
(2020) 11 BOM CK 0030

In the Bombay High Court

Case No : Criminal Application No. 4099, 4183, 4210 Of 2017

Suganchand And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 03-11-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 406, 417, 420
Dowry Prohibition Act, 1961 — Section 3, 4
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2020) 11 BOM CK 0030

Hon'ble Judges : T.V. Nalawade, J; Shrikant D. Kulkarni, J

Bench : Division Bench

Advocate : B.N. Magar, K.S. Patil, C.R. Deshpande

Final Decision : Dismissed

Judgement

Shrikant D. Kulkarni, J

1. Rule. Rule made returnable forthwith. With the consent of the parties, the applications are taken up for final disposal at admission stage.

2. These quashing applications arising out of same First Information Report (In short "FIR") vide C.R. No. 130 of 2017, registered with Amalner Police Station for the offences punishable under Sections 406, 417, 420 read with Section 34 of the Indian Penal Code (hereinafter referred to as "IPC" for short) and under Sections 3 and 4 of the Dowry Prohibition Act, are being disposed of by common judgment.

3. The relevant facts for the adjudication of these applications in narrow compass are as under :

3 (i) Mr. Shyamsundar Nathulaji Vedmutha (Jain) [hereinafter referred to as "first informant / Respondent No.2"] is a businessman resident of R.K. Patel Nagar, Amalner, Dist. Jalgaon. He has one daughter by name Payal. Payal has attained marriageable age. The first informant was in search of a proper match for his

daughter Payal. At the same time, Sushil Sunilchand Lodha resident of Karanja, Dist. Washim was also in search of a bride. Sushil Sunilchand Lodha came to know about Payal through marriage bureau. After getting the information, Sushil Lodha made contact with the first informant and collected necessary information about his daughter.

3 (ii) On 20.02.2017, Sushil Sunilchand Lodha (son), Sushilchand Dulichand Lodha (father), Aruna Sunilchand Lodha (mother), Bhavana Bharat Parakh (sister), Prakashchand Parakh (father-in-law of Bhavana) resident of Malkapur and friend of proposed bridegroom Rupesh Rameshchand Baheti, Vinod and Sugalchand Devda (uncle), Sau.Rupali Rupesh Baheti, Vijay Sunilchand Lodha and Kismat Borele resident of Amravati came to house of the first informant for marriage proposal. After the formal program of hospitality, the family members from the side of bridegroom informed to the first informant that they like Payal and ready for marriage, but marriage must be solemnized at Amalner. The family members of Sushil Sunilchand Lodha also insisted for engagement ceremony on the very day since they had come from long distance. Accordingly, the engagement ceremony was performed. In the engagement ceremony, one gold chain of 30 gms. One gold ring of 7 gms. and cash of Rs.11,000/- in addition to gift of clothes and sarees were given to the bridegroom's party in the presence of all. 19th June, 2017 was fixed as a marriage date with the consent of all.

3 (iii) As per the talks between the parties, the first informant booked one Mangalkarya as well as engaged caterer and other agencies and incurred Rs.2,00,000/- towards preparation of marriage. In the meanwhile, Sushil Sunilchand Lodha was in touch with Payal by making contact on her mobile phone and never disclosed to break the marriage. All of sudden on 17.04.2017, Sushil Sunilchand Lodha sent message to Payal on WhatsApp that he has no interest to enter into wedlock with her. Payal has shown that message to her parents as well as other family members. The first informant immediately made contact with the sister of Sushil Sunilchand Lodha and other family members. On 23.04.2017, Bhavana, Rupesh Baheti and Kismat Borele and their uncle Sugalchand Devda came to Amalner and informed to the first informant that there is no substance in the message of Sushil Lodha.

