

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

CRIMINAL APPLICATION NO. 266 OF 2022

1. Akhtar Hussain Shaikh

2. Noor Alam Hasib Shah

...Applicants

Versus

1. The State of Maharashtra

2. Noorjahan Farhat Shaikh

...Respondents

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Ms. Falguni Brahmbhatt a/w Mr. Abdul Kader Lokhandwala, Advocate
for the Applicants.

Mr. A.R. Shaikh, for Respondent No.2.

Ms. Rutuja Ambekar, APP for the Respondent No.1 – State.

P.I. Mr. Ravindra Kalamkar, L.C.B. Kolhapur, present.

PSI Mr. Gonare, Amboli Police Station, Mumbai, present.

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**CORAM : PRAKASH D. NAIK, &
N. R. BORKAR, JJ.**

DATE : 15th APRIL, 2024.

P.C.:

1. The applicants are charge-sheeted for the offences punishable under Sections 420, 306 r/w Section 34 of Indian Penal Code (for short “IPC”). The charge-sheet arises out of the First Information Report (for short ‘FIR’) dated 17.11.2017 registered with Amboli Police Station, Mumbai vide C.R. No.413 of 2013.

2. The statement of complainant was recorded on 15.10.2017. However, the FIR was registered on 17.11.2017 for offences punishable under Section 420 r/w Section 34 of IPC. The complainant had alleged that the accused No.1 Smt. Aruna Belose had induced the complainant to invest the money in the company of applicant No.2. The complainant's husband was working abroad. She invested huge amount in the company of the applicant No.2. Subsequently, the accused promised that they would get admission for the son of complainant and induced her to part with huge amount. The complainant had invested an amount of Rs.1,35,00,000/-. It was alleged that she was cheated.

3. The husband of the complainant allegedly committed suicide on 16.10.2017. The complainant had produced the suicide note purportedly written by the deceased-husband on 28.12.2017. The supplementary statement of the complainant was recorded on 28.12.2017 and 13.09.2018.

4. Learned Advocate for the applicants and Respondent No.2 submitted that the parties have resolved the dispute and the proceedings can be quashed against the applicants with the consent of complainant. It is submitted that no role has been ascribed to applicant No.1. The applicant No.2 had agreed to return the

amount to the complainant which was received by him. The amount of Rs.10,00,000/- has been returned by applicant No.2 to complainant. The complainant has filed an Affidavit giving no objection for quashing the proceedings against the applicants.

5. Learned A.P.P. submitted that the complainant's husband had committed suicide. The offence under Section 306 was added and the charge-sheet is filed for offences under Sections 420, 306 r/w Section 34 of IPC. The complainant was deceived by the accused by inducing her to part with amount. Although the parties have settled the dispute, the proceedings may not be quashed.

6. In rejoinder the learned Advocate for applicants submitted that even on merits the applicants have good case. There is no evidence to establish offence under Section 306 of IPC. The amount of Rs.10,00,000/- has been returned to the complainant. The FIR is silent about the involvement of the complainant's husband.

7. From the tenor of the FIR it appears that the complainant's friend Aruna Belose had induced her to invest the amount. Subsequently, the complainant had parted the amount towards the admission of her son. Complainant's husband committed suicide on 15.12.2017. Thereafter, the complainant had entered into

understanding with the accused for return of the amount. Cheques issued by accused No.1 were dishonoured. There is no specific overt act to applicant No.1. The applicant No.2 has returned the amount of Rs.10,00,000/- to the complainant which was accepted by him. Pursuant to the said amount, supplementary statement was recorded on 13.09.2018, wherein she has referred to the writing executed by applicant No.2 for return of the amount. Apparently, the FIR does not refer to the involvement of the complainant's husband in the transaction. Suicide note was produced by the complainant on 28.12.2017.

8. Considering the factual aspects, the impugned proceedings can be quashed qua the Petitioners.

ORDER

- i) Criminal Application No.266 of 2022 is allowed qua the applicants and disposed off;
- ii) Criminal Proceedings in S.C. No.189/2023, pending before the Court of Sessions at Mumbai which are arising out of FIR No.413 of 2017 dated 17.11.2017 registered with Amboli Police Station, Mumbai is quashed and set aside.
- iii) The Applicant No.1 shall pay cost of Rs.10,000/- and The Applicant No.2 shall pay cost of Rs.25,000/- to Advocates Association of Western India Generation Next

within a period of three weeks from today. The Account details are as under:

Account Name : Advocates Association of Western India
Generation Next
A/c No. : 000110110007807
Bank Name : Bank of India
Branch Name : Mumbai Main
IFSC Code : BKID00000001

iv) The receipt of payment of cost be produced in the Registry of this Court within one week thereafter.

v) List the application for reporting the compliance after five weeks.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)