

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

CRIMINAL APPLICATION NO. 3136 OF 2018

1. Pooja Vitthal Temkar,
Age: 28 Years, Occ.- Service,
R/o: Permanent r/o: Nirgudsar,
Taluka Ambegaon,
District Pune.
Presently R/o: Wagharde,
Taluka Shahada,
District Nandurbar.
2. Prasad Vithal Temkar,
Age:26 Years, Occ.- Service,
R/o: Nirgudsar,
Taluka Ambegaon,
District Pune.
3. Vishal Ratnakar Korhale,
Age:25 Years, Occ.- Service,
R/o: Nirgudsar,
Taluka Ambegaon,
District Pune.
4. Shubham Bhagwan Tulekar,
Age:21 Years, Occ.- Education,
R/o: Nirgudsar,
Taluka Ambegaon,
District Pune.

... **Applicants**

Versus

1. State of Maharashtra
2. Jagruti Ravindra Bhamare,
Age 25 years, Occ. Household,
R/o: Plot No.5, Nitinagar,
Dongargaon Road,
Shahada, Taluka Shahada,
District Nandurbar.

... **Respondents**

.....

Mr. Amit S. Savale, Advocate for the Applicants.

Mr. Mr. S.B. Joshi, A.P.P. for respondent no.1-State.

Mr. G.A. Nagori, Advocate for Respondent no.2.

.....

**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**

DATE : 09.04.2019

JUDGMENT :- (Per: Mangesh S. Patil, J.)

Heard. Rule. Rule is made returnable forthwith. Learned A.P.P. waives service for the respondent no.1. Learned advocate Mr. G. 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 are seeking quashment of Crime No.266 of 2018 registered with Shahada Police Station, district Nandurbar and the charge-sheet pursuant thereto for the offences punishable under Sections 329, 406, 420, 464, 494, 498-A, 506 read with Section 34 of the Indian Penal Code.

3. The respondent no.2 lodged the F.I.R. on 07.08.2018 *inter alia* alleging that her marriage was solemnized on 11.05.2015 with one Ravindra who was then working as an Agricultural Assistant at Morshi, district Amravati. When she started cohabiting with him she realized that he was already having an affair with the applicant no.1 and disclosed the fact to her. In spite of her resistance he continued to have the illicit relations. Her

husband and in-laws subjected her to ill-treatment. Her husband then left her at the bus stand at Shahada on 28.04.2018 and since thereafter she has been residing at her parental home. She then alleged that she and her parents then came to know that her husband has solemnized marriage with the applicant no.1 on 02.06.2018 at Alandi and the rest of the applicants have signed on the notarized document in that respect, as witnesses.

4. The learned advocate for the applicants vehemently submits that accepting the allegations in the F.I.R. at their face value, none of the ingredients for any of the offences can be made out as against the applicants. There is absolutely no whisper about the applicants having ever deceived the respondent no.2. For that matter she has not at all whispered about she having been ever contacted by them or there was any interaction between them. Therefore assuming for the sake of arguments that the applicant no.1 has solemnized marriage with husband of the respondent no.2 and the rest of the applicants have signed on the notarized document witnessing the marriage, none of the offences can be made out against them. It would be a sheer abuse of the process of law if they are made to face the charge and the proceeding may be quashed.

5. Learned A.P.P. and the learned advocate for the respondent no.2 oppose the application. They submit that the applicant no.1 knowing that the

respondent no.2 is already married to her husband has solemnized the marriage with him by indulging in creating a false record of the marriage and the rest of the applicants have also attested the notarized document and thereby have abetted commission of the offence and the application may be rejected.

6. We have carefully gone through the charge-sheet. It is necessary to note at this juncture that a composite F.I.R. has been lodged by the respondent no.2 against her husband, his relatives and the present applicants. Even according to her the applicants are not the relatives of her husband and therefore they cannot be added as co-accused as far as the offence punishable under Section 498-A is concerned.

7. For that matter, for the same reason, in the absence of any allegation, they even cannot be said to have played any role in subjecting her to any cruelty. Going by the allegations, it is only the offence of cheating and forgery which have been tried to be set up against the present applicants. However in our considered view even they cannot be charged for those offences for the obvious reasons.

8. Accepting the allegations in the F.I.R. at their face value and even accepting the material collected by the Investigating Officer to substantiate the charge of fabrication of the marriage record, we are of the considered

view that even those offences *prima facie* cannot be made out against the applicants. There is absolutely no allegation in the F.I.R. about the applicants having deceived the respondent no.2 in any manner. As is pointed out by the learned advocate even there is no whisper that she had ever met them. All the allegations have been levelled against the husband who had not disclosed her about having an affair with the applicant no.1.

9. It is true that during the course of investigation a letter has been obtained from the Marriage Hall where the husband of the respondent no.2 is alleged to have solemnized marriage with the applicant no.1, wherein he is shown to be unmarried. Similarly even a notarized document seems to have been brought in existence wherein apart from the applicant no.1 and the husband of the respondent no.2, signatures of the applicant nos. 2 to 4 are appearing as witnesses. Still we cannot comprehend as to how the applicants can be said to have indulged in any forgery or cheating. None of the ingredients for constituting those offences can be discerned even if the entire charge-sheet is taken in to consideration. No fruitful purpose is likely to be served by making the applicants face the charge. It would be a sheer misuse of the process of law if they are allowed to face the charge based on such material. The application therefore deserves to be allowed.

10. The application is allowed. The rule is made absolute in terms of

prayer Clause 'B'.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]

KAKADE