

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 944 OF 2016

1. Parmeshwar S/o Sitaram Udare,
age : 36 years, Occ.: Labour,
2. Sitaram S/o Devaba Udare,
Age : 78 years, Occ.: Nil,
3. Avida W/o Sitaram Udare,
Age : 70 years, Occ.:Household,
4. Suresh S/o Sitaram Udare,
Age : 38 years, Occ.: Labour,
5. Deivbai S/o Suresh Udare,
Age : 23 years, Occ.: Household,
6. Barakibai @ Priya D/o Gulab Kamble,
Age : Major, Occ.: Household,

All R/o Pus, Tal. Ambajogai,
District Beed

7. Chhaya W/o Shivaji Upade,
Age : 34 years, Occ.: Household,
R/o : Pattiwadgaon, Tal. Ambajogai,
District Beed
8. Savita W/o Pintu @ Sugriv Kamble,
Age : 33 years, Occ.: Household,
R/o. Siddheshwar Lane, Latur,
Tal. and Dist. Latur

..APPLICANTS

(Applicant no.1 is deleted as per
leave granted by the Hon'ble Court's
order dated 06.04.2016.)

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Loha,
Tal. Loha, District Nanded

2. Sau. Anita W/o Parmeshwar Udare,
Age : 23 years, Occu.: Household,
R/o Pus, Tal. Ambajogai,
District Beed, at present
R/o. Indira Nagar, Loha,
Tal. Loha, District Nanded

..RESPONDENTS

Mr. S.S. Thombre, Advocate for the applicants
Mr. K.S. Patil, A.P.P. for the respondent/State
Mr. A.M. Gaikwad, Advocate for respondent no.2

**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

**RESERVED ON : 22nd AUGUST, 2016
PRONOUNCED ON : 30th AUGUST, 2016**

JUDGMENT (PER : SANGITRAO S. PATIL, J.):

Heard both sides.

2. By this application under section 482 of Criminal Procedure Code, applicant nos.2 to 8 have prayed for quashing of the First Information Report on the basis of which, Crime No.98 of 2015 has been registered with Police Station, Loha, District Nanded against them for the offences punishable under sections 498-A, 323, 506, 494 read with section 34 of the Indian Penal Code.

3. Applicant no.1-Parmeshwar Udare, who has been

deleted from the array of applicants after filing of this application, is the husband of respondent no.2. applicant nos.2 and 3 are the parents, applicant no.4 is the brother, applicant no. 5 is the sister-in-law, while applicant nos.7 and 8 are the married sisters of the husband of respondent no.2. Applicant no.1 is alleged to have performed second marriage with applicant no.6- Barakibai @ Priya.

4. Respondent no.2 lodged the report against applicant nos.2 to 8 and her husband - Parmeshwar (applicant no.1) in Police Station, Loha, District Nanded dated 4th/12th November, 2015, alleging interalia that her husband cohabited with her for a period of 5 to 6 months only after the marriage that was performed on 9th February, 2010. When she was pregnant of four months, her husband asked her to get aborted on the say that he was not expecting a child so early after the marriage. Respondent no.2 went to her mother's house and delivered a male child. Neither her husband nor anybody from his family went to see respondent no.2. When the child became six months old, her husband (applicant no.1) and applicant nos.2 and 4 visited the maternal home of

respondent no.2. They told her that they were not intending to have a child. They further told that they were taking the child with them but would not take her. They further asked for the amount of Rs.1,00,000/- out of dowry, in case respondent no.2 wanted to cohabit with her husband. They further beat respondent no.2 and her mother.

5. Respondent no.2 came to know that her husband performed second marriage with applicant no.6-Barakibai.

6. Thereafter, respondent no.2, her mother and other relatives visited the matrimonial house of respondent no.2. They were not allowed to enter into the house. They were beaten and threatened of death. It is further alleged that the husband of the respondent no.2 and applicant no.6 beat respondent no.2.

7. Thereafter, also the husband of respondent no.2 went to the maternal home of respondent no.2 and threatened that he would kill her and her son.

8. On the above referred allegations, respondent no.2 filed F.I.R. in Police Station Loha, District Nanded.

9. On the basis of above referred F.I.R., crime No.98 of 2015 came to be registered against the husband of respondent no.2 i.e. applicant no.1 and applicant nos.2 to 8.

