

JUDGMENT (Per K. L. Wadane,J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, the application is taken up for final hearing.

2. The applicants/original accused have challenged the first information report bearing Crime No.28/2016 registered against them with Thalner Police Station, Tq. Shirpur Dist.Dhule for the offence punishable under Section 420 read with 34 of the Indian Penal Code so also the Criminal proceedings bearing STC No.1029/2016 instituted against them by respondent No.2/original complainant for the offence punishable under sections 500 and 506 read with 34 of the Indian Penal Code.

3. Respondent No.2/original complainant has filed report with Thalner Police station on 2nd July, 2016 against the applicants and it is alleged that her marriage was arranged and fixed with applicant No.1 Mahendra. Both sides agreed for the marriage. On 09.04.2016 engagement ceremony was performed and date of marriage was fixed. Thereafter, on 13.04.2016, applicants have informed to the brother of the complainant that age of the complainant is more than the age of applicant No.1 Mahendra i.e. more than the

bridegroom and hence they were not ready to perform the marriage. The complainant further alleged that expenses of Rs.6 lakh was incurred on engagement ceremony. Hence the complainant has lodged complaint alleging breach of trust, on the basis of which the offence as stated above came to be registered against the applicants/ accused.

4. We have heard Mr. B. R. Waramaa, learned counsel for the applicants, Mr. S. B. Pulkundwar, APP for the State and Mr. Prkashsing B.Patil, learned counsel for respondent No.2.

5. During the course of argument learned counsel for the applicant submitted that at the relevant time age of applicant NO.1 was 31 years. At the time of initial talk between the parties, family member of the complainants disclosed the age of respondent No. 2 as 30 years. Believing that information about the age as disclosed by family members of the complainant, applicant No.1 had consented for marriage. He further argued that engagement ceremony was performed and both the parties have incurred equal expenses for that ceremony. After performance of engagement ceremony nearest relatives of the applicants informed them

about the age of respondent No.2 as about 40 years. On enquiry from the Adhar Card of respondent No.2, it was revealed that birth year of respondent No.2 is 1979, that indicates that respondent No.2 was 37 years old, i.e. seven years elder than the applicant No.1. The applicants have realized that they have been cheated and therefore complaint was filed by them at Dindori Police Station. Mr.Waramaa, the leaned counsel for the applicants further submitted that the marriage could not be performed on account of false disclosure of age by respondent No.2.

6. On perusal of the record, it appears that admittedly the agreement of marriage was between applicant No.1 Mahendra and respondent No.2. If at all there was alleged breach on the part of applicant No.1, and even if it is proved, then applicant No.1 Mahendra alone is to be held responsible for the breach of agreement of marriage and its consequences. Applicant Nos. 2 and 3 are brothers of applicant No.1, applicant No.4 is mother and applicant No.5 is sister of applicant No.1. They are the relatives. They were not party to the contract of marriage between complainant and applicant No.1. Applicant No.1 was agreed to

marry with respondent No.2. If at all there was alleged breach by applicant No.1, then how the other applicants i.e. applicant Nos. 2 to 5 can be held responsible for the alleged act of applicant No.1.

7. In view of the above, even accepting the allegations in the first information report as it is, there was no role played by applicant Nos. 2 to 5 in reference to the agreement of marriage between applicant No.1 Mahendra and complainant/respondent No.2. Therefore, continuation of criminal proceedings against applicant Nos. 2 to 5 is nothing but an abuse of process of law. Hence following order:

O R D E R

- (1) The application of Applicant Nos. 2 to 5 is allowed. The First Information Report bearing Crime No.28/2016 filed against the applicants accused for the offence punishable under section 420 is hereby quashed and set aside to the extent of applicant Nos. 2 to 5.
- (2) The other relief in respect of Private Complaint bearing S.T.C. No. 1029/2016 is rejected. However, liberty is given to file separate proceeding in

respect of S.T.C. No.1029/2016.

- (3) The application in respect of applicant No.1 Mahendra Rajput stands rejected.
- (4) The amount deposited by the applicants in view of the order made by this Court is to be returned to them.
- (5) Rule is made absolute in the aforesaid terms.

(K. L. WADANE, J.)

(T. V. NALWADE, J.)

JPC