IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3079 OF 2023

Hana Khan d/o Mohammed Mohsin Khan
Aged 39 years, Occ. Pilot,
Residing at A-31, Sector-52, NOIDA,
Uttar Pradesh – 201 301 .. Petitioner

vs.

1. State of Maharashtra
(At the instance of Mahatma Gandhi
Chowk Police Station, Sangli)

2. Aatish Sashikant Shinge,
Aged 48 years, Occ. Pilot,
Originally Residing at Yash Niwas,
Sundar Nagar, Near Anand Nursing
Road, Miraj-Sangli Road, Sangli.
And
presently residing at Yash Kunj,
50/421, Unnat Nagar – II, Goregaon (W),
Mumbai – 400 104. .. Respondents

Ms. Bani Dikshit, a/w. Ganesh Bhujbal, for the Petitioner.
Mr. Y. M. Nakhwa, APP, for the Respondent-State.
Mr. Vivek Joshi, for the Respondent No.2.

CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.

RESERVED ON : 8th DECEMBER, 2023.
PRONOUNCE ON : 8th JANUARY, 2024.

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) Present Petition is filed under Article 226 of Constitution of India read with Section 482 of Code of Criminal Procedure seeking to quash

and set aside the F.I.R. bearing C.R. No.211/2022 registered with Mahatma Gandhi Chowk Police Station, at Sangli, for the offences punishable under Sections 420, 406 and 506 of the Indian Penal Code, 1860. Respondent No.2 has opposed the Petition by his affidavit-in-reply.

2) Heard Ms. Bani Dikshit, learned counsel for the Petitioner, Mr.Y.M. Nakhwa learned APP for the Respondent-State and Mr. Vivek Joshi, for Respondent No.2.

3) Rule. The Rule is made returnable forthwith and by consent of the parties the matter is taken up for final hearing.

4) The impugned F.I.R. has been registered on the report filed by Respondent No.2, wherein it is stated that, since May 2003, the Petitioner and Respondent No.2 were friends. The Petitioner used to meet Respondent No.2, at Mumbai. At that time, the Petitioner told the Respondent No.2 that, she is married, however, due to matrimonial disputes she has filed a divorce case against her husband and it is pending. The Petitioner also told that, she is willing to be a pilot and after becoming pilot, she would marry with Respondent No.2. The Petitioner also told that, she is doing a business of event management, at Delhi and her family is residing at Meerut, Uttar Pradesh. Her father has 150 *acres* of land at Meerut, out of which 4 acres land would be acquired by the Government, 2 Acres land at Delhi is standing in her name.

4.1) It is stated that, in September 2015, the Petitioner went to America for pilot training. However, the Respondent No.2 was in contact with her. In March 2016, the Petitioner told to Respondent No.2 that she is in need of $10,000/-. Hence, Respondent No.2 sent $10,000/- to her through his friend. Further, the Petitioner told the Respondent No.2 that, since she was teenaged, her father is not giving her money, therefore, she requested Respondent No.2 to give her money to complete her training and promised that, on completing the training, she would return that money by selling her 2 acres of land. Hence, between August-2016 to February-2019, Respondent No.2 gave total Rs.58,92,000/- to the Petitioner by banking transaction and/or cash through his friend and mother. The Petitioner returned to India in August-2016 after completing her training. At that time, the Respondent No.2 demanded his money back. However, she did not return it on the pretext that, her event management business is closed. Hence, she would return the money either by selling or transferring her land in the name of Respondent No.2. During the aforesaid period, Respondent No.2 was calling and meeting the Petitioner and demanding his money back, but she avoided to pay.

4.2) In the year 2019, the Petitioner was appointed as pilot in Indigo Airlines. Then she stopped talking with Respondent No.2 and avoided to return his money. Hence, Respondent No.2 enquired about her land and her divorce status. It revealed that, neither the Petitioner filed the divorce case against her husband nor any land is standing in her name at Delhi. Thus, the Petitioner cheated to Respondent No.2.

4.3) It is stated that, when mother of Respondent No.2 learnt about the incident, she phoned the Petitioner and enquired with her. However, the Petitioner threatened that, she would file a police case and make them sit in jail. Hence, on his mother's say, Respondent No.2 did not file the report immediately. Thereafter also the Petitioner avoided to return the money when demanded. Hence, on 24th November, 2021, mother of Respondent No.2 filed one complaint with the Superintendent of Police, Sangli on behalf of Respondent No.2. Thereafter, Respondent No.2 filed the present report, pursuant to which the impugned F.I.R. has been registered against the Petitioner. Hence this Petition.

5) Learned counsel for the Petitioner vehemently submitted that, assuming without admitting that some money is due from the Petitioner to Respondent No.2, only proceedings for recovery of the money will lie in civil Court because the element of cheating is completely absent in the transactions. Thus, the dispute between the Petitioner and Respondent No.2 is purely of civil nature. As such, the offences under Sections 420 and 406 of the I.P.C. cannot be levelled against the Petitioner.

5.1) It is submitted that, there is huge delay in filing the F.I.R., which is not satisfactorily explained. Initially, mother of Respondent No.2 had filed a similar report/complaint with the Superintendent of Police, Sangli on 24th November, 2021, but said complaint seems to be closed in view of the reply of the Petitioner. It is submitted that, meanwhile Respondent No.2 indulged in defaming the petitioner and her family members. Therefore, the Petitioner filed a civil suit before the Delhi Court and sought an injunction against Respondent No.2. However, he continued to defame her. Hence, the Petitioner sought an Order of the Court, which caused him to remove certain portion of the Facebook post dated 1st September, 2020. It is submitted that, the Petitioner has also filed a complaint seeking an action against Respondent No.2 under Section 504 and 506 of the I.P.C. Therefore, Respondent No.2 filed the impugned F.I.R. as a counter blast to the civil and criminal action by the Petitioner, to recover the money and to harass her.

