



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 48 OF 2023

1. Mr. Anil Dnyandev Pawar,
Age:54 years, Occ.-Service,
2. Mrs. Jaya Anil Pawar,
Age:47 years, Occ.-Housewife,
3. Mr. Swapnil Anil Pawar,
Age:26 years, Occ.-Student,
4. Mrs. Sheetal Anil Pawar
@ Mrs. Sheetal Prasad Godse,
Age:30 years, Occ.-Service,

All R/at:Survey No. 16, Janardan Nagar,
Behind Durga Hotel, Lohgaon,
Dist. - Pune.

...Applicants/Accused

Vs.

1. The State of Maharashtra
(At the instance of Vimantal
Police Station, Pune)
(Notice to be served on A.PP,
A.S. High Court, Bombay).
2. Mr. Dnyaneshwar Ganpat Shingare, (Orig. Complt.)
Age:63 years, Occ.-Retired,
R/at:Survey No. 78/3, Santnagar Maharaj Nagar,
Near Shankar Mandir, Bhosari,
Alandi Road, Pune.Respondents

Ms. Priya Gajare i/b Mr. Amit Karva, for the Applicants.
Mr. Anand S. Shalgaonkar, A.PP for the Respondent-State.
Mr. Dhananjay K. Bhosale for Respondent No. 2.

CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.
RESERVED ON : 19th AUGUST 2024.
PRONOUNCED ON : 28th AUGUST 2024.

JUDGMENT (Per Dr. Neela Gokhale, J.) :-

- 1) Rule. Rule made returnable forthwith. With consent of the parties, Application is taken up for final hearing.
- 2) The present proceeding arises from an unfortunate series of events where a young girl, undaunted by familial and societal traditions falls in love with her choice of a partner but lacks courage enough to reveal this relationship to her family. What happens next is not a mystery. Oblivious to their daughters' choice of partner, her parents proceed to arrange her marriage with a man of their choice, mistaking their daughters' silence as her approval. The engagement takes place. The soon to be parents-in-law incur expenditure on printing invitation cards, new clothes, jewelry etc. for the impending marriage. Cometh the eleventh hour, waking up to the reality, the girl jolts out of her stupor and elopes with her paramour. The parents and the in-laws are left to explain her absence. The parents file a missing complaint, but the in-laws lodge an FIR alleging various offences including that of 'cheating' against the girl and her family members. This is the FIR we are to deal with. Whether any cognizable offence is disclosed in the above circumstances, to justify prosecution, is a question that arises for our determination.

3) Applicants seek quashing of the R.C.C. No. 3569 of 2022 pending before the learned Judicial Magistrate First Class, Court No. 5, Shivajinagar Court, Pune arising from FIR bearing No. 163 of 2022 dated 1st May 2022 registered with Vimantal Police Station, Pune for offences punishable under Sections 417, 418, 420, 500 read with 34 of the Indian Penal Code, 1860 ('IPC').

4) The Applicants No. 1, 2 and 3 are the father, mother, and brother of the Applicant No. 4 respectively. The Applicant No. 4 is the girl who was to be married to the son of Respondent No.2.

5) Facts of the Case:

5.1) The FIR reveals that, the Respondent No.2 was looking for a suitable partner to be married to his son, Amol. The two families were brought together by Mr. Ashok B. Sonawane and Mr. Vijay Ovhal, friends of the families and match makers. In March 2022, the Respondent No.2 along with his family approached the Applicants with the proposal of their son for their daughter. Both the families visited each other's residence and after consensus between them, the "Supari Ceremony" (engagement ceremony) took place on 27th March 2022. The mediators as named above were present at the ceremony and had verified approval of the Applicant No.4 and Amol for the said marriage. The marriage date was fixed as 1st May 2022.

5.2) Both families commenced preparations. It is the contention of

the Respondent No. 2 as discerned from the FIR that, they purchased jewelry for the bride and also a trousseau for her. They also spent a substantial amount in purchasing gifts for family and friends. According to him, his family spent an amount of Rs.1,62,000/- for wedding preparations.