10. The learned counsel for applicants nos.2 to 8 submits that applicant nos.2 and 3 – (parents of the husband of respondent no.2) are aged about 78 and 70 years respectively. Applicant nos.4 and 5 are the brother and sister-in-law of the husband of respondent no.2 and are residing separate. Applicant nos.7 and 8 are the married sisters of the husband of respondent no.2. They are residing at their respective matrimonial houses. Applicant no.6 has no concern whatsoever with the husband of respondent no.2. He submits that respondent no.2 herself is not ready to cohabit with her husband. She lodged false report against applicant nos.2 to 8 with a view to harass them. He further submits that the allegations made against applicant nos.2 to 8 are very vague and general. No offence is disclosed against them. He, therefore, submits that F.I.R. lodged against applicant nos.2 to 8 may be quashed and set aside.

11. The learned A.P.P. filed the status report of investigation conducted by Police-Sub-Inspector of Police Station Loha, in the above referred crime. He submits that the investigation is still in progress.

12. The learned counsel for respondent no.2 Mr.A.M. Gaikwad, submits that there is sufficient evidence collected by the Investigating Officer to connect applicant nos.2 to 8 with the above mentioned offences. He, therefore, submits that the application may be rejected.

13. The contents of the F.I.R. summarised above, indeed, are very vague and general. There is no mention of the date, time and or particular place in respect of the alleged acts of violence committed by applicant nos.2 to 8 as well as in respect of the alleged second marriage of the husband of respondent no.2 with applicant no.6 – Barakibai. The contents of the F.I.R. that the husband of respondent no.2 and his parents were not expecting the child from her, but they visited her maternal home after about six months of her delivery and tried to take away her son with them, do not appear to be natural and probable. When it is the case of

respondent no.2 that her husband i.e. (applicant no.1) and in-laws were not expecting any child from her so early, in all probabilities they would not have thought of taking away the child from the custody of respondent no.2. Even otherwise, there is no specific mention as to on which date and time, the said applicants visited the maternal home of respondent no.2 and tried to take away her child with them.

14. So far as the alleged second marriage of the husband of respondent no.2 with applicant no.6-Barakibai is concerned, except a single sentence that respondent no.2 came to know about the alleged second marriage of her husband with applicant no.6, there is nothing prima facie to constitute the offence of bigamy. The ingredients of the offence of bigamy are totally absent in the F.I.R.

15. The allegations of the alleged acts of violence committed by applicant nos.2 to 8 are totally vague and general. It does not appear to be natural and probable that applicant nos.2 and 4 would go to the maternal home of respondent no.2 and beat her mother and herself. It is not clarified as to why respondent no.2 did not lodge

report in respect of that incident against the said applicants. The same is the case in respect of the alleged incident that is stated to have taken place when respondent no.2 and her mother visited the house of applicant no.2. It is alleged that they were beaten at that time. No date or time of that incident has been mentioned in the F.I.R. No report was lodged immediately after that incident as well.

16. The papers of investigation containing the statements of respondent no.2 and the witnesses namely Balaji Gyanba Kamble, Vitthal Bhimrao Rajkhor, Radhabai Tukaram Hake (i.e. the mother of respondent no.2), Sanjay Tukaram Kandhare, Rohidas Tukaram Kandhare and supplementary statement of respondent no.2, also do not contain the details of the alleged incident of violence committed by the applicants concerned at maternal as well as matrimonial houses of respondent no.2.

17. In the above circumstances, there is no point in allowing the investigation to proceed further and put applicant nos.2 to 8 under the constant fear of being prosecuted. There are no sufficient grounds to proceed

against applicant nos.2 to 8. The First Investigation Report lodged against applicant nos.2 to 8 deserves to be quashed and set aside.

18. In the result, we pass the following order:-

O R D E R

- (i) The Criminal Application is allowed.
- (ii) The First Information Report subject-matter of Crime No.98 of 2015 registered with Police Station Loha, District Nanded, is quashed and set aside to the extent it relates to applicant nos.2 to 8.
- (iii) The Criminal Application is accordingly disposed of.
- (iv) No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.S. SHINDE**]
JUDGE