

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JANUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE K. NATARAJAN

CRIMINAL PETITION No.5865 OF 2021

BETWEEN:

1. SRI. VENKATESH,
S/O SRIRAMULU GOUDU,
AGED ABOUT 26 YEARS,

2. SMT. RATHNAMMA,
W/O SRIRAMULU GOUDU,
AGED ABOUT 51 YEARS,

BOTH ARE R/OF NO.28,
CHANDRA LAYOUT, 3RD CROSS,
VENKATESHWARA THEATRE ROAD,
DEVASANDRA MAIN ROAD,
K R PURAM,
BANGALORE - 560 036.

3. SRI. MANJUNATH,
S/O K. MUNIVENKATAPPA,
AGED ABOUT 42 YEARS,

4. SRI. MUNIVENKATAPPA,
S/O CHIKKAPPA,
AGED ABOUT 74 YEARS,

BOTH ARE R/O
CHINNAHALLI,

MUSTOOR,
KOLAR - 563 132. ...PETITIONERS

(BY SRI.N.S.SRIRAJ GOWDA, ADVOCATE FOR
M/S.POOVAYYA AND CO., ADVOCATES)

AND:

1. STATE OF KARNATAKA,
THROUGH SHO,
RAMAMURTHY NAGAR POLICE STATION,
KEMPEGOWDA UNDERPASS ROAD,
EAST OF NGEF LAYOUT,
DOORAVANI NAGAR,
BANGALORE - 560 016.
2. SMT. GULZAR G P.,
AGED ABOUT 24 YEARS,
D/O GOKUR SAHEB,
R/O H NO.997,
NEAR JAMIYA MASJID,
NARASIMHAIAH COMPOUND,
VIJINAPURA, RAMAMURTHY NAGAR,
BANGALORE - 560 016.

...RESPONDENTS

(BY SRI. MAHESH SHETTY, HCGP FOR R1;
R2 IS SERVED AND UNREPRESENTED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR BEARING CR.NO.157/2020 DATED 03.05.2020, REGISTERED BY THE RESPONDENT NO.1 POLICE FOR OFFENCE P/U/S 420, 506, 34 OF IPC (ANNEXURE - A) PENDING ON THE FILE OF 10TH A.C.M.M., MAYO HALL UNIT, AT BENGALURU BY ALLOWING THIS PETITION.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION, THIS DAY THROUGH VIDEO CONFERENCING, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioners/accused Nos.1 to 4 under Section 482 of Cr.P.C. for quashing the FIR in Cr.No.157/2020 registered by the Ramamurthy Nagar Police Station for the offences punishable under Section 420, 506 read with Section 34 of IPC.

2. Heard the learned counsel for the petitioners and learned HCGP for respondent No.1-State.

Respondent No.2 served and unrepresented.

3. The case of the prosecution is that on the complaint of respondent No.2, the Police registered a case on 03.05.2020 wherein, it is alleged that the about 8 years back she came to know petitioner No.1 and both of them fell in love with each other and petitioner No.1 agreed to marry her. Subsequently, he left her and said to have married some other lady as

his family members supported his marriage with some other lady. Therefore, she filed a complaint against petitioner No.1 and his other family members for having cheated her.

4. Learned counsel for the petitioners contended that mere promise of marriage and not marrying her cannot be said to be a cheating as per the provision of Section 415 of IPC. Absolutely there is no ingredient for invoking the said section. After the filing of the case in May-2020, absolutely there no investigation by the Police in spite of the petitioners appearing before the Police after obtaining the bail and there is no progress. Respondent No.2 has filed the complaint only to harass the petitioners. Hence, prayed for quashing the FIR.

5. *Per contra*, learned High Court Government Pleader objected the same.

6. Having heard the arguments and perused the records, admittedly respondent No.2 filed complaint stating that accused No.1/petitioner No.1 fell in love with her and he has promised to marry her. Subsequently, he failed to marry her and he married somebody else and other petitioners said to have helped petitioner No.1 to marry some other lady. A plain reading of the complaint would reveal that it does not attract any ingredient of Section 415 of IPC in order to show that the accused persons have committed the offence under Section 420 of IPC and also she has just stated that the accused have also threatened her in order to attract Section 506 of IPC. Absolutely there is no ingredient stated by her in order to show that there is a criminal intention of cheating by petitioner No.1 and thereby, he has promised to marry her but has broken his promise.

7. Learned counsel for the petitioners relied upon a Single Bench judgment of the High Court of Judicature at Madras, in the case of ***K.U.Prabhu Raj Vs. State by Sub Inspector of Police, A.W.P.S. Tambaram and another*** reported in **2012-3-L.W.770** wherein, the Court has held at paragraphs 16 and 17 as under:

"16. A cursory perusal of the above provision would make it clear that there are atleast three essential ingredients constituting an offence of cheating which should be made out from the materials available on record. They are as follows:-

'(1) Deception of any person;

(2) 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 and

(3) 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.'

17. The learned counsel for the second respondent would further submit that the offence involved in this case falls within the ambit of the third limb of Section 415 I.P.C as enumerated above. According to the learned counsel, but for the promise made by the petitioner, the daughter of the second respondent would have married someone-else and settled down in her life. Thus, according to him, the petitioner has committed a clear offence of cheating. In my considered opinion, it is not so. As has been held by the Division Bench of the Calcutta High Court in *Abhoy Pradhan v. State of W.B* case (cited supra), mere promise to marry and later on withdrawing the said promise will not amount to an offence of cheating at all. On such false promise to marry, the person to whom such promise was made should have done or omitted to do something that he would not do or omitted to do but for the deception. In this case, absolutely, there are no materials available on record to show that because of the promise made by the petitioner, the daughter of the second respondent has done anything or omitted to do something which has the tendency to cause damage or harm to the body or mind or reputation or property of the daughter of the second respondent. In the absence of the same, the entire allegations found in the records, in my considered

opinion, would not make out an offence under Section 417 or 420 I.P.C., at all."

8. The Hon'ble Supreme Court also has categorically held in the case of **S.W.PALANITKAR AND OTHERS VS. STATE OF BIHAR AND ANOTHER** reported in **(2002) 1 SCC 241** at paragraph No.11 that mere breach of contract cannot give rise to any criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and the time when the offence is said to have been committed. Here in this case, petitioner No.1 is said to have promised to marry respondent No.2, but failed to marry her. In view of the judgment of the Hon'ble Supreme Court, respondent No.2 has failed to make out a case of criminal intention of petitioner No.1 from the beginning for cheating the complainant. That apart, the aforesaid judgment of High Court of judicature at Madras is applicable to the case where the promise of marriage will not attract

Section 420 of IPC. This Court has held in Crl.R.P.No.233/2020 dated 24.02.2020 in the case of Sri.D.Ramesh Sinha Vs. State of Karnataka that as a promise of marriage and breach of contract will not attract the provisions of Sections 417 and 420 of IPC. Such being the case, continuing the proceedings or investigation against the petitioners is abuse of process of law and therefore, the same is liable to be quashed. Accordingly, I pass the following;

ORDER

The petition is ***allowed***.

The investigation against this petitioner in Cr.No.157/2020 registered by the Ramamurthy Nagar Police Station is hereby quashed.

**Sd/-
JUDGE**

NR/-