

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPICATION NO. 2995 OF 2014

1. Mr. Rajendra Tukaram Nikam,
Age 49 years, Occu. Teacher,
2. Smt. Sumanbai Tukaram Nikam,
Age 75 years, Occu. Household,
3. Vasantao Bhaskarrao Nikam,
Age 73 years, Occu. Retired,
R/o. Rakhunde Nagar, Chalisgaon,
Taluka Chalisgaon, District Jalgaon.
4. Sau. Sandhya @ Prabha Sanjay Shitole,
Age 45 years, Occu. Household,
5. Sanjay Raosaheb Shitole,
Age 50 years, Occu. Retired,

Applicant Nos. 1 and 2
R/o. Flat No. 2, Jivala Apartment,
Ramanand Nagar, Jalgaon,
Taluka & District Jalgaon.

Applicant No. 4 & 5 both
R/o. HUDCO Colony, Aurangabad,
Taluka & District Aurangabad.

....Applicants.

Versus

1. The State of Maharashtra
Through Police Inspector,
Ramanand Nagar Police Station,
Jalgaon, Taluka & District Jalgaon.
2. Sau. Swati Rajendra Nikam,
(Shahin Sayyad Rafik)
Age 37 years, Occu. Advocate,
R/o. Balirampeth, Near Tahsil Office,
Jalgaon, Taluka & Distrit Jalgaon.

....Respondents.

Mr. S.V. Suryawanshi, Advocate for applicants.

Mrs. D.S. Jape, APP for respondent No. 1/State.

Mr. P.P. Khandagale-Patil, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : JULY 25, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The application is filed under section 482 of Criminal Procedure Code for relief of quashing of F.I.R. No. 53/2014 registered with Ramanandnagar Police Station, Jalgaon for offences punishable under sections 498-A, 354, 504, 506, 34 etc. of Indian Penal Code. The application of applicant No. 1 Rajendra Nikam, husband of the first informant is already disposed of and the argument was heard only for applicant Nos. 2 to 5.

2) Crime is registered on the basis of report given by one Swati. It is her contention that her marriage with applicant No. 1 Rajendra took place on 12.3.2004 and she has daughter aged about 10 years from Rajendra. Applicant No. 2 Sumanbai is mother of Rajendra, applicant No. 3 is cousin of Rajendra, applicant No. 4 is married sister of Rajendra and applicant No. 5 is husband of applicant No. 4. Admittedly, applicant Nos. 3 to 5 are living separate from applicant Nos. 1 and 2 and only applicant Nos. 1 and 2 are living together.

3) Allegations are made by respondent in F.I.R. dated

21.5.2014 that her marriage with Rajendra took place as per the Hindu rites and this was second marriage of Rajendra. The first wife of Rajendra was dead. She cohabited with husband where Sumanbai and husband of Sumanbai were living.

4) Allegations are made by the first informant that occasionally the remaining accused used to visit the place of Rajendra and they used to tell Rajendra about the so called first marriage of the first informant. It is her contention that she had informed to Rajendra about her so called first marriage, but due to instigation of other accused, the husband started giving illtreatment to her and he started asking her to bring Rs.10 lakh for purchasing flat. She is practicing advocate and it is her contention that only to avoid defamation, she continued cohabitation with the husband.

5) The first informant has mentioned incidents like incident which took place on the occasion of first Diwali festival in which she was abused by husband and his mother. It is her contention that after first Diwali, all the accused had given abuses to her and she was assaulted even when she was pregnant. No specific date is mentioned of that incident. A daughter was born to her on 9.12.2004. It is her contention that in the presence of her parents, applicant No. 3 and husband had assaulted her in February of 2006. Allegations are made

that applicant No. 3, who was aged about 70 years, was abusing her in filthy language. Allegations are made against the husband by mentioning specific incident dated 19.10.2006, August 2010. It is her contention that in August 2010 she was driven out of the matrimonial house by her husband and her ornaments were snatched and taken away. She has made allegations that when she started living separate, the husband used to visit that place also and he used to harass her. It is her contention that her husband and mother of the husband had given undertaking in writing on stamp paper to behave well.

6) Some record is produced to show that on 31.5.2001 one affidavit was filed by respondent that she had married with a Muslim man. The marriage certificate was also prepared under Muslim Law. Copy of decision given by the Civil Judge, Junior Division, Chalisgaon in Regular Civil Suit No. 253/2001 is filed and it shows that the said man, who was also advocate, had filed proceeding for restitution of conjugal rights. In that proceeding, finding was given that there was relationship of husband and wife between the plaintiff and the present respondent. The decision was given on 21.4.2009. At the cost of repetition, it needs to be mentioned here that it is the case of respondent in the present matter that her marriage with Rajendra took place on 12.3.2004. The respondent had filed Second Appeal No. 510/2012 against the said decision as there was finding of aforesaid

nature, but she could not succeed in second appeal.

7) The learned counsel for applicant placed reliance on some observations made by this Court in the case reported as **2018 ALL MR (Cri) 2845 at Nagpur Bench [Rangrao s/o. Shyamrao Chaudhary & Anr. Vs. State of Maharashtra & Anr.]**. In that proceeding, when there were vague allegations, in the similar matter the proceeding filed under section 482 of Cr.P.C. was allowed by this Court. It can be said that when nothing can be achieved due to vague allegations in the trial, the Court is expected to use the power given under section 482 of Cr.P.C. In the present matter, applicant Nos. 3 to 5 were not living with the family of Rajendra and that is admitted fact. Allegations are made that occasionally they used to visit the place of Rajendra and they used to instigate Rajendra. In addition to that, there are aforesaid circumstances. In view of these circumstances, this Court holds that it will be abuse of process of law, if applicant Nos. 3 to 5 are made to face the trial for aforesaid offences. In the result, application of applicant Nos. 3 to 5 is allowed. Relief is granted to them in terms of prayer clause 'B'. Application of applicant No. 2 stands dismissed. Rule is made absolute in aforesaid terms.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]