

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

Criminal Application No.2902 of 2019

- 1) Alka w/o Shivajirao Kale,
Age 55 years,
Occupation : Household,
R/o Laxmi Colony,
Old Ausa Road, Latur.
- 2) Vaishali d/o Shivajirao Kale,
Age 29 years,
Occupation : Service,
R/o Laxmi Colony,
Old Ausa Road, Latur. .. **Applicants.**

Versus

- 1) The State of Maharashtra,
Through Police Station Officer,
Shivaji Nagar Police Station,
Latur, Taluka & Dist Latur.
- 2) Guna @ Archana d/o Govind Musale,
Age 29 years,
Occupation : Service,
R/o Deshpande Colony,
Ausa Road, Latur. .. **Respondents.**

Shri. P.P. More, Advocate, for applicants.

Smt. D.S. Jape, Additional Public Prosecutor, for
respondent No.1.

Shri. V.D. Gunale, Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
M. G. SEWLIKAR, JJ.**

Date: 12th DECEMBER 2019

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

1) Rule. Rule made returnable forthwith. Heard both the sides by consent for final disposal.

2) The present proceeding is filed for the relief of quashing of F.I.R. No.233/2019 registered with Shivaji Nagar Police Station Latur for offences punishable under sections 376(2)(n), 504, 506 read with 34 of the Indian Penal Code and also for quashing of charge sheet bearing No.119/2019 filed in this crime against the present applicants.

3) The crime is registered on the basis of report given by respondent No.2. Report was given on 4-6-2019. It is her contention that in August 2016 she came in contact with Vishal Kale and after the acquaintance there was affair with Vishal. It is contended that on 21-8-2016 in the night time Vishal came to her residential place and by giving promise of marriage he took sexual intercourse with her. It is her contention that by giving such promise Vishal exploited her sexually and this relation continued

upto 12-5-2019. It is contended that on 17-5-2019 he promised her that he will take some decision on marriage but after that he did not turn up. It is her contention that she is handicapped lady.

4) The informant has made allegation against the present applicants that on 19-5-2019 at 7.00 a.m. applicant No.1 came to her residential place and she picked up quarrel with her and both applicants gave threats of life by saying that she should not marry with Vishal. After this incident she approached police and gave report on 4-6-2019.

5) The aforesaid allegations, if they are accepted as they are show that the allegations of offence of rape are against Vishal. Vishal is son of applicant No.1 and brother of applicant No.2. Even if it is presumed that on 19-5-2019 some incident did take place between the applicants and the informant, it cannot be said that said incident had taken place in the course of some transaction which is mentioned as against Vishal Kale. Charge for offence of rape cannot be framed against these 2 ladies and there

will be no question of joinder of charges in view of the aforesaid allegations made against the applicants. It is clear that if the incident dated 19-5-2019 was separately considered, police would have registered it as a non cognizable case. It can be said that to avoid such registration of non cognizable case charge sheet is filed against the present applicants also along with Vishal for the aforesaid offence. This Court holds that it will be abuse of process of law if the applicants are made to face the trial for the aforesaid offences like offences punishable under sections 504, 506 of the Indian Penal Code in the case of rape filed against Vishal. This Court holds that relief claimed by the applicants needs to be granted.

6) In the result, the application is allowed. Relief is granted only to the extent of the present applicants in terms of prayer clause (C) and (C-1). Prayer clause (C-1) was added after allowing the applicants to amend the proceeding by adding the relief of quashing of the case itself. Rule made absolute in those terms.

Sd/-
(M. G. SEWLIKAR, J.)
 rsl

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