, prayer in Criminal Application no.9 of 2023 to quash and set aside the impugned order dated 13.10.2022 passed on Exhibit-10 in Cri.M.A. No.2728 of 2018 thereby seeking continuation of proceeding dehorse stay order in criminal application no.1819 of 2020 does not survive. Hence, Criminal application no.9 of 2023 is disposed off as rendered infructuous. Hence, the following order.

**ORDER**

- i. Criminal application no.1819 of 2020 is hereby allowed in terms of prayer clause "A". Criminal application accordingly disposed off.
- ii. Criminal application no.9 of 2023 is disposed off as infructuous.

( S. G. CHAPALGAONKAR )  
JUDGE

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