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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
WRIT PETITION NO.1889 OF 2011

Mahesh Shivpad Gavane & Ors. ...Petitioners
vs.
State of Maharashtra & Ors. ...Respondents

Mr.P.D.Pise for the Petitioners
Ms M.H.Mhatre, APP for the respondent Nos.1 and 2.

CORAM : A.S.OKA, &
 A.A.SAYED, JJ.
DATE : September 30, 2016

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Heard the learned counsel for the petitioners and the learned APP for the first and second respondents. None appears for the third respondent. Even on 1st September 2016 and 29th September 2016, none appeared for the third respondent.

2 The prayer in this petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure,1973 (for short CrPC) is for quashing the First Information Report (FIR) registered for the offence under sections 366, 452 read with section 34 of the Indian Penal Code. The third respondent is the first informant. The third respondent is the mother of the second petitioner. The maiden name of the second petitioner is Sweta. The allegation in the FIR is that on 23rd March 2011, there was SSC examination of the sister of the second petitioner. The mother of

the second petitioner had been to the school for dropping the sister of the second petitioner. It is alleged that on the same date, the first petitioner who is stated to be a worker of a political party entered the house of the first informant along with his colleagues. The allegation is that he forcibly took the second petitioner with him and she was made to sit in Maruti Omni Van. The date of birth of the second petitioner is 26th October 1990. The allegation is of commission of offence under sections 366 and 452 read with section 34 of the IPC.

3 In the present application for quashing filed by the petitioners, it is contended that the petitioners married in accordance with Hindu Vedic rites on 7th November 2008 at Nrusinhawadi and since then, they are residing together as husband and wife. There is an affidavit dated 31st March 2011 of the second petitioner executed before the Executive Magistrate, Thane annexed to the application. It is stated in the said affidavit that she is married to the first petitioner on 7th November 2008. It is stated that on 23rd March 2011, on her wish, she left her mother's house and started residing with her husband. There is also an affidavit executed by the first petitioner on 16th March 2011 which is annexed to the petition. Our attention is also invited to the application filed by the second petitioner against her mother under section 12 of the Domestic Violence Act.

4 The prayer is made for quashing offence on the ground that no offence is made out and in any case, the first petitioner accused and the second petitioner who is the victim of the offence are staying together as husband and wife after solemnization of marriage.

5 The first informant has filed an affidavit in reply. It is contended in the affidavit-in-reply that apart from offence subject matter of this petition, there are three offences registered in the year 2006 and 2008 against the first petitioner who is posing to be the President of Maharashtra Nav Nirman Seva, Miraj Taluka. She has reiterated the incident of 23rd March 2011 as set out in her statement recorded by the police. She has pointed out that on her own request, the investigation was entrusted to State CID. It is alleged that as a result of transfer of investigation to State CID, the first petitioner realised that he will not be released from the clutches of the investigation and therefore, the present petition has been filed.

6 When this petition was called out for final hearing on 1st September 2016, we directed that the concerned Investigating Officer to make an enquiry on the claim made by the petitioners about their marriage. Accordingly, the Sub Inspector of Police of State CID, Sangli has submitted a report dated 30th September 2016 which is taken on record and marked 'R-1' for identification. In the report, he has stated that on 7th November 2008 the marriage

between the first petitioner and the second petitioner was solemnized by Shri Milind Poojari at Shrikshetra Nrusinhawadi. It is pointed out that the petitioners are blessed with a daughter by the name Jenika who is born on 5th November 2012. A copy of the birth certificate of the daughter is also a part of the report. The Police Officer has recorded that the petitioners are residing together at Plot No.79, Government Colony, Kupwad Road, Miraj. He has annexed a certificate issued by Shri Milind Poojari about their marriage. To the report, photo copies of Aadhar Card issued to both the petitioners have been annexed showing their address as Plot No.79, Government Colony, Kupwad Road, Miraj. A copy of the identity card issued to their daughter by the school is also annexed. Thus, the said report shows that the case made out by the petitioners has been substantiated and that they have been residing together as husband and wife at Miraj and they have a daughter born on 5th November 2012. At the time of marriage, the second petitioner had attained majority.

7 In view of the said report, now the continuation of criminal proceedings against the first petitioner will cause undue harassment to the first petitioner as well as the second petitioner. On 8th July 2011, this Court granted ad-interim relief in terms of prayer clause(c) by which investigation was stayed and therefore, no further investigation was carried out. Earlier orders show that an effort was made by the Division Benches of

this Court to bring about the settlement between the petitioners and the first informant. However, there could not be any settlement.

8 Continuation of the criminal proceedings against the first petitioner will be nothing but abuse of process of law. Therefore, this is a fit case to exercise the power under section 482 of the Code of Criminal Procedure, 1973 to quash the proceedings.

9 Accordingly, we pass the following order:

(I) Rule is made absolute in terms of prayer clause (b) which reads thus:

“(b) The Hon'ble Court Boma, after going through the validity and correctness of the case, the crime registered No.41/2011 u/sec.366, 452 read with section 34 of the IPC in Miraj Police Station against the petitioner No.1 be quashed and set aside.”

(II) All concerned to act upon an authenticated copy of this order.

(A.A.SAYED, J.)

(A.S.OKA, J.)