



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 859 OF 2024

PETITIONERS

- : 1] Nisha Sanjay Mitkari,
Aged 24 years, Occu. Teacher,
- 2] Sanjay Lakhsmanappa Mitkari,
Aged 42 years, Occu. Business,
- 3] Dilip Laxmanappa Mitkari,
Aged 42 years, Occu. Business,
- 4] Sakhubai Sudhakar Pandhade,
Aged 55 years, Occu. Housewife,
- 5] Sudhakar Vaijanath Pandhade,
Aged 60 years, Occu. Business,
- All are resident of village Rohinkhed,
Tq. Motala, Dist. Buldhana.

VERSUS

RESPONDENTS

- : Shyam Karbasappa Savare,
Aged 55 years, Occu. None,
R/o Chaube layout, Gorakshan Road,
Tq. Khamgaon, Dist. Buldhana.

Mr. Amit V. Band, Advocate for the petitioners.
Mr. K. H. Anandani, Advocate for the respondent.

CORAM : M. W. CHANDWANI, J.
DATED : APRIL 09, 2025

ORAL JUDGMENT

1. **RULE.** Rule made returnable forthwith. By consent of

the learned counsel for the parties, the matter is taken up for final disposal.

2. By the present petition, the petitioners are seeking quashment of Regular Criminal Case No. 69 of 2023 registered against them on the basis of the complaint filed by the respondent for the offences punishable under Sections 420, 452, 323, 504, 506 read with Section 34 of the IPC.

3. Brief facts giving rise to the present petition are that, the respondent filed a complaint before the learned Judicial Magistrate, First Class, Khamgaon, alleging that the petitioners have committed offences punishable under Sections 420, 452, 323, 504, 506 read with Section 34 of the IPC. It is alleged that the marriage between petitioner no.1 and the son of the respondent was fixed. Accordingly, on 25.04.2021, during the engagement ceremony, gold ornaments were gifted to petitioner no.1. One mobile phone was also gifted to petitioner no.1 by the son of the respondent. Since, petitioner no.1 on multiple occasions, expressed her desire not to get married so early, the marriage proposal could not be materialized and the marriage could not be performed. The respondent asked the

petitioners to return the gold ornaments and the mobile phone gifted to petitioner no.1. In spite of repeated demands by the respondent, the petitioners did not hand over the gold ornaments and the mobile phone. It is also alleged in the complaint that on 28.8.2022 at about 3.00 p.m., the petitioners/accused nos.2 to 5 had been to the house of the respondent to demand the gold ornaments and the mobile phone, however they refused to handover the same. They manhandled the respondent and also threatened the respondent and his son for their life.

4. On registration of the complaint, learned Magistrate recorded the verification statement of the complainant. Learned Magistrate found a *prima facie* case against the petitioners for taking cognizance and accordingly, issued process against them for the aforesaid offences.

5. I have heard Mr. Amit V. Band, learned counsel for the petitioners and Mr. K. H. Anandani, learned counsel for the respondent. Perused the record.

6. Mr. Amit Band, learned counsel for the petitioners

vehemently submitted that no ingredient of any of the alleged offences is made out, even if the contentions made in the complaint filed by the respondent are accepted in toto. Learned counsel seeks to rely on the judgment of the Hon'ble Supreme Court in ***Sachin Garg .vs. State of U.P. and another***, reported at ***2024 SCC Online SC 82***. In paragraph 20 of the said report, it has been held as under :

“20. While it is true that at the stage of issuing summons a magistrate only needs to be satisfied with a prima facie case for taking cognizance, the duty of the magistrate is also to be satisfied whether there is sufficient ground for proceeding, as has been held in the case of Jagdish Ram (supra). The same proposition of law has been laid down in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749]. The learned Magistrate's order issuing summons records the background of the case in rather longish detail but reflects his satisfaction in a cryptic manner. At the stage of issue of summons, detailed reasoning as to why a Magistrate is issuing summons, however, is not necessary. But in this case, we are satisfied that the allegations made by the complainant do not give rise to the offences for which the appellant has been summoned for trial. A commercial dispute, which ought to have been resolved through the forum of Civil Court has been given criminal colour by lifting from the penal code certain words or phrases and implanting them in a criminal complaint. The learned Magistrate here failed to apply his mind in issuing summons and the High Court also failed to exercise its jurisdiction under Section 482 of the 1973 Code to prevent abuse of the power of the Criminal Court.”

