

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

CRIMINAL APPLICATION NO.1511 OF 2005

1. Nishikant s/o Ashok Kalanke
Age 36 years, Occu. Nil
R/o Plot No.43, Sector - 2,
Kopar Khairne, Washi,
New Mumbai
 2. Ashok s/o Dagadu Kalanke,
Age 70 years, Occu. Retired
R/o as above
 3. Shalini w/o Ashok Kalanke,
Age 60 years, Occu. Household,
R/o as above
- ..Applicants

Versus

1. Pankaja w/o Nishikant Kalanke,
Age 33 years, Occu. Household,
R/o Plot No.7, Yeshashri Housing
Society, CIDCO, Aurangabad
 2. The State of Maharashtra
- ..Respondents

Mr N.L. Jadhav, Advocate for applicants
Mr S.G. Ladda and Mr B.R. Loya, Advocates for respondent No.1-
absent
Mr P.G. Borade, A.P.P. for respondent No.2

CORAM : V.K. JADHAV, J.

DATE : 2nd September 2016

PER COURT

1. The learned Counsel for the applicants is present, however, none present for respondent No.1-original complainant.
2. In the order dated 31st August 2016, it is observed that respondent No.1 - Pankaja had filed complaint against present applicants and others for having committed an offence under Sections 494, 107 read with Sec.34 of Indian Penal Code and the order of issuance of process was under challenge before this Court in Criminal

Application No.2267/2002. This Court, by order dated 22nd July 2009, in the said Criminal Application No.2267/2002 along with Criminal Application No.2301/2002 quashed the order of issuance of process with the observations that wife Pankaja faced severance of marriage with her husband, present petitioner No.1 - Nishikant in the matrimonial proceedings and by virtue of the order dated 5th September 2003 in Family Court Appeal, the divorce petition is confirmed. The marital tie between Petitioner No.1 - Nishikant and respondent No.1 - Pankaja no more subsists w.e.f. 22nd September 2000. Even though, the last chance is given, none present for the respondent No.1-original complainant.

3. The learned Counsel for the petitioners submits that the relations as husband and wife between the parties are not subsisting and both of them got remarried. Furthermore, the learned Counsel submits that there is no entrustment of property and thus, the ingredients of Section 406 of Indian Penal Code are not attracted. Learned counsel further submits that impugned order dated 1st March 2005 of issuance of process against the present petitioners for the offence punishable under Section 406 read with Sec.34 of Indian Penal Code is improper, incorrect and illegal.

4. I have also heard the learned A.P.P. for the State.

5. Even accepting the allegations made in the complaint as it is, I do not think that ingredients of Section 406 of Indian Penal Code are attracted in this case. Furthermore, it appears that the parties and most particularly respondent No.1 - original complainant has lost her

interest in prosecuting the present application. The petitioner No.1 Nishikant and the respondent No.1-original complainant got remarried after the divorce of decree passed in favour of petitioner No.1 - Nishikant. Their relations as husband and wife are not subsisting and no purpose will be served in keeping the complaint lodged by the respondent-wife pending before trial Court. In view of above, I propose to pass the following order:

ORDER

Criminal Application is hereby allowed in terms of prayer clause (C) and the R.C.C. No.75/2005 pending before the Chief Judicial Magistrate, Aurangabad is hereby dismissed as against the present petitioners.

6. Criminal Application is accordingly disposed of. Rule made absolute in above terms.

(V.K. JADHAV, J.)

vvr