

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

CRIMINAL APPLICATION NO. 1782 OF 2017

1. Ramdhan S/o. Reva Rathod,
Age : 64 years, Occu. Pensioner,
R/o. Kakda, Post. Ner, Tq. & Dist. Jalna.
2. Gunabai W/o. Ramdhan Rathod,
Age : 60 years, Occu. Household,
R/o. Kakda, Post. Ner,
Tq. & Dist. Jalna.
3. Sachin S/o. Ramdhan Rathod,
Age : 28 years, Occu. Unemployed,
R/o. Kakda, Post. Ner,
Tq. & Dist. Jalna.
4. Deelip S/o Uttam Adhe,
Age : 33 years, Occu. Teacher,
R/o. Chikhali, Tq. Chikhali,
Dist. Buldhana.
5. Vaishali W/o Deelip Adhe,
Age : 30 years, Occu. Household,
R/o. Chikhali, Tq. Chikhali,
Dist. Buldhana.
6. Uttam S/o Reva Rathod,
Age : 50 years, Occu. Agriculture,
R/o. Kakda, Post. Ner,
Tq. & Dist. Jalna.
7. Raju S/o Uttam Rathod,
Age : 25 years, Occu. Agril,
R/o. Chikhali, Tq. Chikhali,
Dist. Buldhana.
8. Santosh S/o Uttam Rathod,
Age : 35 years, Occu. Agriculture,
R/o. Chikhali, Tq. Chikhali,
Dist. Buldhana.

9. Saraswati @ Sarsabai Uttam Rathod,
Age : 40 years, Occu. Household,
R/o. Kakda, Post. Ner,
Tq. & Dist. Jalna.
10. Dharma Gangu Rathod,
Age : 60 years, Occu. Agriculture,
R/o. Kakda, Post. Ner,
Tq. & Dist. Jalna.
11. Sunil S/o Subhash Pawar,
Age : 25 years, Occu. Service,
R/o. Meher Jawala, Tq. Ghansawangi,
Dist. Jalna.
12. Subhash S/o Rupa Pawar,
Age : 44 years, Occu. Agriculture,
R/o. Meher Jawala, Tq. Ghansawangi,
Dist. Jalna.
13. Bhivdas S/o Rupa Pawar,
Age : 55 years, Occu. Agriculture,
R/o. Meher Jawala, Tq. Ghansawangi,
Dist. Jalna.
14. Sheelabai W/o Bhivdas Pawar,
Age : 50 years, Occu. Agriculture,
R/o. Meher Jawala, Tq. Ghansawangi,
Dist. Jalna.
15. Sandeep S/o Bhivdas Pawar,
Age : 21 years, Occu. Student,
R/o. Meher Jawala, Tq. Ghansawangi,
Dist. Jalna.
16. Shivdas S/o Rupa Pawar,
Age : 60 years, Occu. Agriculture,
R/o. Meher Jawala, Tq. Ghansawangi,
Dist. Jalna.

...Applicants..

VERSUS

1. The State of Maharashtra,
Through Kadim Jalna Police Station,
Dist. Jalna.
2. Rajashri Eknath Rathod,
Age : 30 years, Occu. Government Service,
R/o. C/o. Ruplal Ratan Jadhav,
Mauli Nagar, Near Surya Lawns,
Beed By-pass Road, Aurangabad. ... Respondents..

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Mr Santosh S. Jadhavar, Advocate for the applicants
Mr M. M. Nerlikar, APP for respondent/State
Smt. Nima Suryawanshi, Advocate for respondent No. 2
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CORAM : **S. S. SHINDE &
A. M. DHAVALA, JJ.**

RESERVED ON : 18.09.2017.
PRONOUNCED ON : __.09.2017.

ORAL JUDGMENT (PER A. M. DHAVALA, J.) :

1. This application has been filed by present applicants under Section 482 of the Code of Criminal Procedure for quashing of First Information Report at C.R. No.43/2017 registered at Kadim Jalna Police Station, Jalna against them for the offences punishable u/s 420, 463, 464, 465, 468, 494 r/w 34 of the Indian Penal Code.

2. Applicants No. 1, 2 and 3 herein have not pressed the present application. Hence, the application stands dismissed to the extent of applicant No. 1-Ramdhan S/o. Reva Rathod, applicant no.2-Gunabai W/o. Ramdhan Rathod and applicant no.3-Sachin S/o. Ramdhan Rathod.

3. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

4. As per FIR dt. 28.01.2017, respondent No. 2 – Rajashri, a Gramsevak from Aurangabad, married to accused No. 2 – Eknath from Jalna, on 15.05.2009. Accused No. 2 – Eknath is working in Government Medical College at Aurangabad as Lab Technician. Out of the said wedlock, she was blessed with a son – Nikhil. The relations between them were disturbed and matrimonial disputes are pending in the Court. As per FIR, she alleged that her husband Eknath contracted second marriage with accused No.1 – Pooja Rathod, who was later on found to be minor. Pooja has given birth to a girl on 14.06.2016 in General Hospital at Gandhi Chaman, Jalna. Pooja's father's name is Damodhar (accused no. 5) while respondent No.2's father in-law is Ramdhan Rathod (accused no-3). Pooja's grand-mother Bhagubai

(accused no.6) wrongly entered the name of child begotten by Pooja as daughter of Damodhar Ramdhan Chavan. There is no such person having name of Damodhar Ramdhan Chavan. By making such entry of such false name of the father of the child, the accused have cheated the Government. He has married to Pooja Rathod on 01.02.2015 and 26 other accused named therein including the applicants had arranged the marriage and attended the marriage. On the basis of such FIR, crime was registered at C.R. No. 43/2017 at Kadim Jalna Police Station, Jalna and was investigated into.