5.2) Lastly, learned counsel for the Petitioner submitted that, all the alleged monetary transactions took place at Delhi and else places and not a single transaction took place at Sangli. Yet, the F.I.R. came to be registered at Sangli Police Station sans jurisdiction. This fact also fortifies that the crime against the petitioner is registered just to recover the money and to harass her. Thus, the impugned F.I.R. smacks with malafide. It is vexatious and a result of personal vengeance, hence it be quashed.

6) Per contra, learned APP has submitted that, the facts and

circumstances of the case clearly indicate that, after receiving huge money from Respondent No.2, the Petitioner never wanted to return it. As such, the intention to cheat on the part of Petitioner was very much present since beginning. Thus, there is *prima facie* case of the offences alleged against the Petitioner. Hence, the Petition may be dismissed. Similar is the contention by learned Advocate for Respondent No.2.

7) In the light of the rival submissions, first we have to see whether any of the ingredients under Sections 405 and 420 of the I.P.C. have been made out or not. The offences of criminal breach of trust and cheating are respectively defined under Section 405 and 415 of the I.P.C. and the same are respectively punishable under Section 406 and 420 thereof. To constitute the aforesaid offences, it is inbuilt that there has to be a necessary dishonest intention, which is *sine qua non* to hold the accused guilty for commission of the said offence.

8) In the case of *Joseph Selvaraja vs. State of Gujarat:(2011) 7 SCC 59*, cited by learned counsel for the Petitioner, the Hon'ble Supreme Court observed that, "*A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the Courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out*".

9) In the above context, it is important to note that, there were many bank transactions whereby an amount totaling to Rs.42,12,000/- was transferred to the bank account of the Petitioner from time to time. Similarly, total amount of Rs.16,80,000/- was given to her by cash in the same manner. These facts are corroborated by the statement of the witnesses and the bank record. The above transactions took place between August-2016 to February-2019, within a span of about 2 and half years. Meanwhile, the Petitioner went to America, undergone the pilot training and returned to India. After her return to India also the Petitioner was getting monetary help from Respondent No.2. Thereafter, Respondent No.2 started demanding his money back. However, the Petitioner avoided to return on the pretext that her event management business is closed or that she would return the money either selling her land or transferring it in the name of Respondent No.2.

10) In the year 2019, the Petitioner got appointed as pilot. Thereafter, she stopped talking with Respondent No.2. This conduct of the Petitioner made the Respondent No.2 to enquire against her and surprisingly, it revealed that neither the Petitioner filed any divorce case against her husband nor any land is standing in her name at Delhi.

11) From the above circumstances it is crystal clear that, as soon as the monetary need of the Petitioner was over, she started distancing from Respondent No.2 to avoid paying back his money. The plaint of the Civil Suit

filed by the Petitioner indicate that in the year 2020 Respondent No.2 posted against the Petitioner some defamatory matter on social media. Some posts (page No.59) indicate that since the Petitioner was not returning the money, dispute took place between her and Respondent No.2, therefore, the later posted that matter to show that the Petitioner turned back from her promise to return the money given as help. Here it is important to note that, notwithstanding the Petitioner received huge money from Respondent No.2, she did not produce a single bank or cash payment entry towards return of the money that she received from Respondent No.2. The Petitioner did not explain as to what she did of the huge money that she received from the Respondent No.2. The Petitioner could not explain as to how only an amount of Rs.12,00,000/- plus is payable by her out of the total amount that she received from Respondent No.2, which is almost 5 times higher than that.

12) In view of the above discussion, we are of the firm opinion that since beginning there was dishonest intention on the part of the Petitioner not to return the money of Respondent No.2. Hence, by giving false promise of marriage and returning that amount by disposing her land, the Petitioner deceived the Respondent No.2 and dishonestly induced him to extend her the monetary help from time to time and then the Petitioner misappropriated or converted to her own use that money. As such, this is a tactful and a

strong *prima facie* case of the criminal breach of trust and cheating by the Petitioner.

13) The impugned F.I.R. is also much criticized on the ground that, Sangli Police registered the same without jurisdiction. Therefore, it is illegal. However, the F.I.R. clearly mentions that part transaction took place at Sangli when mother of Respondent No.2 gave Rs.15,000/- by cash to the Petitioner. As such said amount was returnable at Sangli only. Therefore, according to us, Sangli Police has got jurisdiction to investigate the same. In this regard it is apt to refer the judgment in the case of *Navin Chandra Majethia vs. State of Maharashtra* [(*2000*) *7 SCC 640*] wherein at paragraph 22, the Hon'ble Supreme Court has observed as under :

> *"22. So far as the question of territorial jurisdiction with reference to a criminal offence is concerned the main factor to be considered is the place where the alleged offence was committed."*
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> *The territorial jurisdiction of a Court with regard to criminal offence would be decided on the basis of place of occurrence of the incident and not on the basis of where the complaint was filed and the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another*

Court. The venue of enquiry or trial is primarily to be determined by the averments contained in the complaint or charge sheet".

14) In the case in hand, the investigation of the crime is yet not over. The monetary transactions took place at various places. Scuttling the investigation in pursuance of present F.I.R., according to us, will not be proper on such hyper technical grounds as raised by the Petitioner. In the backdrop and considering the aforestated observations in the case of *Navin Chandra Majethia (supra),* the question of the territorial jurisdiction raised herein would hardly benefit the Petitioner.

15) In view of the above discussion, there is no substance in the Petition and the Petition is liable to be dismissed.

15.1) Criminal Writ Petition No.3079 of 2023 is dismissed.

(SHYAM C. CHANDAK, J.) **(A. S. GADKARI, J.)**