

Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 5296 OF 2021

Shailendra Kumar Dubey .. Petitioner

Vs.

1. XYZ

2. The State of Maharashtra .. Respondents

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Ms. Jasmin Purani i/b Mr. Rahul Agrawal for the petitioner

Mrs. P.P. Shinde, APP for the respondent no.2 – State

Mr. Deepak Dalvi, IO, Mr. Pradeep More, (Retd.) P.I. BKC Police
Station present Court.

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : 1st FEBRUARY, 2023.

P.C.

1. Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith. With the consent of
the parties the petition is taken up for final disposal. Learned APP
waives notice on behalf of respondent No. 2 – State.

3. By this petition, preferred under Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks quashing of the FIR bearing C.R. No. 318 of 2019 dated 17.11.2019 registered with the BKC Police Station, Mumbai for the alleged offences punishable under Sections 376, 377, 498A, 354, 506(2), 420, 406, r/w 34 of the Indian Penal Code.

4. A few facts germane for disposal of this petition can be summarized as follows :-

5. The petitioner is an Assistant General Manager, serving in Bank of India, Durgapur, West Bengal. Presently, he is posted as a Deputy General Manager. He has been arraigned as an accused in C.R. No. 318 of 2019, dated 17.11.2019 registered by the BKC Police Station, Mumbai for the alleged offences as above.

6. Respondent no.1 is the victim whose marriage was solemnized with Ankit Kaushal Kumar on 04.07.2018 at Hotel Lalit, Panjim, Goa as per the Hindu rites and rituals. After her marriage, she was subjected to physical and mental cruelty as well as demand of

jewellery, cash etc. by her husband and in-laws. It is needless to go into the minute details, which are evident from the charge-sheet submitted by the Investigating Agency in the Court of 71st Metropolitan Magistrate, Bandra, Mumbai. The only role attributed to the petitioner is that he just acted as a middle-man in introducing the two families of the bride and bridegroom.

7. As a matter of fact, it appears that the petitioner, in good faith, acted as a mediator for fixing the marriage of the respondent no.1 with the accused no.1 namely Ankit Kaushal Kumar by providing the contact details of both parties to each other. He is in no way related with any of the parties. Surprisingly, there are absolutely no allegations against him in the first information report as well as in the statement of the victim recorded by the Metropolitan Magistrate, 54th Court, Mazgaon, Mumbai under Section 164(5) Cr.P.C. on 31.01.2020. It appears that suddenly, the Investigating Agency had served a Notice under Section 41-A of the Cr.P.C. through an e-mail upon the applicant, only when he came to know about an FIR in the instant crime having been registered against him along with other accused.

8. Admittedly, the applicant is already on Anticipatory Bail granted by the Sessions Court, Mumbai on 13.01.2021 in A.B.A. No.1467 of 2020.

9. Despite repeatedly asking the learned APP as well as the Investigating Officer who is present in Court, none could justify as to how the applicant can be arraigned as an accused in this crime, even remotely. This is nothing but an abuse of process of law by the Investigating Officer which cannot be countenanced. It appears that only in her supplementary statement recorded on 25.11.2019, the respondent no.1 had, for the first time, stated that the applicant has cheated them by exploiting her father sentimentally praising her husband and in-laws that they are decent, cultured and refined and that, the boy has also a very good job in a foreign country. This, in our view, cannot be said to be the offences, even remotely, attracting ingredients of Sections 406 or 420 of the Indian Penal Code.

10. It is obvious that the allegations against the applicant herein are baseless and without any substance. The allegations made in the FIR and the final report under Section 173 of the Cr.P.C., even if,

are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the applicant. The material placed before us do not disclose commission of cognizable or non-cognizable offence having been committed by the applicant. The allegations are absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the applicant.

11. In view of the well known judgment in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**¹ this is a fit case to invoke our jurisdiction under Section 482 of the Cr.P.C. and under Article 226 of the Constitution of India. The FIR and the charge-sheet against the applicant, therefore, needs to be quashed and set aside only *qua* the applicant. Consequently, following order is passed.

12. Accordingly, the petition is allowed. The FIR bearing C.R. No. 318 of 2019 registered with the BKC Police Station, Mumbai and consequently the charge-sheet filed in the Metropolitan Magistrate, 71st Court, Bandra Mumbai for the alleged offences against the petitioner are quashed and set aside.

1 1992 Supp (1) SCC 335

13. Rule is made absolute in the aforesaid terms. Application is disposed of accordingly.

14. All concerned to act on the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]