5. The contesting applicants No. 4 to 16 are original accused Nos. 9 to 16, 18, 20 to 23, respectively. They have challenged the FIR registered against them on the grounds that accused Nos. 17 & 19 were already dead before lodging of FIR. Out of them, Yamunabai (accused No. 19) had died even before the alleged date of second marriage. Accused No. 13 and 14 are not related to the applicants and they are not in existence. They are not resident of Meher Jawala, where Eknath and other accused are residing.

6. Learned counsel for the applicants submits that, the allegations in the FIR do not show any role to the applicants in the alleged second marriage of Eknath with Pooja and with the registration

of birth date of Pooja. The allegations are vague and the applicants have no concern with the same. The applicants have not participated or performed any act in the marriage of Eknath with Pooja. The allegations in the FIR do not constitute any offence against the applicants. The continuation of the proceedings against the applicants will be abuse of the process of the Court. Hence, the FIR be quashed.

7. Respondent No. 2 has filed her reply, which is as per FIR. She has claimed that the facts raised in the application are subject matter of dispute and court cannot go into the disputed questions of facts. It is also claimed that, deceased - Pooja was born on 07.01.2000 and was minor at the time of marriage. Learned Advocate for respondent No. 2 has stated that offence u/s 11 of the Prohibition of Child Marriage Act, 2006 is also disclosed against the applicants which is cognizable offence. Hence, the FIR be not quashed.

8. We have heard learned advocate for the parties and learned APP for respondent No. 1 and have perused the entire papers of investigation.

9. It is evident that the incident of making false entry of the birth & name of father of child of Pooja in the register of birth is

independent of the alleged incident of marriage between Eknath and Pooja. The facts clearly disclose that the applicants No. 4 to 16 have no concern with the recording of the said allegedly forged entry. Therefore, there is no material to show that the present applicants had indulged in commission of offences u/s 420, 463, 464, 465, 468, 494 r/w 34 of the Indian Penal Code.

10. The only role attributed to the present applicants is that they contracted and attended the second marriage of accused No. 2 – Eknath with accused No. 1 – Pooja. We find that, the first informant herself was not aware of the said marriage which is alleged to have taken place on 01.02.2015. The FIR does not disclose the source of knowledge of the informant. The FIR is lodged on 28.01.2017 i.e. almost after two years from the alleged incident.

11. In **Santi Deb Berma v. Smt. Kanchan Prava Devi AIR 1991 SC 816**, it is held that, in case of marriage, all the essential ceremonies should be performed so as to call it as second marriage. It should be otherwise valid. It is necessary to plead in what form the second marriage was performed, when and where it was performed. The FIR is silent on these material aspects. There is also no specific role assigned to the applicants herein of the alleged marriage. Even after

7½ months, besides the statement of accused no. 1-Pooja which is not legally admissible, the Investigating Officer found no material witness or any document to support the allegations of second marriage. Even in the birth register, the name of mother of child is not recorded as Pooja W/o Eknath Rathod. Pooja is not holding the name as Pooja W/o Eknath Rathod. FIR itself is an hearsay evidence and there is no material to support the allegations.

12. The offence u/s 494 of the Indian Penal Code is non-cognizable and as per Section 198 of Code of Criminal Procedure, it is for respondent No. 2 to file complaint in the court of Judicial Magistrate First Class. Section 11 under the Prohibition of Child Marriage Act, 2006 is offence when parent, guardian or any other person or in any other capacity having charge of the child lawfully or unlawfully including any member of organization or association does any act to promote or permits it to be solemnised or negligently fails to prevent such marriage is punishable with imprisonment. It is not the case of respondent No. 2 that any of the applicants No. 4 to 16 were in-charge of the child namely; Pooja in any capacity. Therefore, the provisions of Child Marriage Restraint Act will not be attracted against applicants No. 4 to 16.

13. In view of the above facts, we find that the prosecution of First Information Report impugned against the applicants is abuse of process of the Court. There is no material whatsoever to continue the said prosecution. Hence, the Criminal Application deserves to be allowed. The following order is passed.

ORDER

- (I) The Criminal Application is allowed.
- (II) First Information Report at C.R. No. 43/2017 registered at Kadim Jalna Police Station, Jalna against the applicants for the offences punishable u/s 420, 463, 464, 465, 468, 494 r/w 34 of the Indian Penal Code is hereby quashed to the extent of the applicants No. 4 to 16.

13. Rule is made absolute in the above terms with no order as to costs.

14. We appreciate the able assistance provided by Smt. Nima Suryawanshi, learned counsel appointed through Legal Aid to represent respondent No. 2. She shall be paid fees as per rules.

[A. M. DHAVAL]
JUDGE

[S. S. SHINDE]
JUDGE

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