



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4029 OF 2022

Satish Gajanan Mulik

..Petitioner

V/s.

The State of Maharashtra & Anr.

..Respondents

Mr. Niranjan Mundargi a/w Satyam Nimbalkar, Niranjan Mogre, Ms. Keral Mehta, Mr. Abhishek Arote, Ashish Kachole and Omkar Chitale for the Petitioner.

Mr. J.P. Yagnik, APP for the Respondent No.1/State.

Mr. Purushottam Chavan for Respondent No.2.

CORAM : SUNIL B. SHUKRE, AND
M.M. SATHAYE, JJ.

DATE : 27th MARCH 2023

(JUDGMENT : PER M.M.SATHAYE,J.)

1. Rule. Rule made returnable forthwith. Ld. APP and advocate for the Respondent No. 2 / informant waive service. Taken up for final disposal with consent.

2. By this petition filed under Article 226 of the Constitution of India along with Section 482 of the Code of Criminal Procedure ("CrPC" for short), the Petitioner is seeking to quash and set aside the Crime bearing FIR No. 427 of 2022 registered with Yerwada Police Station, Pune for offence punishable under

Section 420 of the Indian Penal Code (“IPC” for short), which is subsequently registered as Criminal Case bearing No. RCC/4523/2022 pending before the learned Judicial Magistrate First Class No. 5, Pune.

3. Heard both sides. Perused record. Learned counsel for the Petitioner has argued in support of his case and taken us through various documents on record. Learned APP for Respondent No. 1 State has pointed out material in support of prosecution. Learned Advocate for Respondent No. 2 has vehemently opposed grant of any relief to Petitioner and has urged that allegations in FIR and statements recorded during course of investigations are sufficient to show specific role of Petitioner in the alleged crime and he must face trial.

4. Perusal of the FIR dated 02.09.2022 shows that according to the informant/Respondent No.2, the Petitioner is an advocate appointed by him in the Court at Pune since at least from December 2012 in a suit filed against a third party. It is alleged that the Petitioner gave false promise of favorable outcome and took large sum as fees, which according to Respondent No.2 are paid in cash. It is further alleged that Petitioner has turned collusive with other side. It is also alleged that in the year 2018, the Petitioner purchased certain land of Respondent No.2 but sale deed was executed in favour of Bramha Builders in which

Respondent No.2 has received about Rs.98.8 lakhs, but about Rs.86.45 lakhs are still pending. It is further alleged that when Respondent No. 2 asked the Petitioner about remaining amount, he avoided to entertain. It is alleged that Petitioner advised Respondent No.2 to accept certain amount and withdraw the case filed against the third party. It is alleged that the Petitioner has cheated Respondent No.2, which has resulted in lot of tension to him and therefore, Respondent No.2 consumed sleeping pills leading to his hospitalisation.

5. It is material to note that offence is registered only under Section 420 of IPC. Accepting the allegation as mentioned by Respondent No.2 in the FIR at its face value, as also the statements recorded during the course of investigation, in our opinion, the crime alleged under Section 420 of IPC cannot be said to have been committed. The Petitioner is an Advocate and Respondent No.2 is his client. Wrong advise or alleged promise of favourable outcome in litigation being a promise given for illegal purpose and against public policy, is no promise which is enforceable in law, and therefore, would not be an inducement made for delivery of property and hence, would not be cheating within the meaning of Section 415 of IPC. It will not be out of place to mention that FIR alleges payment of fees in cash to Petitioner and admits receipt of huge sum of money towards sale of property by Respondent No. 2. This would show that the

dispute between Respondent No.2 and the Petitioner, at its best, is of civil nature including that arising out of the provisions of Advocates Act, dealing with the conduct of an Advocate.

6. Perusal of the copy of sale deed registered on 17th April, 2018 (under which he is alleged to have been not paid fully) shows that Informant/Respondent No. 2 has executed the same for himself and as natural guardian of his children, along with his wife. The said sale deed is apparently executed in favour of Brahma Corp. Company Limited and not with the Petitioner. Therefore, non receipt of full consideration has no connection with the Petitioner as alleged. The recitals in the said sale deed further show that Respondent No. 2 has received monetary consideration vide demand draft/cheques thereunder.

7. Therefore in the the peculiar facts and circumstances of the case, in our considered view this case falls in one of the categories given in the case of *State of Haryana and Ors. v/s. Ch. Bhajanlal and Ors.*¹ With the allegations in FIR as well as the quality of material collected by the Investigating Officer during the course of investigation, it will be abuse of process of law if the Petitioner is permitted to be prosecuted further.

8. Hence, we pass the following order:

1 1992 Supp (1) SCC 335

(i) The Petition is allowed in terms of prayer clause (b) and accordingly the FIR bearing Crime No. 427/2022 registered on 02.09.2022 with Yerwada Police Station for the offence punishable under Sections 420 of the Indian Penal Code, 1860 and consequential proceedings RCC No. 4523/2022 pending before the Court of 5th Judicial Magistrate, First Class, Pune, are hereby quashed and set aside.

(ii) Rule is made absolute in the above terms. No costs.

(M.M.SATHAYE, J.)

(SUNIL B. SHUKRE, J.)