

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPELLATE SIDE JURISDICTION

CRIMINAL WRIT PETITION NO.: 614 OF 2014

01. **Milind s/o Namdeo Suryawanshi,**
Age: years, Occ.: Labourer,

02. **Shila d/o Namdeo Suryawanshi,**
Age 35 years, Occ.: Social work,

Both R/o: C-3 Vasundhara Society,
Indiranagar, Nashik-9.

... **APPLICANTS**
(Orig. Accused)

VERSUS

01. **The State of Maharashtra,**
Through the Police Station Officer,
Akole Police Station, Tq. Akole,
Ahmednagar.

02. **Rajendra s/o Ganpat Kadam,**
Age : 36 years, Occu. Labourer,
R/o Guravzap, Akole, Tq. Akole,
Dist. Ahmednagar.

03. **Sou. Mangala w/o Milind Suryawanshi,**
Age : Major, Occu. Household,
R/o. : C-3, Vasundhara Society,
Indiranagar, Nasik-9.

... **RESPONDENTS**
(Respondent No.2
Orig. Complainant)

Smt. Alka Shelke/ More Patil, Advocate for Petitioners.
Mr.S.B.Pulkundwar, APP for Respondent / State.
Mr. A. M. Phule, Advocate for Respondent No.3.

**CORAM:- T. V. NALAWADE &
SMT. I. K. JAIN, JJ.**

DATED :- 20th April, 2015.

JUDGMENT [PER SMT.I.K.JAIN, J.]:

Rule. Rule made returnable forthwith. By consent of the parties, the criminal writ petition is heard finally.

2 Learned APP is also heard.

3 This petition under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure is for quashing FIR in Crime No.I-38 of 2014, registered for the offences punishable under Sections 363, 368 and 120-B of the Indian Penal Code, with Akole Police Station, Taluka Akole, District Ahmednagar.

4 As stated in FIR Complainant Rajendra Ganpat Kadam was married to Mangal d/o Subhash Borade, resident of Nilvandi Pade, Taluka Dindori, District Nasik. In 2006, Rajendra divorced his first wife and in 2008, re-married to Mangal a divorcee.

5 According to Complainant, first marriage of Mangal was performed with Petitioner No.1. Before 15 days of lodging FIR, Milind lodged a report with Indiranagar Police Station that Mangal

was wrongfully detained by her parents. On his report, Complainant / Rajendra, his second wife Mangal, her parents and brother in-law were called at Indiranagar Police Station. When they went there, Milind was not present. Police recorded their statements and they came back to Akole.

6 On 5th April, 2014, at around 02:00 pm, when Complainant came home, he found Mangal missing and his two kids crying. He lodged missing report. On 6th April, 2014, he came to know from neighbours that in two vehicles some people came to his house. Three persons alighted from one vehicle. They dragged and took Mangal away in that vehicle. Complainant suspected that Milind might have taken her away. So, he had been to Nasik. He did not find Milind and his sister Shila/ Petitioner No.2 at Nasik. He inquired from Manorama, mother of Milind, but she did not give satisfactory reply. Complainant then made her thorough search, but in vain. As she could not be traced, on 10th April, 2014, he lodged FIR.

7 So far as Petitioner No.2 / Shila is concerned, no role is attributed to her in FIR. According to Petitioners, Respondent No.3/Mangal on her own decided to reside with Petitioner No.1 and therefore, there is no substance in the allegations that Petitioner

No.1 kidnapped Respondent No.3 and removed her from the custody of Respondent No.2/ original Complainant.

8 It appears that on 15th April, 2014 and 2nd May, 2014, Respondent No.3/ Mangal submitted written representations to the Superintendent of Police Ahmednagar, stating therein that she was residing willingly with Petitioner No.1.

9 As statement of Respondent No.3 was not recorded vide order dated 23rd March, 2015, this Court directed the Investigating Agency to record her statement. In compliance to the said order, statement of Mangal came to be recorded. She stated in the statement that she was never kidnapped by any one. She filed her affidavit. In the affidavit, she stated that she is legally wedded wife of Petitioner No.1. Their marriage was solemnized on 15th December, 2003 as per Hindu rights. The couple have a female child. The marital tie between her and Petitioner No.1 still subsists. She is residing with Petitioner No.1 and her daughter on her own and leading a happy matrimonial life.

10 In view of the statement of Mangal, FIR lodged by Respondent No.2 appears to be untrue in toto. Nothing can be achieved if charge-sheet is filed against the Petitioners. So to

prevent the abuse of process of law, we find it a fit case to exercise discretion under Section 482 of the Criminal Procedure Code.

11 In the result, criminal writ petition succeeds. FIR in Crime No.I-38 of 2014, registered for the offences punishable under Sections 363, 368 and 120-B of the Indian Penal Code, at Akole Police Station, Taluka Akole, District Ahmednagar, is hereby quashed and set aside.

12 Rule is made absolute in the aforesaid terms.

[SMT. I. K. JAIN, J]

[T. V. NALAWADE, J.]

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