5.3) On 29th April 2022, the Applicants No. 1, 2 & 3 approached the Respondents and inform them that their daughter, the Applicant No. 4 is missing since 28th April 2022, and they had filed a missing complaint with the local police. It is the case of the Respondent No. 2 that the Applicants concealed the fact of their daughter having an affair with another boy, from the Respondent No.2 and induced him and his family to make the huge expenditure towards the marriage. It is alleged that the Applicants have cheated the Respondent No. 2 and defamed his family. Thus the Respondent No.2, aggrieved by the conduct of the Applicants, filed the subject FIR.

6) Ms. Priya Gajare, learned counsel appears for the Applicants and Mr. Dhananjay Bhosale learned counsel appears for the Respondent No.2. Mr. A.S.Shalgaonkar, learned APP represents the State.

7) Ms. Gajare states that the Applicants did not have any intention to cheat, defraud or defame the Respondent No.2. Their daughter namely, Applicant No.4 eloped with one Mr. Prasad Godse by her own free will, but she did not confide in any of the other Applicants. According to Ms. Gajare, the Applicant No.4 was scared to reveal the relationship between herself and Mr. Godse. There was no motive or purposeful intention of committing

the offences as alleged and no charges can be framed against the Applicants. She further contends that statements of the witnesses recorded by the Police clearly indicate that the Applicants No.1 to 3 had no inkling of the relationship of the Applicant No.4 with said Mr. Godse. She further contends that, the Applicants themselves have spent considerable amount of money on marriage related expenses. From the entire reading of the charge sheet, it cannot be said that the Applicants gained any monetary benefit from the alleged offence. On the contrary, they too were defamed and embarrassed especially on account of having to face a trial in the circumstances. She placed reliance on the statements of witnesses as recorded by the Police to canvass her case that the Applicant No.4 had never shared the fact of her relationship with her family. Thus, Ms. Gajare states that from plain reading of the FIR and the charge sheet, no offences are made out and the proceedings be quashed.

8) Per contra, Mr. Bhosale states that the entire story is hatched by the Applicants to escape criminal prosecution. According to him, the Applicants were fully aware of the relationship of the Applicant No.4 with the said Mr. Godse and it was pre-planned by the Applicants to inform the Respondent No.2 regarding running away of their daughter with her lover in the middle of the preparations of the marriage ceremony. The Applicants in fact had complete knowledge of the expenses to be incurred by the Respondent No.2 and his family and with the sole intention of the making

him suffer a loss, they waited till the end to reveal the fact about the Applicant No.4 running away with Mr. Godse. Mr. Bhosale raised the contention that the Applicants were in collusion with the persons to whom payments were made for the preparations of the marriage ceremony. The Applicants had no intention of getting them married and only wanted to cheat the Respondent No.2. He states that the entire sequence of events and the intent of the Applicants will be revealed in a trial and hence, contested the Application.

9) Mr. Shalgaonkar strongly opposed the Application and supported the prosecution case.

10) We have heard the counsels of both the parties and with their assistance perused the documents on record.

11) A plain but careful reading of the FIR and the statement of the Respondent No.2 recorded on 1st May 2022 clearly indicates that, the expenditure incurred by the Respondent No.2 and his family towards the marriage ceremony was completely voluntary. Most importantly, the statement is bereft of any allegation that the Applicants No.1 to 3 were aware of the relationship between the Applicant No.4 and her paramour. Perusal of the statement of the Applicant No.4 also reveals her fear in disclosing her relationship to her parents and brother and being compelled thereby to remain silent, reluctantly implying consent for the alliance. Furthermore, there is no allegation that, the family of the Respondent No.2

gifted clothes amounting to Rs.80,000/- to the Applicants. As narrated by the Respondent No.2, he spent Rs.7,000/- towards printing invitation cards and Rs.75,000/- towards miscellaneous expenses of wedding arrangements but there is no averment that he was induced by the Applicants so to do. There is no material to indicate that there was any element of dishonesty or deception on the part of the Applicants to induce the Respondent No.2 to part with valuable property by luring his son Amol to marry the Applicant No.4.

