

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2390 OF 2018

- 1] Madhukar Vishram Chaudhary,
Age : 50 years, Occu. : Service,
R/o Lohagad, Tq. Dhule,
District Dhule.
- 2] Dnyaneshwar Lalchand Chaudhary,
Age : , Occu. : Labour,
R/o Lohagad, Tq. Dhule,
District Dhule. ...Applicants

Versus

- 1] The State of Maharashtra,
Through it's Police Inspector,
Dhule Taluka Police Station,
Dhule, District Dhule.
- 2] "X" ...Respondents

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Mr. N. L. Choudhari, Advocate for Applicants.

Ms. V. S. Chaudhari, A. P. P. for Respondent No. 1-
State.

Mr. R. A. Tambe, Advocate for Respondent No. 2.

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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**
DATE : 14-12-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

01. Rule. Rule made returnable forthwith. By consent, heard finally.

02. Present application has been filed by the original accused Nos. 2 and 3 invoking the powers of this Court under Section 482 of Cr. P. C. to quash the F. I. R. bearing C. R. No. 115 of 2018 registered with Dhule Taluka Police Station, Dhule, Dist. Dhule for the offences punishable under Sections 336, 366 and 376 of I. P. C.

03. The applicants have contended that the informant-prosecutrix has stated that she is a married lady having children. Her husband was addicted to liquor. The main accused was the friend of her husband. She was allegedly abducted by the main accused on 18.12.2015 and it is stated that the present applicants had accompanied them in car which was belonging to the present applicant No. 1. They had also paid some money to the main accused and assured him to help in future. It is stated by the applicants that they have been falsely implicated. She had gone alongwith the main accused on her own. At that time, she had no complaint against the main accused. She had not taken the names of the present applicants when her statement was recorded. When a missing report was lodged by the husband of the prosecutrix on 24.12.2015,

subsequently a story has been concocted. It is stated that the investigation would show that the applicants are unnecessarily dragged. They, therefore, prayed for quashment of the report.

04. Heard learned Advocate Mr. N. L. Choudhary for the applicants, learned A. P. P. Ms. V. S. Chaudhari for respondent No. 1 – State and learned Advocate Mr. R. A. Tambe for respondent No. 2-original informant. They all have made submissions to support the respective contentions.

05. It is necessary to see what the informant has stated in the F. I. R. Admittedly, she is a major married lady. She has stated that she got married on 15.4.2000. She has one son and one daughter from her husband. Her daughter is married and resides with her husband. Son is with the husband of the prosecutrix. The husband of the prosecutrix was addicted to liquor. Accused No. 1 was the friend of her husband and therefore, used to frequently visit her house. Accused No. 1 used to create suspicion in the mind of her husband and as a result of which in presence of accused No. 1, husband of the prosecutrix used to abuse her in filthy language, assault her under the influence of liquor. Her husband was harassing her

mentally and physically. Taking disadvantage of this situation accused No. 1 got her confidence and there was affair between them. He gave her promise to marry and therefore, against her wish she was taken from Lohgad to Dhule on 18.12.2015. After they went to Dhule, accused No. 1 called the present applicants i.e. applicant Nos. 1 and 2. Applicant No. 1 left them to Shirdi in his Indica car and thereafter, took them to Shrirampur around 12.30 AM. Thereafter, the applicant No. 1 told accused No. 1 that if he has any financial difficulty he would give more amount and at that time the applicant No. 1 had given the amount of Rs. 15,000/- to 20,000/- to accused No. 1. Thereafter, the present applicants went to Dhule in the said Indica car. The prosecutrix thereafter says that she was residing with accused No. 1 for about two months in a rented premises as husband and wife. There were sexual intercourse between them during that period and thereafter, shifted at another place and again giving promises accused No. 1 has sexually exploited her till 6.7.2017. Thereafter, it appears that on 11.4.2018 she lodged the report.

06. Perusal of the said F. I. R. would show that the main allegations are against the accused No. 1 in respect of the abduction as well as the rape. As regards the

present applicants are concerned, it is only stated that the applicant No. 1 brought his Indica car and left prosecutrix and accused No. 1 to Shrirampur and at that time, applicant No. 2 was alongwith them. Merely on the basis of that fact, though accepted as it is for a moment, will not amount to any offence. There is absolutely no evidence on record to show that present applicants had the knowledge that accused No. 1 had abducted informant and then brought her to Dhule. Another aspect that is required to be seen is that the missing report was lodged by the husband of the prosecutrix in which he had stated that she had gone on her own and has no complaint to make against anybody. Therefore, with this evidence it would be a futile exercise to ask the present applicants to face the trial. Case is made out to use powers of this Court under Section 482 of Cr. P. C. to quash the F. I. R. as against the present applicants.

07. Hence, following order;

ORDER

(i)The application is hereby allowed.

(ii)Relief is granted in terms of prayer clause

"B".

(iii)Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALAWADE]

JUDGE

Dahibhate/-