

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

CRIMINAL APPLICATION NO.1204 OF 2017

1. Anil @ Anna Dnyandeo Pawar
Age: 38 years, Occu.: Agri.
2. Dhanraj s/o.Dnyandeo Pawar
Age: 36 years, Occu.: Agri.
3. Shantabai w/o.Dnyandeo Pawar
Age: 58 Years, Occu.: Household
4. Chaya w/o. Anil @ Anna Dnyandeo
Pawar, Age :35 Years, Occu. Household

All R/o. Nibhari, Tq.-Newasa,
Dist.- Ahmednagar.

APPLICANTS

VERSUS

1. The State of Maharashtra
Through the Police Inspector,
Sonai Police Station, Sonai,
Ta. Newasa, District Ahmednagar.
2. Yogita Chimaji Sable
Age: 35 years, Occu.: Household,
R/o. A/P-Shiregaon, Tq.-Newasa,
Dist.-Ahmednagar
Now R/o. Nibhari, Tq.Newasa,
Dist. - Ahmednagar.

RESPONDENTS

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Mr.Amol S.Gandhi, Advocate for the applicants
Mr.K.N.Lokhande, APP for Respondent-State
Mr.N.S.Tekale, Advocate for respondent no.2.

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**CORAM: S.S.SHINDE &
A.M.DHAVAL, JJ.
Date: 09.08.2017**

ORDER:

1. Heard the learned counsel appearing for the applicants, learned APP appearing for the respondent-State, and the learned counsel appearing for respondent no.2.

2. The learned counsel appearing for the applicants submits that, respondent no.2 has no objection for quashing the First Information Report [for short 'FIR'], and to that effect she has filed the affidavit. Respondent no.2 is residing with applicant no.1; they have extramarital relations. He further submits that even on merits, even if the allegations in the FIR are taken at its face value and read in its entirety, the alleged offence punishable under Section 376 of the IPC is not disclosed, inasmuch as

respondent no.2 was major at the relevant time and relationship between applicant no.1 and respondent no.2 was consensual. He further submits that even the alleged offence punishable under Section 313 of the IPC is concerned, there are general allegations without attributing any specific overt act qua applicants. He further submits that the prosecution agency has not collected the sufficient material during the course of investigation to substantiate the allegations, made against the applicants of causing miscarriage without consent of respondent no.2. Therefore, he submits that the FIR deserves to be quashed. In support of his aforesaid contentions, he invites our attention to the unreported judgment of the Bombay High Court in the case of *Mohd.Bablu Kasiruddin Shaikh Vs. State of Maharashtra & another* in Writ Petition No.2821 of 2017, decided on 19th July, 2017.

3. On the other hand, learned APP appearing for the respondent-State relying upon the investigation papers submits that during the course of investigation, sufficient material has been collected by the Investigation Officer, and on the basis of the said material the trial can proceed. He submits that upon reading the allegations in the FIR in its entirety, an ingredients of the alleged offences have been attracted and consequently the alleged offences have been disclosed. He further submits that so far offence punishable under Section 313 of the IPC is concerned, the said offence is against the public, and therefore, the judgment in the case of the *Mohd.Bablu Kasiruddin Shaikh [supra]* is not applicable in the facts of present case.

4. Learned counsel appearing for the respondent no.2 joins the prayer of the

applicants and submits that respondent no.2 has no objection for quashing the FIR.

5. We have heard the learned counsel appearing for the parties at length. With their able assistance, we have carefully perused the allegations in the FIR. The allegations in the FIR, *prima facie*, disclosed the alleged offences. In the case of *Mohd.Bablu Kasiruddin Shaikh [supra]*, in the facts of that case the Court reached to the conclusion that the offence under Section 375 is not made out. The facts of the present case are quite different inasmuch as apart from the allegations, which would attract offence punishable under Section 376 of the IPC against the applicant no.1, there are specific allegations against all the accused which would *prima facie* disclose the alleged offence punishable under Section 313 of the IPC.

6. When there is prayer for quashing of the FIR, and if the allegations in the FIR, *prima facie* discloses an alleged offence / offences, in such cases matter should be left for further investigation. An evaluation of truth or falsity thereof cannot be gone into, as held by the Supreme Court in the case of *Madan Razak Vs. State of Bihar and others*¹.

7. In that view of the matter, we are not inclined to quash the FIR on the basis of the alleged compromise/settlement between the applicants and respondent no.2 or on merits also. For the reasons afore-stated, the application for quashing of the FIR stands rejected.

8. The observations made hereinabove are *prima facie* in nature, and confined to the adjudication of the present application only, and shall not be construed as an

¹ 2016 Cri.L.J. 676

impediment to avail of an appropriate remedy, in the event of filing charge-sheet by the Investigating Officer.

[A.M.DHAVALA]
JUDGE

[S.S.SHINDE]
JUDGE

DDC