

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 62 OF 2014

YOGESH ARJUN NEHUL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicants : Mr. Kakade N.K.
APP for Respondents/State: Mr. V.D. Godbharale
Advocate for Respondent no.3 : Mr. N.V. Gaware

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CORAM : S.S. SHINDE & A. I. S. CHEEMA, JJ.

Dated: July 30, 2015

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PER COURT :-

Heard the learned counsel appearing for the applicants, the learned counsel appearing for the original complainant and the learned Additional Public Prosecutor appearing for the respondent/State.

2. The learned counsel appearing for the applicants submits that, the respondent - complainant left the matrimonial house on 13th December 2012. The complaint was filed belatedly after 18 months. He further submits that, the evidence of alleged

independent witnesses, who claim to be neighbourers of the applicants, is hear-say. He submits that, the allegations in the complaint and also the statements of the witnesses clearly show that, the allegations are general in nature. There are no specific particulars or overt acts attributed to each of the applicants. He further submits that, the applicant no.1 filed Hindu Marriage Petition No. 280 of 2012 for restitution of conjugal rights, however, same came to be dismissed. He further submits that, trial cannot proceed on the basis of the material collected by the prosecution agency and the same would be exercise in futility and abuse of process of Court. Therefore, he submits that, the application may be allowed.

By way of an alternate submission, he submits that, in case this Court is not inclined to entertain the application of applicant nos. 1 and 2, at least, this Court may entertain the application of applicant nos. 3 and 4, against whom there are no

specific allegations in the complaint or no specific overt act is attributed by the witnesses in their statements.

3. The learned counsel appearing for the complainant invited our attention to the allegations in the complaint and also the statements of the witnesses, and submits that, the allegations, as they appear in the complaint and the contents of the statements of the witnesses will have to be read as it is and can only be tested during the trial, and this Court while exercising jurisdiction under Article 482 of the Criminal Procedure Code, may not enter into the exercise of drawing inferences or evidentiary value of the evidence collected by the prosecution agency. He invited our attention to the judgment of the Supreme Court in the case of **Taramani Parakh V/s State of M.P. and ors¹**, and in particular, para 6 onwards and submits that, the application may be rejected.

4. We have given careful consideration to the

¹ Laws (SC)-2015-3-33

submissions advanced by the learned counsel appearing for the applicants, the learned Additional Public Prosecutor appearing for the Respondent/State and the learned counsel appearing for the original complainant. With their able assistance, we have perused the allegations in the First Information Report and also the statements of the witnesses. The contention of the learned counsel appearing for the applicants that, the complainant has lodged the complaint belatedly after 18 months from leaving matrimonial house by her is concerned, when there are allegations of harassment or mental cruelty, the same is continuous cause of action, and therefore, at this stage, it is difficult to hold that, the complaint lodged by the complainant was belatedly filed.

5. We have carefully read the allegations in the First Information Report and also the statements of the witnesses. It is not possible for this Court to segregate role of each accused while exercising jurisdiction under

Article 482 of the Criminal Procedure Code, when allegations made in the complaint and contents of the statements of the witnesses show composite allegations against the applicants. Upon reading material placed on record, there is sufficient material collected by the prosecution agency so as to try the case.

6. For the reasons aforesaid, the application stands rejected. We make it clear that, the observations made in this order, are prima facie in nature and for the purpose of deciding the present application and the trial Court shall not get influenced by the said observations during trial.

(**A. I. S. CHEEMA, J.)**

(**S.S. SHINDE, J.)**