IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1836 OF 2024

1. Ankita w/o Gitesh Kulkarni
2. Sanjay s/o Digambar Kalmankar
3. Ashwini w/o Sanjay Kalamankar
4. Nikita d/o Sanjay Kalmankar
5. Aditya s/o Sanjay Kalmankar
6. Devidas s/o Khanaderao Patil .. ***Applicants***

Versus

1. The State of Maharashtra
2. Gitesh s/o Umakantrao Kulkarni .. ***Respondents***

…

WITH
CRIMINAL APPLICATION NO.4715 OF 2024

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Mr. S. V. Kulkarni, Advocate for the applicants in both the applications.
Mrs. P. R. Bharaswadkar, APP for respondent No.1/State in both the applications.
Mr. S. S. Gangakhedkar, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI &
SUSHIL M. GHODESWAR, JJ.

DATE : 21 AUGUST 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Criminal Application No.4715 of 2024 has been filed for production of documents. For the reasons stated in the application, Criminal Application No.4715 of 2024 stands allowed and disposed of.

2. Criminal Application No.1836 of 2024 has been filed for quashing the FIR vide Crime No.102 of 2024 dated 17.02.2024 registered with Omerga Police Station, District Dharashiv (Osmanabad) for the offences punishable under Sections 120-B, 420 read with Section 34 of Indian Penal Code.

3. Heard learned Advocate Mr. S. V. Kulkarni for the applicants in both the applications, learned APP Mrs. P. R. Bharaswadkar for respondent No.1/State and learned Advocate Mr. Rahul Cheble holding for learned Advocate Mr. S. S. Gangakhedkar for respondent No.2.

4. Learned Advocate for the applicant, after taking us through the FIR submits that the FIR is the outcome of the order below Exhibit-01 in Criminal Miscellaneous Application No.13 of 2024, under which the police were directed to investigate the matter under Section 156(3) of the Code of Criminal Procedure, however, while passing the said order, the learned Magistrate had not considered the ingredients of the offence. The informant/respondent No.2 husband has given the events since the date of marriage proposal from 25.12.2013, his interacting with the wife applicant No.1 and engagement on 16.03.2014. Thereafter, the sittings for cancellation of date of marriage and as to how the marriage date was required to be cancelled which was scheduled on 25.01.2015. Thereafter again the marriage date was fixed and it was then performed on

07.06.2015. Applicant No.1 and respondent No.2 are blessed with son on 06.07.2016. Then it is stated that applicant No.1 started going to her parental home frequently, was talking with somebody at night time secretly and when asked she used to say that she was talking with her cousin brother. She was talking with arrogance with the parents-in-law, but they were sustaining her behaviour. The informant was forced to stay separately from his parents. It is alleged that still applicant No.1 used to take up quarrels with the informant and was filing proceedings under Domestic Violence Act with the help of her cousin brother-in-law, who is an Advocate. He has then stated that since last two years, prior to the said application under Section 156(3) of the Code of Criminal Procedure dated 23.01.2024, applicant No.1 is residing separately in Pune and when he made inquiry, then a person from Gulbarga is visiting her place, staying with her for 1-2 days. When he further made inquiry he came to know about the name of that person and also got to know the information that he as well as applicant No.1 were in love with each other prior to the marriage with the informant. Applicant No.1 had ran away with that person and got married on 22.08.2011. She cohabited with him for about two years, but her parents had forcibly got applicant No.1 and the said person divorced. Such decree was given by Family Court, Gulbarga on 26.03.2014. Informant says that it is the design/conspiracy of all the applicants that applicant No.1 should perform marriage with the informant and for that purpose they had concealed about the first marriage of applicant No.1. In fact, if we see the entire FIR, which is the reflection of the Criminal Miscellaneous Application, it can be seen that it does not attract the ingredients of Section 420 of Indian Penal Code. The ingredients of said Section require that there should be intention to deceive since beginning. The applicants have contended that they had given the copy of the decree to the informant when the talks about settlement of marriage went ahead. The informant has filed petition for divorce under Section 13(1)(ia) of the Hindu Marriage Act before the learned Civil Judge Senior Division, Omerga in 2021 i.e. Hindu Marriage Petition No.84 of 2021 and his cross-examination was also over on 06.09.2022. Thereafter, after about 1 ½ years, the present FIR has been filed on 17.02.2024. The cross-examination would show that applicant No.1 had filed Domestic Violence proceedings bearing No.37 of 2020 and the present FIR is the outcome as retaliation. She has also filed FIR invoking Section 498-A of Indian Penal Code against the informant.

5. Per contra, learned APP as well as learned Advocate Mr. Rahul Cheble holding for learned Advocate Mr. S. S. Gangakhedkar for respondent No.2 strongly opposed the application and submitted that it is now a disputed fact as to whether the applicants had disclosed about the earlier marriage of applicant No.1 to the informant prior to the

settlement of marriage or not. When the first marriage was not disclosed at all and its dissolution by decree dated 26.03.2014, then the consent given by the present informant cannot be said to be a free consent. Respondent No.2 has filed affidavit and filed the photocopies of the proceedings in M.C. No.144 of 2013 with the Family Court, Gulbarga. Copy of form No.1 Memorandum of Marriage presented to the Registrar of Marriage would show that the status of the present applicant No.1 was shown as unmarried and not as divorcee. Therefore, this is a cheating that has been committed on the informant. Let there be investigation and this cannot be taken as a fit case for quashing the FIR.

