

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO.29340/2017 (GM-RES)

BETWEEN:

1. VIJAYA KUMAR @ VIJAY PATIL  
S/O BASANAGOWDA  
AGED ABOUT 22 YEARS  
WORKING FOR GAIN AS  
TELEMARKETING EXECUTIVE AT  
MATRIMONY.COM PVT LTD  
(M/S BHARAT MATRIMONY)  
HAVING ITS OFFICE AT ADUGODI  
BENGALURU-560 030.
2. MR. CHANDRASHEKAR  
S/O K. NARASIMAIHAH  
AGED ABOUT 34 YEARS  
WORKING FOR GAIN AS  
COLLECTION EXECUTIVE AT  
MATRIMONY.COM PVT LTD  
(M/S BHARAT MATRIMONY)  
HAVING ITS OFFICE AT ADUGODI  
BENGALURU-560 030.

...PETITIONERS

(BY SRI SHYAM SUNDAR H.V., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA  
THROUGH THE STATION HOUSE OFFICER  
BASAVANAGUDI POLICE STATION  
BENGALURU-560 004.

2. UMA S PALLED  
D/O LATE SHEKARAPPA  
AGED ABOUT 40 YEARS  
RESIDING AT SLV P.G  
PAVITHRA PARADISE BACK  
BASAVESHWARANAGAR  
BENGALURU-560 079.

...RESPONDENTS

(BY SRI VINAYAKA V.S., HCGP FOR R-1/STATE;  
SRI N. BYREGOWDA, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CODE OF CRIMINAL PROCEDURE, 1973 PRAYING TO QUASH THE IMPUGNED FIR REGISTERED BY THE BASAVANAGUDI POLICE STATION, DATED 30.5.2017 PRODUCED AT ANNEXURE-A IN CRIME NO.0182/2017 REGISTERED BY THE R-1 IN SO FAR AS THE PETITIONERS ARE CONCERNED.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The 2nd respondent lodged the FIR with the jurisdictional police alleging that she created a profile on the portal "Kannada Matrimony" database maintained by Matrimony.com. Kannadamatrimony of which petitioners - accused Nos.2 and 3 are the employees. It is further alleged that she came into contact with a person by name Amit Deepak through the portal, who is residing in America and he had stated that he had certain quantity of gold and certain amount of currency in dollars, which he was unable to exchange since customs department would

issue clearance only if he paid the charges and that he did not have Indian currency and requested her to transfer a sum of Rs.16,000/-. It is further alleged that accused No.1 demanded more money on the pretext that he could not obtain customs clearance with the amount of money he received and further requested the 2nd respondent to deposit further amount and in turn, the 2nd respondent deposited a sum of Rs.90,000/- into the third party account. It is further alleged that accused No.1 again spoke and requested her to deposit Rs.38,000/- into the third party account towards air tickets and customs clearance. It is further alleged that the 2nd respondent transferred the said amount by NEFT. It is further alleged that accused No.1 informed that his flight from Delhi has been cancelled and further sought for remittance of Rs.1,20,000/-. It is further alleged that when the 2nd respondent insisted for whatsapp video call, the accused No.1 stated that he did not have facility on his phone and thereafter, the 2nd respondent after speaking with a close friend realized that she is being cheated by accused No.1 for a sum of Rs.1,70,000/-. It is further alleged that the petitioner No.1 spoke to her and opined that accused No.1 is a good person and insisted the 2nd respondent to deposit a sum of Rs.3,700/-

towards subscription charges. The police registered the FIR for the offence punishable under Section 420 of IPC and Section 66(D) of the Information Technology Act, 2008. Taking exception to the same, the accused Nos.2 and 3 are before this Court.

2. The learned counsel appearing for the petitioners submits that the allegation of cheating is against accused No.1 and in the absence of specific allegation so as to constitute the commission of offence punishable under Section 420 of IPC, the registration of FIR against the petitioners - accused Nos.2 and 3 is without any substance.

3. On the other hand, the learned High Court Government Pleader submits that the allegation made in the FIR discloses the commission of offence punishable under Section 420 of IPC and the allegation made in the FIR requires to be investigated further and the veracity of the allegation cannot be gone into at this stage and sought for dismissal of the petition.

4. I have examined the submissions made by the learned counsel appearing for the parties.

5. The only allegation against the petitioners - accused Nos.2 and 3 is that they collected a sum of Rs.3,700/- towards subscription charges by promising that her marriage would be solemnized with accused No.1. Admittedly, the petitioners - accused No.2 and 3 are the employees of "Kannada Matrimony" portal and the said amount Rs.3,700/- was collected towards subscription charges and upon subscription, the 2nd respondent came into contact with accused No.1, who maintained his profile in "Kannada Matrimony". Except the said allegation, there is no specific allegation against the petitioners - accused Nos.2 and 3 that they had dishonest intention to cheat the complainant from inception. To constitute the offence punishable under Section 420 of IPC, there must be a specific allegation that the accused had induced the informant to subscribe to the portal with an intention to cheat. In the absence of essential ingredients so as to constitute the commission of offence punishable under Section 420 of IPC, the continuation of investigation against the petitioners - accused Nos.2 and 3 will be an abuse of process of law, since the possibilities of police filing charge sheet against the petitioners - accused Nos.2 and 3 is remote and bleak. Accordingly, I pass the following:

ORDER

i) Writ petition is allowed.

ii) The impugned FIR in Crime No.0182/2017 registered by the Basavanagudi Police Station, insofar as it relates to petitioners - accused Nos.2 and 3 is hereby quashed.

Sd/-  
JUDGE

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