3 (iv) The marriage would be solemnized as agreed between the parties and continue marriage preparation and thereafter they went away to Karanja. The first informant made contact with the friends and relatives of the groom party in order to make further marriage preparation. When they informed that the marriage would be performed as agreed on 19.06.2017, but they have to pay Rs.20,00,000/- to Sushil Lodha since he needs such amount for his construction business, otherwise he may not perform the marriage. The first informant disclosed such fact to the parents of the bridegroom as well as relatives, but they also insisted to satisfy the demand of Rs.20,00,000/-, otherwise presume that the marriage is broken. The first informant tried his level best to convince the members of bridegroom's party, but no outcome. The proposed marriage of Payal

with Sushil Lodha was broken due to such unlawful demand of Rs.20,00,000/-. The reputation and image of the family of the first informant is damaged because of Payal's marriage was broken. The first informant was put to loss to the tune of Rs.5,00,000/-. The first informant and family members were cheated by Sushil Lodha and his parents. The first informant rushed to Amalner Police Station on 16.06.2017 and lodged the FIR against the applicants out of respective applications and others and on that basis Crime No.130 of 2017 came to be registered for the offences punishable under Sections 406, 420 and 417 read with Section 34 of IPC coupled with Sections 3 and 4 of the Dowry Prohibition Act.

4. Feeling aggrieved by the registration of the above said crime, the applicants who happen to be relatives and friends from bridegroom party have rushed to this Court by invoking Section 482 of the Code of Criminal Procedure for quashing of the FIR registered against them.

5. Heard Mr. B.N. Magar, the learned Advocate for the applicants, Mr. K.S. Patil, the learned Advocate for respondent No.1/State and Mr. C.R. Deshpande, the learned Advocate for respondent No.2 representing in all the respective applications.

6. We have perused the copy of FIR and other papers. .

7. Mr. B.M. Magar, the learned Advocate for the applicants invited our attention to the copy of the FIR. He vehemently submitted that there are no specific allegations against the applicants. No role is attributed against them. As per the allegations levelled in the FIR groom party alleged to have denied to solemnize the marriage. The date of alleged denial was on 17.04.2017 and the FIR came to be filed on 16.06.2017 after causing the delay of two months. The FIR is after thought with mala fide intention and with an ulterior motive. He further submitted that the offences alleged against the applicants do not attract even if recitals made in the FIR are taken at their face value. The ingredients of cheating do not attract in view of absence of criminal intention to cheat the bride party or to induce bride party to deliver gold ornaments. Sections 3 and 4 of the Dowry Prohibition Act even do not attract. The applicants have simply attended the engagement ceremony. The applicant No.1 happens to be uncle and applicant No.3 happens to be friend and applicant No.4 his wife and applicant No.2 is a driver of applicant No.1 who has nothing to do with the function (Out of Criminal Application No.4099 of 2017). Mr. Magar submitted that the FIR is surrounded by shadow of doubts. It is a product of imagination. No case is made out against the applicants since they have no role to play in the decision of the proposed bridegroom regarding refusal to solemnize the marriage. Mr.Magar submitted that the FIR needs to be quashed in the above facts and circumstances. To support the aurgument, Mr.Magar, the learned Advocate for the applicants placed his reliance on the decision in case State of Haryana Vs. Bhajan Lal reported in AIR 1992 SC 604.

8. On the other hand, Mr. K.S. Patil, the learned APP for respondent No.1 and Mr.

C.R. Deshpande, the learned Advocate for respondent No.2 also invited our attention to the recitals of the FIR. They submitted that there are specific allegations against the applicants with their role. There is prima facie evidence against the applicants in the commission of the alleged offences. It is not a case to invoke provisions of Section 482 of the Criminal Procedure Code to quash the FIR in view of prima facie evidence on record.

9. We have considered the submissions advanced by the learned counsel appearing for the applicants, the learned APP for the State/respondent No.1 and the learned Advocate for respondent No.2/first informant.

10. Having regard to the arguments canvassed by both the sides, it is clear that both the parties had earlier initial talk so as to have a program to see the girl. According to the convenience of both the sides, the program to see the girl was fixed at the relevant point of time. Both the parties were in a search of good proposal of marriage in the capacity as a bride and bridegroom. The proposal came through marriage bureau. Those aspects need to be considered before entering into arena of the dispute.

11. An offences of cheating cannot be said to have been made out unless the following ingredients are satisfied:

(i) deception of a person either by making a false or misleading representation or by other action or omission;

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

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

12. We would like to place reliance on the citation in case of Harmanpreet Singh Ahluwalia and others vs. State of Punjab and others reported in (2009) 7 SCC 712, wherein it is held by the Hon'ble Supreme Court as under:

"B. Penal Code, 1860 - Ss.415 and 420 - Cheating - Ingredients - Fraudulent or dishonest intention - Held, must exist at the time of making initial promise or formation of contract - The complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation - No offence is made out under S.420 if culpable intention is missing at the time of making initial promise - Contract and Specific Relief - Breach of contract - Distinguished from offence of cheating."

