

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

CRIMINAL APPLICATION NO.5052 OF 2016

1. Jaypal s/o. Natha More,
Age: 32 Years, Occu: Service
2. Natha s/o. Amaruta More,
Age: 62 Years, Occu: Labour.
3. Panchaphulabai w/o. Natha More,
Age: 60 Years, Household.
4. Ramkishan s/o. Natha More,
Age: 38 Years, Occu. Labouror
5. Ashok s/o. Natha More,
Age: 30 Years, Occu. Labouror.
6. Laxmibai w/o. Ramkishan More,
Age 35 Years, Occu. Household.

All R/o. Atharwadi, Tq.Dist.Hingoli

7. Babasaheb s/o. Manikrao Thoke,
Age: 31 Years, Occu. Labouror,
R/o. Adgaon Bazar, Tq.Jintur,
Dist. Parbhani.
8. Prajawati d/o. Shamrao Dhule,
Age: 18 Years, Occu. Labouror
[The complainant has mentioned the
name of applicant No.8 as Prajawati
s/o. Jaypal More]
R/o. Mhaigavan, Tq.Kalamnuri
Dist. Hingoli.

APPLICANTS

VERSUS

1. The State of Maharashtra
Through Police Station Narsi [Namdeo]
Tq. Dist.Hingoli.
[Copy to be served on Police
Prosecution of High Court of Bombay
Bench at Aurangabad]

2. Jayashri w/o. Jaypal More,
Age: 28 years, Occ: Household,
R/o. Kalamkonda [Ku], Tq.Kalamnuri
Dist. Hingoli
Police Station Kalamnuri

RESPONDENTS

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Mr.D.M.Shinde, Advocate for the Applicants
Mr.S.P.Deshmukh,APP for the Respondent/State
Mr.S.S.Londhe, Advocate for respondent no.2.

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 17.04.2017
Pronounced on : 20.04.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. Heard.

2. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

3. This Application is filed with the
following prayer:

B) The F.I.R., complaint, registered with Narsi (Namdeo) Police Station vide C.R.No. 12/2016 under Section 498 (a), 323, 494, 504, 34 of I.P.C. may kindly be quashed and set aside.

4. It is submitted by the learned counsel appearing for the applicants that, applicant no.1 is the husband of respondent no.2 i.e. complainant, and applicant nos.2 and 3 are in-laws of respondent no.2; while the rest of the applicants are brother-in-law and sister-in-law of the complainant. It is submitted that, except applicant no.1, rest of the applicants never resided together in one house at any point of time after marriage of respondent no.2 with applicant no.1. It is alleged in the FIR that, the complainant went to reside at village Atharwadi, though applicant no.1 is serving at Thane. It is alleged that, applicant no.1 did not take respondent no.2 at Thane and ask her to

reside at Atharwadi, District Hingoli, which is native place of applicant no.1. It is alleged by the complainant that, all the accused persons used to harass and ill-treat respondent no.2 for fulfillment of illegal demand of Rs.70,000/-. There are also allegation of instigation. It is submitted that, even if the allegations in the FIR are taken as it is, an ingredient to constitute an alleged offences under Sections 498A, 323, 494, 504 r/w.34 of the Indian Penal Code are not attracted. Only with a view to harass applicant no.1 and his relatives, respondent no.2 has lodged the First Information Report. It is further submitted that, so far as applicant no.4 – Ramkishan Natha More, applicant no.5 Ashok Natha More and applicant no.6 Laxmibai Ramkishan More are concerned, there are no allegations against them in the proceedings instituted under the Domestic Violence Act. It is further submitted that,

respondent no.2 did file complaint before the District Women and Child Development Officer i.e. Women Grievance Redressal Cell, and in the said complaint also, there are no allegations against Ramkishan Natha More and Laxmibai Ramkishan More. It is submitted that, all family members are implicated including husband of sister of applicant no. 1, namely, Babasaheb Manikrao Thoke. It is further submitted that, applicant nos.5 to 8 are not at all residing with applicant no.1 and applicant nos.4 to 8 are residing separately, and they are implicated only with a view to harass the applicants. The complainant started residing with her parents since 18th September, 2013, till date. The learned counsel appearing for the applicants invites our attention to the grounds taken in the application, and also annexures thereto and submits that, the application deserves to be allowed.

5. On the other hand, the learned APP appearing for respondent – State, relying upon the investigation papers and the allegations in the FIR, submits that, there are serious allegations. All the applicants participated in the marriage ceremony of applicant no.1 with applicant no.8. It is submitted that, though the marriage of applicant no.1 with respondent no.2 is subsisting; still applicant no.1 has performed marriage with applicant no.8, and therefore, there are allegations in the FIR, which would attract ingredients to constitute offence under Section 494 r/w.34 of the Indian Penal Code. Therefore, he submits that, the application may be rejected.

6. The learned counsel appearing for respondent no.2 submits that, applicant no.1 with the consent and connivance of the other applicant nos.2 to 7 got married with

applicant no.8, though the marital tie between applicant no.1 and respondent no.2 is intact/in subsistence. Therefore, he submits that, the application may be rejected.

7. We have heard the learned counsel appearing for the applicants, learned APP appearing for the respondent – State, and the learned counsel appearing for respondent no.2 at length. We have carefully perused the allegations in the FIR, and we are of the opinion that, except applicant no.4 Ramkishan Natha More and applicant no.6 Laxmibai Ramkishan More, case of the other applicants deserves no consideration.

8. So far as applicant no.4 Ramkishan Natha More and applicant no.6 Laxmibai Ramkishan More are concerned, there are no allegations either in the complaint instituted under the Domestic Violence Act by respondent no.2, and also in the complaint

filed on 21st November, 2013, before the District Women and Child Development Officer i.e. Women Grievance Redressal Cell. Upon careful perusal of the allegations in the FIR, there are omnibus and general allegations against the aforesaid two accused persons.

9. So far as other accused i.e. applicant nos.1 to 3, 5, 7 and 8 are concerned, as rightly submitted by the learned APP appearing for respondent – State and the learned counsel appearing for respondent no.2 that, during subsistence of marital tie between applicant no.1 and respondent no.2, there is an allegation in the FIR that, applicant no.1 has performed second marriage with applicant no.8 – Prajawati. Unless the investigation is taken to the logical end, the truth will not surface on record.

10. In that view of the matter, we are not inclined to entertain the application to the extent of applicant nos.1 to 3, 5, 7 and 8. Hence their application stands rejected.

11. In the light of discussion in the foregoing paragraphs, the FIR vide Crime No. 12/2016, registered with Narsi [Namdeo] Police Station, for the offences punishable under Sections 498A, 323, 494, 504, 34 of the Indian Penal Code, to the extent of applicant no.4 Ramkishan Natha More and applicant no.6 Laxmibai Ramkishan More, stands quashed and set aside.

12. Rule is made absolute on above terms. Criminal Application stands disposed of accordingly.

13. An observations made hereinabove are *prima facie* in nature and confined to the adjudication of the present application. This order will not preclude the applicants,

whose applications stands rejected from availing of an appropriate remedy in case the Investigating Officer, after completion of investigation, files report under Section 173 [2] of the Criminal Procedure Code.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

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