

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

Criminal Application No.7040 of 2017

- 1) Ramdas Shaharam Akolkar,
Age 59 years,
Occupation : Retired.
R/o Plot No.14, Shivnagar,
Pipeline Road, Ahmednagar,
Taluka & District Ahmednagar.
- 2) Sayanabai Ramdas Akolkar,
Age 55 years,
Occupation : Housewife.
R/o Plot No.14, Shivnagar,
Pipeline Road, Ahmednagar,
Taluka & District Ahmednagar.
- 3) Nitin Ramdas Akolkar,
Age 32 years,
Occupation: Auto Driver
R/o Gangotri Residency,
Tapowan Road, Ahmednagar,
Taluka & District Ahmednagar.
- 4) Swati Nitin Akolkar,
Age 28 years,
Occupation: Household,
R/o Gangotri Residency,
Tapowan Road, Ahmednagar,
Taluka & District Ahmednagar.
- 5) Sadhana Ganesh Akolkar,
Age 30 years,
Occupation: Household,
R/o Gangotri Residency,
Tapowan Road, Ahmednagar,
Taluka & District Ahmednagar. .. **Applicants.**

Versus

- 1) The State of Maharashtra,
Through Investigating Officer,
Tofkhana Police Station,
Ahmednagar,
District Ahmednagar.
- 2) Harshada d/o Rajendra Barse,
Age 21 years,
Occupation: Education,
R/o Plot No.146,
Tapowan Road,
Suryanagar, Savedi,
Ahmednagar,
Taluka & Dist. Ahmednagar. .. **Respondents.**

Shri. N.B. Narwade, Advocate, for applicants.

Shri. R.V. Dasalkar, Additional Public Prosecutor, for
respondent No.1.

Shri. R.S. Deshmukh, Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 5 JUNE 2018

JUDGMENT (Per T.V. Nalawade, J.):

- 1) Rule, rule made returnable forthwith. Heard
both sides by consent for final disposal. Hearing was
given to the learned counsel for the first informant also.

2) Present proceeding is filed under section 482 of Criminal Procedure Code for relief of quashing of First Information Report of CR No.I-225/2017 registered in Tofkhana Police Station, Ahmednagar for offences punishable under sections 376, 313, 504, 506 read with 34 of Indian Penal Code and section 3(1)(xii), 3(2)(vi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Offence punishable under section 417 IPC was also added and by making amendment of the main proceeding, new relief is prayed for quashing of the charge sheet filed against the present applicants.

3) The First Information Report is given by a lady, aged 21 years (hereinafter referred to as "prosecutrix") and she belongs to Scheduled Caste. She has made allegations mainly against Ganesh Akolkar. Applicant Nos.1 and 2 are father and mother of Ganesh. Applicant No.5 is wife of Ganesh. Applicant No.3 is brother of Ganesh and applicant No.4 is wife of applicant No.3.

4) It is the case of the prosecutrix that she got acquainted with Ganesh due to her girl friend and then there was love affairs between her and Ganesh. It is her case that Ganesh arranged for a room on rent basis for her at a place from Savedi, Ahmednagar and there she started living. She was working to earn livelihood. It is her case that on 26-12-2016 in the evening time Ganesh came to her room. He stayed there and by saying that he was not married he took sexual intercourse with her when she was not consenting to it. It is her case that subsequently also Ganesh took sexual intercourse with her many times and then she became pregnant. It is her case that on 7-4-2017 by bringing a kit of "Preganews" Ganesh confirmed that she was pregnant. Then he took her to one hospital where first sonography was done and then steps were taken to abort the child. It is her case that abortion took place on 18-4-2017 in Sukhada Hospital, Savedi Ahmednagar when she was not consenting to the abortion. It is her case that after this abortion Ganesh started avoiding her. It is her case that Ganesh disclosed that he was already married and he has two issues from his wife.

5) It is the case of the prosecutrix that on 5-6-2017 at 3.49 p.m. Ganesh called her and asked her to come to his house. It is her case that when she went to the residential place of Ganesh situated at Gangotri Residency, Ahmednagar, in the house all the present applicants were present. It is her case that wife of Ganesh gave abuses to her in filthy language and others assaulted her. It is her case that due to this incident when she went to Tofkhana police station to give report, the applicants and others pressurized her and promised her to settle the dispute and due to that she did not give the report in respect of the incident dated 5-6-2017. It is the case of the prosecutrix that on 7-6-2017 one Traffic Police called her to Kohinoor Mangal Karyalaya and there she was pressurized and there promise was given by father of Ganesh to give her money for settling the dispute. It is her case that on 9-6-2017 she was taken to a Notary-Public and there her signature and thumb impression were obtained on a document without informing the contents of the document to her. She gave report on 4-7-2017.

6) Learned counsel for the applicants submitted that all the allegations with regard to offence punishable under section 376 IPC, the offence of deceiving her and the offence of illegal abortion are against Ganesh and there are no such allegations against the present applicants. He submitted that even if the allegations are considered as they are, they show that the applicants came in picture only after the abortion. Learned counsel submitted that the allegations in respect of the incident dated 5-6-2017 were of non cognizable offence and the first informant had given statement before police on 9-6-2017 that she had no grievance against present applicants and so it was not desirable to file charge sheet by police against the present applicants on the basis of the same incident for any offences. Learned counsel submitted that only to pressurize the applicants, for compelling them to come to some settlement they are implicated in the present matter. On the other hand, learned counsel for the first informant submitted that the allegations show that at least father of Ganesh had offered money for settling the dispute and so offence punishable under section 214, IPC, is committed.

7) Copy of the statement given to police on 9-6-2017 shows that the first informant had approached police to give complaint in respect of incident dated 5-6-2017 and there was allegation of giving abuses and assault by fist and kicks. There was no record of medical examination. The alleged incident, in which promise of giving money was made, allegedly took place on 7-6-2017 and after that statement was given to police by the first informant i.e. on 9-6-2017. Admittedly, she made affidavit before Notary-Public also about the settlement. Copy of the said document dated 9-6-2017 is on record. Statement of the prosecutrix was recorded by Judicial Magistrate under section 164 of the Cr.P.C. on 15-7-2017 and copy of it shows that allegations of only abuses and assault were made in respect of the incident dated 5-6-2017 and allegations were that by deceiving her but, her signature was obtained on notarized document on 9-6-2017. There was no allegation to constitute offence punishable under section 214 IPC. Though it can be said that it is a matter of appreciation, the fact remains that the main allegations are against Ganesh, who is close relative of the applicants. The record is sufficient to infer that giving of the F.I.R.

against the present applicants is a pressure tactics and allowing the prosecution to go on as against them will be misuse of process of law. This Court holds that the relief claimed needs to be granted to the present applicants.

8) In the result, the application is allowed in terms of prayer clause B-1 to the extent of present applicants. Rule made absolute in those terms.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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