7. It is also submitted on behalf of the learned counsel for the petitioners that vague allegations are made in the complaint and

the complaint is filed after passage of one year as a counter blast to the complaint filed by petitioner no.1 against the respondent and his relatives for the offences punishable under Sections 417, 504, 506 r/w Section 34 of the Indian Penal Code and under Sections 3, 4, 7 of the Dowry Prohibition Act, 1961. Therefore, he sought quashing of the complaint filed by the respondent.

8. Per contra, Mr. Anandani, learned counsel for the respondent submitted that the complaint discloses a *prima facie* case against the petitioners for the offences punishable under Sections 420, 452, 323, 504, 506 read with Section 34 of the IPC. It is contended that the complaint very well spells out the facts which constitute these offences.

9. With the able assistance of the learned counsel for the petitioners and the respondent, I have gone through the complaint minutely. The material paragraphs in the complaint are paragraph nos.4, 5 and 6, which are reproduced below :

"4. असे असता मध्यंतरीचे काळात फिर्यादीचा मुलगा व आरोपी क. 1 बोलत असतांना तिने बरेचवेळा फिर्यादीचे मुलास असे सांगितले की तिला आता लवकर लग्न करावयाचे नाही. आरोपी क. 3 म्हणजेच आरोपी क. 1 चे काका यांनी आरोपी क. 1 हीला विश्वासात न घेता सदरचे लग्न ठरविले आहे व लग्न लवकर करण्याची तिला घाई करित आहेत व

त्यासह अनेक गोष्टी झाल्यामुळे दोन्ही पक्षांनी बसुन सदरचे लग्न मोडले परंतु त्यावेळेस वरील दागिणे व मोबाईल हा फिर्दादीने मागीतलेवरही आरोपींनी परत दिला नाही.

5. सदरची घटना झाल्यानंतर फिर्दादीने आरोपींना बरेचवेळा त्यांचे वरील नमुद दागिणे व मोबाईल परत मागीतला परंतु आरोपींनी फिर्दादीस नेहमीच उडवाउडवीची उत्तरे देवुन सदरचे दागिणे व मोबाईल देण्यास टाळाटाळ ' केली. जवळपास एक वर्ष उलटुन गेल्यानंतर दि. 28/08/2022 रोजी अं. द्रुपारी 3 वाजता आरोपी क. 2 ते 5 हे फिर्दादीचे घरी खामगाव येथे आले व फिर्दादीसोबत व त्याचे घरातील लोकांसोबत उध्दट बोलले व म्हणाले की त्यांनी आरोपी क. 1 सोबतचे लग्न मोडुन तिचे भविष्य अंधकारमय केलेले आहे व त्यामुळे आरोपींनी सदरचे दागिणे व मोबाईल परत देण्यास स्पष्ट 'नकार' दिला व खोट्या केसेसमध्ये अडकविण्याच्या धमक्या दिल्या. परंतु फिर्दादींना सदरचा वाद पुढे वाढविणे नसल्यामुळे फिर्दादी व त्याचे कुटुंबियांनी समजुतदारपणाची भाषा वापरली. उलट आरोपींनी फिर्दादींना त्यांचे घरीच बसुन शिवीगाळ केली व लोटपोट करुन फिर्दादी व त्याचे मुलास जीवे मारण्याच्या धमक्या दिल्या व तुमचे सामान परत करत नाही असे म्हणाले व तेथुन नीघुन गेले. त्यावेळेस फिर्दादीचे मोहल्ल्यातील सुरेश सदाशिवआप्पा हिंगमिरे, राहुल आत्माराम वडोदे व अमर यशवंत खोडके हे घराबाहेर हजर होते व त्यांनी सदरची घटना प्रत्यक्ष बघितली आहे.

