

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

CRIMINAL APPLICATION NO.2856 OF 2018

- 1 Mahadeo Ambadas Sangle,
Age 30 yrs., Occ. Agri.,
R/o Shirur Ghat, Tq. Kaij,
Dist. Beed.
- 2 Sonabai w/o Achyut Choure,
Age 35 yrs., Occ. Service,
R/o Jivachiwadi, Tq. Kaij,
Dist. Beed.
- 3 Achyut Kondiba Choure,
Age 50 yrs., Occ. Agri.,
R/o as above.
- 4 Asaram Kondiba Choure,
Age 60 yrs., Occ. Agri.,
R/o as above.
- 5 Ramdas Asaram Choure,
Age 18 yrs., Occ. Agri.,
R/o as above.
- 6 Dinkar Jaywanta Neharkar,
Age 36 yrs., Occ. Agri.,
R/o Pisegaon, Tambwa,
Tq. Kaij, Dist. Beed.

... Applicants.

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Kaij,
Tq. Kaij, Dist. Beed.

2 Kaushalya w/o Mahadeo Sangle,
Age 28 yrs., Occ. Husehold,
R/o Jiwachiwadi, Tq. Kaij,
Dist. Beed.

... **Respondents.**

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Mr. Amol R. Gaikwad, Advocate for the applicants

Mr. S.J. Salgare, APP for the respondents/State

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

DATE : 13th DECEMBER, 2018

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard finally with
consent of both parties and taken up for final disposal at admission stage.

2 Present application has been filed by the original accused
persons invoking the inherent powers of this Court under Section 482 of
the Criminal Procedure Code, 1973 for quashing and setting aside First
Information Report bearing Crime No.394/2018 registered with Kaij
Police Station, Tq. Kaij, Dist. Beed for the offence under Section 327,
354, 354A, 143, 149, 323, 504, 506 of the Indian Penal Code.

3 Applicant No.1 is the husband of respondent No.2. Respondent No.2 has contended in the application that she got married to applicant No.1 in the year 2009. She has three daughters from applicant No.1 aged 8, 5 and 2 respectively. However, about three months prior to 28.08.2018 applicant No.1 had driven respondent No.2 out of the house along with daughters by raising suspicion over her character. It is the contention of the respondent No.2 that she was called on phone by applicant No.1 on 28.08.2018 and he told that they would settle their dispute, for that purpose she should come at about 4.00 p.m. behind Panchayat Samiti, Kaij. When she went at that place, she found all the applicants present. Applicants No.1 and 3 told her that they will not give amount of Rs.50,000/- of the cotton, she can do whatever she like, husband is not intending to cohabit and the daughters are not begotten from him. Her husband and applicant No.3 told that she is not behaving properly. Thereafter, the applicants No.3, 4 and 6 pressed her breast and outraged her modesty. They all had taken the gold Mangalsutra of 5 grams as well as 10 grams valuing Rs.45,000/- from her neck. She was abused, threatened and assaulted. Her brother Prakash Choure separated them.

4 The applicants are contending that they have been falsely implicated, the contents of FIR are false and concocted. Applicant No.1 is working as labour with one Popat Achyut Sangle. Respondent No.2 is having extra marital affair with him since last 3 years. He did not make any complaint taking into consideration the life of their children, however, respondent No.2 and said Popat had assaulted him. He gave understanding to respondent No.2, however, there was no change in her behaviour. He caught respondent No.2 and said Popat raid handed on 26.06.2018. He went to Police Station to lodge complaint, but his report was not taken, however, non cognizable report was registered under Section 498 of I.P.C.. No investigation was done. On 27.06.2018 respondent No.2 left matrimonial home without intimating anybody. She went to the field on 04.07.2018, where applicant No.1 was working and in presence of the brothers applicant No.1 was assaulted and abused, even a non cognizable offence under Section 323, 504, 506 r.w. 34 of IPC has been lodged by applicant No.1 on 05.07.2018 regarding said incident. Applicant No.1 had thereafter filed private complaint against respondent No.2 and Popat before Judicial Magistrate First Class, Kaij. Cognizance has been taken. Even on the day of incident i.e. on

28.08.2018 applicant No.1 had lodged report under Section 454, 380 of IPC against the brother of the informant and as a counter blast the First Information Report in question has been filed. Applicant No.2 is serving as Teacher and she is the wife of applicant No.3, applicant No.4 is the brother of applicant No.3, applicant No.5 is the son of applicant No.4 and he is a student. No such incident has taken place as narrated in the First Information Report and therefore they have prayed for quashment of the FIR.

5 Heard learned Advocate Mr. A.R. Gaikwad for the applicants and learned APP Mr. S.J. Salgare for the respondents. When it was pointed out to the learned Advocate for the applicants that this Court is not inclined to grant any relief to applicants No.1, 3, 4 and 6, he prayed for withdrawal of the application against them. The application has been considered only in respect of applicants No.2 and 5.

6 Perusal of the First Information Report would show that only the presence of applicants No.2 and 5 has been stated. No specific act is attributed to them. Whatever allegations in respect of the acts, alleged to have been done is against the applicants No.1, 3, 4 and 6. Further, it can also be seen that the applicants No.2 who is a Teacher, was present in her

school and the certificate about her attendance has been given by Headmaster, Zilla Parishad School at Jiwachiwadi, Tq. Kaij, Dist. Beed. It would be a futile exercise to ask applicants No.2 and 5 to face trial with such kind of allegations, therefore, case is made out to exercise inherent powers of this Court under Section 482 of Cr.P.C. to quash First Information Report against them. Hence, following order.

ORDER

- 1 Application of applicants No.1, 3, 4 and 6 is disposed of as withdrawn.
- 2 Application of applicants No.2 and 5 is allowed.
- 3 Relief is granted in terms of prayer clause "B".
- 4 Leave to amendment is granted.
- 5 Relief of quashing of Regular Criminal Case No.224/2018 proceeding pending in the Court of learned Judicial Magistrate First Class, Kaij, Dist. Beed is hereby quashed and set aside.
- 6 Rule made absolute in those terms.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE

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