

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

CRIMINAL APPLICATION NO.2544 OF 2018

1. Vasanti Manohar Dighe,
Age- 54 years, Occ. Social Worker,
R/o 159, Shani Peth,
Taluka and Dist. Jalgaon.
2. Jagdish Bhaskarrao Neve,
Age- 47 years, Occ. Business
3. Hemlata Dattatraya Rokade,
Age- 50 years, Occ. Doctor
4. Vandana Jagdish Neve,
Age- 42 years, Occ. Household.
- Applicant Nos.2 to 4
All R/o 172, Shani Peth,
Taluka and District Jalgaon.
5. Mangala Ramesh Nagarkar,
Age- 57 years, Occ. Household,
266, Shani Peth,
Taluka and Dist. Jalgaon.
6. Rajkumari Satyanarayan Baldi,
Age- 55 years, Occ. Household,
R/o MIDC, Ajintha Road, Jalgaon,
Taluka and Dist. Jalgaon.
7. Bharti Prakash Patharkar,
Age- 48 years, Occ. Household,
R/o 89/2 A, Dadawadi, Jalgaon,
Taluka and Dist. Jalgaon.
8. Ritu @ Chandrakala Devilal Vyas,
Age- 33 years, Occ. Private Service,

R/o Behind Pratapnagar High School,
Taluka and Dist. Jalgaon.

9. Puja Eknath Patil,
Age- 20 years, Occ. Education,
R/o Shani Peth,
Taluka and Dist. Jalgaon.

... **APPLICANTS**

Versus

1. The State of Maharashtra,
2. Laxman Devram Patil,
Age- 50 years, Occ. Farmer,
R/o Varad Khurad,
Taluka Dharangaon, Dist. Jalgaon.
3. Bindiya Ajit Nandedkar,
Age-Major, Occ. Household work
R/o 4, Krishi Colony, Jalgaon,
Tq. and Dist. Jalgaon.
4. Ajit s/o Avinash Nandedkar,
Age-Major, Occ. Service,
R/o 4, Krishi Colony, Jalgaon,
Tq. and Dist. Jalgaon.
5. Rahul @ Dushyant Girish Kulkarni,
Age-27 years, Occ. Service,
R/o Gopika Mohiniraj Bhakta Niwas,
Near Mohiniraj Mandir, Tq. Newasa,
Dist. Ahmednagar.
6. Manjula Kacharulal Mundada,
Age-35 years, Occ. Advocate,
R/o 127, Polan Peth, Jalgaon,
Tq. and Dist. Jalgaon.
7. Rahul @ Tushar Bhaidas Patil,
Age-27 years, Occ. Service,

R/o Varad (Khurd), Tq. Dharangaon,
Dist. Jalgaon.

... **RESPONDENTS**

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Advocate for Applicants : Mr. Prakash Paranjape
A.P.P. for Respondent/State: Mr. S.B. Joshi
Advocate for Respondent No.2: Mr. Yogesh H. Jadhav h/f. Girish A. Nagori

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CORAM : MANGESH S. PATIL, J.
DATE : 30.09.2019

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned A.P.P. waives service for the respondent-State and learned advocate Mr. Yogesh H. Jadhav h/f. Girish A. Nagori waives service for the respondent no.2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The applicants and the respondent nos.3 to 7 are the accused in R.C.C. No. 201 of 2016 pending on the file of the J.M.F.C., Jalgaon in connection with Crime No. 126 of 2015 registered with City Police Station, Jalgaon for the offence punishable under Section 384 read with Section 34 of the I.P.C. and for the offence punishable under Section 10 and 11 of the Prohibition of Child Marriage Act, 2006. They preferred application under Section 239 of the Cr.P.C. before the Magistrate seeking discharge. The learned Magistrate rejected the application. They preferred revision before

the Sessions Court. By the impugned judgment and order the revision has been dismissed. Hence this Writ Petition.

3. In short the prosecution case is to the effect that son of the informant by name Vishal had not completed 21 years of age and was not competent to solemnize marriage. Intimacy developed between Vishal and the accused no.1. When he and his father insisted to wait till he attained the age of majority all the accused in furtherance of their common intention demanded a ransom and also threatened him of dire consequences as well as of filing a case of rape and accordingly compelled him to solemnize marriage on 03.07.2015 while he was still a minor. The F.I.R. was lodged on 27.08.2015 and the offence was registered. The accused were arrested and in due course of time the charge-sheet was filed.

4. The learned advocate for the petitioner submits that they are being falsely implicated. They had merely tried to intervene and help the couple solemnize an intercaste marriage. They are social workers and had intervened under a *bona fide* belief that the couple was competent to solemnize marriage. There was no occasion for them to doubt that Vishal had not completed 21 years of age. It would be sheer abuse of the process of law if the social workers like the applicants are made to face the trial. There was

no intention on their part to get involved in any criminal activity. Applying the principles laid down in the case of **State of Haryana and Ors. V/s. Bhajan Lal and Ors.**; AIR 1992 SUPREME COURT 604, the Magistrate ought to have discharged them.

5. The learned A.P.P. and the learned advocate for the respondent no.2 submit that there is nothing on record to show that the charge is groundless without which the applicants cannot be discharged under Section 239 of the Cr.PC. There was material in the form of school leaving certificate and record of university showing that the Vishal's date of birth was 13.07.1994 and the marriage was solemnized on 03.07.2015. The F.I.R. as well as the statement of Vishal clearly show and attribute role to each of the applicants in firstly threatening him and his father, demanding money and threatening to implicate him in rape case. There is also evidence about solemnization of marriage ceremony and thus there was sufficient material to *prima facie* show involvement of the applicants in the crime.

6. I have carefully gone through the F.I.R., the statement of the witnesses and the impugned orders of both the Courts below. Obviously, there have been concurrent findings of the two Courts below. It would need a strong material to invoke the powers of this Court to interfere.

7. As has been correctly noticed by the two Courts below, the F.I.R. and statement of the Vishal clearly demonstrate and attribute specific role to each of the applicants. It appears that the couple developed intimacy and were willing to marry. However, simultaneously it needs to be borne in mind whatever could have been the reason for the applicants and the other accused to step in, the fact remains that they had indulged in some activity leading to solemnization of the marriage when *prima facie* Vishal was still to complete 21 years of age. It is not necessary that the accused should know that the child is not of the marriageable age.

8. Besides, there are specific allegations about the applicants and the other accused having threatened the informant and Vishal of consequences if they refused to perform the marriage. There are allegations about they having demanded money and also about having threatened of involving them in a prosecution for rape. Right in the teeth of such specific and precise allegations no fault can be found with the observations and the conclusions drawn by the learned Magistrate and that of the learned Additional Sessions Judge in holding that it cannot be said that the charge is groundless within the meaning of Section 239 of the Cr.P.C. and it was not a case for grant of discharge. There was no apparent perversity, arbitrariness or

capriciousness in the order passed by the learned Magistrate. Consequently, even the learned Additional Sessions Judge could not have intervened under the revisional powers under Section 397 of the Cr.P.C. Similarly, I find no sufficient and cogent reason to intervene in the concurrent findings.

9. It is necessary to note here that the respondent nos.3 to 7 also apparently were parties to the application filed before the Magistrate seeking discharge and were also parties before the Sessions Court as revision applicants, however they have not independently preferred any application and have been arrayed only as respondents herein. Therefore the impugned orders to their extent being not under challenge even for that reason deserves to be confirmed.

10. The application is dismissed. The rule is discharged.

[MANGESH S. PATIL, J.]