6. वर नमुद झालेल्या घटनेमुळे फिर्दादी त त्याचे घरातील लोक घाबरुन गेले होते व त्यांना समाजात सदरचे घटनेमुळे बदनामी होईल याची भीती वाटत होती. परंतु त्यानंतरही आरोपींनी फिर्दादींना धमक्या देणे सुरुच ठेवले होते. त्यामुळे शेवटी नाईलाजास्तव फिर्दादीने दि. 06/09/2022 रोजी पोलीस स्टेशन शिवाजी नगर खामगाव येथे आरोपींविरुद्ध तोंडी तक्रार दाखल केली होती. परंतु पोलीसांनी सदरचे तक्रारीची कोणतीही दखल न घेता सदरची तक्रार ही अदखलपात्र गुन्हा म्हणुन नोंदविली होती व आजपावेतो सुध्दा वारंवार विनंती करुनही सदरचे तक्रारीवर गंभीरपणे 'कोणतीही कारवाई केलेली नाही. म्हणुन फिर्दादी ' प्रस्तुतचा फिर्दाद अर्ज वि. न्यायालयात त्याचेवर व मुलावर झालेल्या अन्यायास न्याय मिळेल उद्देशाने दाखल करीत आहे."

10. The offence of cheating is defined under Section 415 of the IPC which is reproduced here -

"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”.

11. Thus for attracting the offence of cheating, a person must be deceived and induced fraudulently or dishonestly to deliver any property to any person. However, in the present case, the respondent has come up with a case that during the engagement ceremony, gold ornaments and a mobile phone were handed over to petitioner no.1. Learned counsel for the respondent tried to submit that the petitioners had an intention to cheat him since the beginning and therefore, the offence punishable under Section 420 of the IPC has been made out.

12. In the complaint, there is no whisper as to how the petitioners deceived or induced the respondent to deliver the gold ornaments and the mobile phone. Only because the petitioners failed to return the gold ornaments and the mobile phone given to petitioner no.1 in engagement ceremony, it cannot be said that the offence of cheating, punishable under Section 420 of the IPC, is committed. Therefore, no *prima facie* case is made out to show that the offence punishable under Section 420 of the IPC has been

committed by the petitioners.

13. Further, in order to attract the offence punishable under Section 323 of the IPC, hurt must be caused to a person, but there is no whisper in the complaint that any hurt was caused to the respondent or his relatives by the petitioners. Therefore, the complaint does not disclose commission of offence punishable under Section 323 of the IPC.

14. So far as the offences punishable under Sections 452, 504 and 506 of the IPC are concerned, in paragraph 5 of the complaint, there are averments that on 28.08.2022, petitioner nos.2 to 5 came to the house of the respondent, assaulted the respondent and his relative and threatened him and his son for life. Therefore, I do not find force in the argument of the learned counsel for the petitioners that there is no ingredient of the offences punishable under Sections 452, 504 and 506 r/w Section 34 of the IPC against any of the petitioners.

15. On perusal of the complaint and other documents, it appears that no allegation has been made against petitioner no.1 in respect of the alleged incident dated 28.08.2022. Therefore, no case is made out against petitioner no.1 for any of the offences. So far as

the submission of the learned counsel for the petitioners that the complaint is a counter blast to the complaint filed by petitioner no.1 is concerned, it is a matter to be appreciated by the learned Magistrate during the course of trial.

16. In view of the above, the petition partly succeeds. The complaint filed against petitioner no.1 – Nisha Sanjay Mitkari is quashed. The complaint filed against petitioner nos.2 to 5 for the offences punishable under Sections 420 and 323 of the IPC is quashed. Therefore, Regular Criminal Case No. 69/2023 to proceed against respondent nos.2 to 5 for the offences punishable under Sections 452, 504 and 506 r/w Section 34 of the IPC.

17. The petition is partly allowed to the extent mentioned above. Needless to mention that this Court has not opined that no other offences are committed by the petitioners. If the learned Magistrate finds from the complaint during the course of the trial that any other offence has been committed by them, it will be open for him to decide the same in view of the contentions made in the complaint.

(M.W.Chandwani, J.)

Diwale