13. The story of the first informant is of two fold. One part is related to engagement ceremony wherein bride party alleged to have given gold ring and gold chain and cash amount of Rs.11,000/- to the groom as per the talks between the parties while settling the marriage. Second part relates to preparation for marriage ceremony by the father of the bride/first informant by engaging catering service and other services and booking of Mangalkarya / auditorium.

14. On close scrutiny of the FIR, it is reveled that after alleged refusal to perform the marriage by the groom by sending WhatsApp message to his proposed wife, there was again meeting between two sides. It was agreed between both the sides to proceed ahead to perform the marriage and both the parties have given green signal indicating no impediment in marriage. What it indicates? It indicates that there was no mens rea or criminal intention in the minds of groom party. While giving promise of marriage to bride party, their intention was bona fide while fixing the marriage with daughter of the first informant. They had also taken steps to that effect and even removed the so called impediment in the marriage when groom had allegedly sent WhatsApp message to bride regarding refusal to marry.

15. A mere breach of contract cannot give rise to criminal prosecution. The distinction between a case of mere breach of contract and one of cheating depends upon the intention of the accused at the time of the alleged inducement. Where there is no clear and conclusive evidence of criminal intention of the accused at the time the offence is said to be committed and the aggrieved has an alternative remedy in a Civil Court the matter should not be allowed to be fought in a Criminal Court. For the sake of moment, even if it is accepted that the first informant who is the father of the bride had incurred expenditure for booking of Mangalkaryalaya / auditorium for the marriage, engaging catering service and other agencies, the first informant has remedy to recover that amount by approaching Civil Court. The Criminal prosecution is not the remedy available to him in the above background. When there was no fraudulent or dishonest intention of the applicants to deceive the first informant. In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that the person had a fraudulent intention at the time of making promise to say that he committed an act of cheating. A mere failure to keep up promise cannot be presumed an act leading to cheat. Criminal intention at the time of the offence is to be established and mere breach of promise of marriage cannot give rise to criminal intention.

16. On perusal of the contents of the FIR, it no where reveals that the applicants played any inducement at the time of presenting gold chain and gold ring to the groom in the engagement ceremony. Both the parties with an understanding performed the engagement ceremony and also spent some amount under the impression that marriage of the first informant's daughter will be performed.

Subsequently, groom did not agree to marry with the daughter of the first informant.

17. If the relation of the present applicants out of three proceedings with the bridegroom is taken into consideration, hardly they had any prominent role to play for pulling down the marriage proposal. They seem to have attended the engagement ceremony in their capacity as a friends and relatives. The driver is also arraigned in the FIR as one of the accused when he had no concern at all with the marriage. Friend's wife also has been arraigned as accused without any specific allegations against her.

18. Having regard to the above reasons and discussion, we are arrived at the conclusion that no prima facie case is made out against the applicants. There is absolutely no iota of evidence to show that the applicants attended the engagement ceremony with dishonest intention. There is no material in the FIR to attract the offences of criminal breach of trust and cheating and demand of dowry alleged against the applicants. In the above premise, it would not be proper to continue the criminal prosecution against the applicants. If it is allowed to continue, it would amount to an abuse of process of law. We are convinced to invoke provisions of Section 482 of the Code of Criminal procedure to quash the FIR registered against the applicants.

19. In view of the forgoing reasons, we proceed to pass the following order:

ORDER

(i) The applications for quashing of FIR filed by the respective applicants in connection with Crime No.0130 of 2017 registered at Amalner Police Station, Dist. Jalgaon for the offences punishable under Sections 406, 417, 420 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, is hereby allowed.

(ii) The Criminal Application No.4183 of 2017 stands dismissed to the extent of applicant No. 1 - Sunilchand S/o. Dulichand Lodha and applicant No.2 - Aruna W/o. Sunilchand Lodha as the same was withdrawn vide order dated 14.08.2017.

(iii) Rule is made absolute in above terms.

20. The observations made hereinabove are prima facie in nature and confined to the adjudication of present applications only and the trial Court shall not get influenced by the said observations during the trial.