12) The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure, (Cr.PC) to quash complaints and criminal proceedings have been stated and reiterated by the Supreme Court in several decisions following the decision in the matter of *State of Haryana v. Bhajan Lal*¹. The principles, relevant to our purpose are:

“(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the

1 1992 Supp(1) SCC 335

complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out:

(a) purely a civil wrong; or

(b) purely a criminal offence; or

(c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature

and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

13) The Supreme Court, in the case of *Prof. R.K. Vijayasathy and Another v. Sudha Seetharam and Anr.*² has culled out the ingredients to constitute the offence under Sections 415 and 420 of IPC, as under:

“15. Section 415 of the Penal Code reads thus:

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”.

16. The ingredients to constitute an offence of cheating are as follows:

16.1. There should be fraudulent or dishonest inducement of a person by deceiving him:

16.1.1. The person so induced should be intentionally induced to deliver any property to any person or to consent

² (2019) 16 Supreme Court Cases 739

that any person shall retain any property, or

16.1.2. The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

16.2. In cases covered by 16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

17. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

18. Section 420 of the Penal Code reads thus:

420. Cheating and dishonestly inducing delivery of property.— Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

19. The ingredients to constitute an offence under Section 420 are as follows:

19.1. A person must commit the offence of cheating under Section 415; and

19.2. The person cheated must be dishonestly induced to
(a) deliver property to any person; or
(b) make, alter or destroy valuable security or

anything signed or sealed and capable of being converted into valuable security.

20. Cheating is an essential ingredient for an act to constitute an offence under Section 420.”

14) It can thus be seen that for attracting the provision of Section 420 of IPC, the FIR/complaint must show that the person cheated must have been dishonestly induced to deliver the property to any person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of Section 420 of IPC, it must be shown that the FIR/complaint discloses:

(i) the deception of any person;

(ii) fraudulently or dishonestly inducing that person to deliver any property to any person; and

(iii) dishonest intention of the accused at the time of making the inducement.

15) The facts in the present case *prima facie* do not disclose commission of the cognizable offence of ‘cheating’. There is no whiff of any dishonesty or intention to deceive in any of the statements of the witnesses as recorded by the Police. It is a regrettable case of a hapless young woman who went along with her parents’ decision to marry Mr. Amol but at the last minute developed cold feet to enter a charade of a marriage. Her plight in not being brave enough to confide in her parents about her relationship with Mr. Godse cannot be construed to as ‘cheating’ as an offence under the

IPC nor can it foist a prosecution on her. The decision to remain silent can at best be injudicious but not dishonest. To make out an offence under cheating the intention to cheat or deceive should be right there from the beginning. In the present case, no such intention to cheat from the beginning could be made out from the complaint of Respondent-2.

16) In an identical matter, the Apex Court, in its recent decision in the matter of *Raju Krishna Shedbalkar v. State of Karnataka*³ observed as follows:

“We do not see how an offence even under Section 417 of IPC is made out against the present appellant. There can be multiple reasons for initiating a marriage proposal and then the proposal not reaching the desired end. It may in a given case involve cheating; it is possible theoretically yet in order to prove an offence of cheating in such cases prosecution must have reliable and trustworthy evidence in order to first prosecute such a case. There is no such evidence before the prosecution and therefore no offence under Section 417 is also made out.”

17) Considering the factual matrix and the settled law, *prima facie* reading of the FIR does not disclose commission of a cognizable offence of ‘cheating’. According to us, perusal of first information report does not disclose commission of any cognizable offence and in particular an offence under Section 420 of the IPC. At best, offences under Sections 417, 418 and 500 of the IPC can be said to have been made out against the Applicants.

3 2024 SCC Online SC 200

The said three Sections are non-cognizable in nature and therefore criminal proceedings initiated by the prosecution culminating in C.R.No.350 of 2022, do not survive and are accordingly quashed and set aside.

17.1) We have reserved liberty to the Respondent No.2 to initiate appropriate action as may be permissible under the law in respect of the said offences i.e., Sections 417, 418 and 500 of the IPC so advised and if he so desires.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)

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