6. It is to be noted that the main contention of the informant in the criminal application and the FIR is that the applicants had concealed the first marriage and divorce of applicant No.1 at the time of settlement of marriage. We will have to consider here that the marriage between applicant No.1 and respondent No.2 had taken place on 07.06.2015 and the Miscellaneous Criminal Application under Section 156(3) of the Code of Criminal Procedure was filed on 23.01.2024. Now, there is question of delay in lodging the report. Another fact that is also important is that prior to the said application under Section 156(3) of the Code of Criminal Procedure, since two years, applicant No.1 was residing separately from respondent No.2. If we peruse the application filed by respondent No.2 under Section 156(3) of the Code of Criminal Procedure, only statement

is made that the informant had gone to Police Station Omerga on 13.01.2024 to lodge the FIR, but the police had not taken cognizance stating that how he could not come to know about the same till seven years of marriage. Certainly, from the order that was passed by the learned Judicial Magistrate First Class, Omerga on 13.02.2023 for investigation under Section 156(3) of the Code of Criminal Procedure, it is not clear as to whether she had seen that the requirements of law under the decision in ***Priyanka Srivastava and another vs. State of Uttar Pradesh and others, (2015) 6 SCC 287*** was complied with or not. Even, recently, in **S. N. Vijayalakshmi and Ors. Vs. State of Karnataka and Anr., [Criminal Appeal No.__ of 2025 (@Special Leave Petition (Criminal) No.8626 of 2024)],** it has been observed that :-

> "We sum up our conclusions on this score as follows : (i) directions issued in ***Priyanka Srivastava (Supra)*** are mandatory; (ii) Guidelines laid down in ***Priyanka Srivastava (Supra)*** operate prospectively; (iii) Non-filing of the supporting affidavit is a curable defect, but must be cured before the Magistrate passes any substantive order on the complaint/application, and; (iv) If the Magistrate proceeds without the requisite affidavit, such order/any consequential orders/proceedings can be quashed on the sole ground of non-compliance with ***Priyanka Srivastava (Supra)***."

7. The steps those have been made mandatory in view of the decision in ***Priyanka Srivastava (Supra)*** are that the person has to

approach the local police station first for lodging the FIR and if it is not taken, then a written complaint will have to be given and if it is not registered as FIR, then he has to approach the superior authority under Section 154(3) of the Code of Criminal Procedure and in spite of that if no cognizance is taken, then such person can approach the Magistrate under Section 156(3) of the Code of Criminal Procedure. The impugned order does not say that all this procedure was adhered to and in absence of such inaction on the part of the police, the Magistrate is then taking recourse to Section 156(3) of the Code of Criminal Procedure. There is absolutely no statement in the order that the learned Magistrate has considered the affidavit and also the copy of the written complaints to the local police station and to the superior police officer. Therefore, the impugned order suffers from the basic requirements and, therefore, as stated above in ***S. N. Vijaylaxmi (Supra),*** FIR needs to be quashed and set aside.

8. Even on merits, it can be seen that for proving an offence under Section 420 of Indian Penal Code, following ingredients will have to be shown even *prima facie :-*

> "***Ingredients of Section.-*** The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall

> retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

Now, therefore, it should have been shown by respondent No.2 that there was fraudulent or dishonest inducement to him to deliver property by the applicant. In order to prove the offence of cheating, the intention to cheat should be since beginning i.e. inception. Even for proving the offence under Section 415 of the Indian Penal Code which is punishable under Section 417 of the Indian Penal Code, it has to be shown that the accused persons had fraudulent or dishonest intention at the time of making a promise with an intention to retain the property. In ***Hira Lal Hari Lal Bhagwati vs. CBI. 2003 SCC (Cri.) 1121,*** following are the observations :-

> "To hold a person guilty of cheating as defined under Section 415 of the Indian Penal Code, it is necessary to show that he has fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, Section 415 of the Indian Penal Code which defines cheating, requires deception of any person (a) inducing that person to: (i) to deliver any property to any person, or (ii) to consent that any person shall retain any property or (b) intentionally inducing that

> person 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, anybody's mind, reputation or property. In view of the aforesaid provisions, the appellants state that person may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the Section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest."

Further, in ***Hridaya Ranjan Prasad Verma vs. State of Bihar, AIR 2000 SC 2341,*** it has been held as follows :

> "Section 415, I.P.Code which defines cheating requires: (1) deception of any person; (2)(a) fraudulently or dishonestly inducing that person; (i) to deliver any property to any person; or (ii) to consent that any person shall retain any property; or (b) intentionally inducing that person 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."

9. Now, the question here is the form No.1 Memorandum of Marriage stating that applicant No.1 was unmarried was the intentional act and would amount to offence under Section 420 of Indian Penal Code. Till applicant No.1 got separated two years prior to the application, it

appears that the informant had no knowledge at all. In fact, the Domestic Violence proceedings were filed in 2020 itself. Therefore, it is hard to believe that two years thereafter also she was residing with the informant. Then in that case, she had separated from him four years prior to the application. It appears that the said application and the FIR is nothing but the act in revenge i.e. act of vengeance. Therefore, on the said count also, this is a fit case where this Court should exercise its powers under Section 482 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

I) Criminal Application stands allowed.

II) The FIR vide Crime No.102 of 2024 dated 17.02.2024 registered with Omerga Police Station, District Dharashiv (Osmanabad) for the offences punishable under Sections 120-B, 420 read with Section 34 of Indian Penal Code, stands quashed and set aside as against the present applicants.

[SUSHIL M. GHODESWAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm