

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2079 OF 2018

- 1) Maruti s/o Satwaji Hanumantkar,
Age 46 years, Occupation Service as
Teacher with Rajabai Higher Secondary
School, Pardi Tq. Ardhapur Dist. Nanded,
R/o Adarsh Nagar (Navjeevan Nagar),
Taroda (Khurd), Taluka Ardhapur Dist.
Nanded.
- 2) 'X'
(Minor)
- 3) Vijay s/o Chandrakant @ Ramchandra
Waghmare, Age 21 years, Occuaption
Student with Hazur Sahib I.T.I. College,
Nanded, R/o Vyankatesh Nagar, Kukhed
Tq. Mukhed Dist. Nanded.
- 4) Anjanabai w/o Satwaji Hanumantkar,
Age 75 years, Occupation household,
R/o Adarsh Nagar (Navjeevan Nagar),
Tarolda (Khurd Tq. ardhapur Dist. Nanded. ...Applicants

Versus

- 1) The State of Maharashtra,
through the Police Inspector,
Bhagya Nagar Police Station,
Nanded.
- 2) Kavita d/o Dagadu Dhadve,
(Claiming to be the wife of applicant No.1,
when there was no marriage at all),
Age 32 years, Occupation Household,
R/o At Post Belthar, Tq. Kalamnoori
Dist. Hingoli. ...Respondents

Mr. R. S. Deshmukh, Advocate for applicants.
Ms. P. V. Diggikar, Addl. Public Prosecutor, for respondent
No.1/ State.
Mr. M. R. Jamdhade, Advocate for respondent No.2.

**CORAM : T. V. NALAWADE &
SMT.VIBHA KANKANWADI. JJ.**

DATE : 05-10-2018.

ORAL JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. At the outset, learned Advocate for the applicants seeks permission to withdraw the application to the extent of applicant No.1.
2. Permission granted. The application stands disposed of as withdrawn to the extent of applicant No.1.
3. Rule. Rule made returnable forthwith. Heard both the sides for final disposal by consent.
4. Present application has been filed by original accused persons invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure in order to quash the charge-sheet and proceedings in R. C. C. No. 363 of 2018 filed with learned Judicial Magistrate First Class, 1st Court, Nanded, for the offences punishable under Section 354, 323, 504, 506 read with 34 of the Indian Penal Code arising from First Information Report vide Cr. No. 87 of 2018 registered with Bhagyanagar Police Station, Nanded.

5. Applicant No.2 is the minor son of applicant No. 1. Applicant No. 3 is the nephew of applicant No. 1 (Son of real sister). Applicant No.4 is the mother of applicant No. 1.

6. Respondent No.2 – informant has contended that, applicant No. 1 is her husband. He is lecturer at Pardi Institute. Informant was in the house on 07-04-2018 around 2.00 p. m. Applicant No. 1 and 2 (who is her step son) abused her and asked her to leave the house. They had also threatened to kill her. Applicant No. 1 had assaulted her by means of belt. Applicant No. 3 pulled her hand with bad intention and then gave fists blows. Applicant No. 4 instigated applicant No. 1 to 3 and assaulted her. Informant went to the house of her sister Jyoti Shahare. Applicant No. 1 to 3 went behind her and assaulted Jyoti and her husband. Informant went to rescue sister, at that time applicant No. 3 again caught hold of her hand with ill intention. Therefore, she has lodged the report on 08-04-2018.

7. The applicants have contended that, the allegations in the FIR are false and frivolous. No such incident had ever taken place as narrated in the FIR. The educational qualification of applicant No. 1 is M. A. History (Gold Medalist) and B. Ed. Applicant No. 2 was studying in 12th standard at Jamkhed, Dist. Ahmednagar and secured 91% marks. Applicant No. 3 is studying in I. T. I. College, Nanded. Applicant No. 1 got married to one Sangita on 26-05-1997.

Sangiat had left home voluntarily in 2007. Custody of applicant No. 2 is with him. There are various proceedings pending between applicant No. 1 and Sangita. However, the marriage between him and Sangita has not yet dissolved. Informant, her sister and sister's husband are harassing applicant No. 1 since 5-6 years. R. C. C. No. 912 of 2011 was filed against applicant No. 1, in which informant had claimed that she is the wife of applicant No. 1. However, at the time of evidence, she denied that statement in her cross-examination. Therefore, the decision of the said case was in favour of applicant No. 1. Applicant No. 1 has filed suit for injunction against informant, her sister and sister's husband from interfering and dispossessing him from his house. Temporary injunction has been granted in his favour. There is absolutely no case against them. Perusal of charge-sheet would show that no offence has been made against them. Therefore, they have prayed for quashment of the proceeding.

8. Heard learned Advocate Mr. R. S. Deshmukh appearing on behalf of applicants, learned Addl. Public Prosecutor Ms. P. V. Diggikar and learned Advocate Mr. M. R. Jamdhade appearing for respondent No.2. All of them have argued in support of their respective contentions. When it was pointed out to the learned advocate for the applicants that, this Court is not inclined to grant any relief to applicant No.1, he prayed for withdrawal of the

application as against him.

9. The application was considered only for the allegations against the applicant No. 2 to 3. At the outset, it can be seen that applicant No. 1 is not admitting that respondent No. 2 is his wife. He has filed on record copies of the litigation going on between him and Sangita. The copy of the birth certificate of applicant No. 2 shows that he is the son of applicant No. 2 and Sangita. Respondent No. 2 has also addressed him as step-son. She has not given the alleged date of marriage between her and applicant No. 1. She has also not stated as to why there was quarrel between her and applicants. It can not be of one day only, if at all she was staying with applicants. Intentionally all these things have been kept vague. The copy of deposition of respondent No. 2 in R. C. C. No. 912 of 2011 would show that she has denied the fact of marriage between her and applicant No. 1. The said proceeding was for the offence punishable under Section 498 A, 494, 506 r/w. 34 of Indian Penal Code. Present applicant No. 1 and 4 were accused in that proceeding. The fact of marriage between her and applicant No. 1 was denied by applicant No. 1. Those accused persons came to be acquitted on 25-09-2013. With this background of facts, it is hard to believe that respondent No. 2 was staying with applicants on 08-04-2018. It is hard to believe that when father, uncle and son i.e. applicant No. 1 was there, then applicant No. 2 to 4 would have acted in any manner.

Unnecessarily a minor has been involved. There appears to be still dispute pending between applicant No. 1 and respondent No. 2, which will have to be sorted out by him; but there is less likelihood of involvement of other applicants, taking into consideration the background. Further as regards allegations of outraging her modesty is concerned, she says that her hand was caught by applicant No. 3. Possibility of catching hand in order to rescue other applicants from respondent No. 2 can not be ruled out. It will not amount to outraging of her modesty. It would be futile exercise to ask applicants No. 2 to 4 to face the trial. Under such circumstance relief is required to be granted to the applicants No. 2 to 4 by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- 1) Application of applicant No. 1 stands disposed of as withdrawn.
- 2) Application of applicants No. 2 to 4 is hereby allowed.
- 3) Relief is granted in terms of prayer clause "C" to the applicants No. 2 to 4 only.
- 4) Rule made absolute in the above terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.