

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3501 OF 2019

Rupali w/o Sachin Aute  
age 25 years, occ. Household  
r/o 6-II-222, Gate No. 51  
Banewdi, near Railway Station  
Aurangabad  
Tq. & Dist. Aurangabad.

Applicant

Versus

1. The State of Maharashtra  
Through Police Station Incharge  
Kranti Chowk, Aurangabad  
Tq. & Dist Aurangabad.
2. Sachin s/o Sopan Aute  
age 38 years, occ. Gizer Mechanic  
r/o Rajeshri -2,  
Plot No. 21, Survey no. 349/21  
near idea Tower, Datta Nagar  
Behind Ganesh Market,  
Konark Ngar, Adgaon Shivar, Nashik  
Tq. & dist. Nashik
3. Sopan s/o Baburao Aute  
age 71 years, occ. Nil  
r/o Shradda, Bungalow No. 11  
Konark Nagar 02, Adgaon Shivar  
Nashik
4. Pratibha w/o Sopan Aute  
Age 64years, occ. Service & household  
r/o Shradda, Bungalow No. 11  
Konark Nagar 02, Adgaon Shivar  
Nashik
5. Shialesh s/o Sopan Aute  
age 41 years, occ. Service

r/o Shradda, Bungalow No. 11  
Konark Nagar 2, Adgaon Shivar  
Nashik

6. Sow Rekhah s/o Shailesh Aute  
age 32 years, occ. Household  
r/o Shradda, Bungalow No. 11  
Konark Nagar 2, Adgaon Shivar  
Nashik
7. Sow Karuna w/o Balasaheb Ghorpade  
age 41 years, occ. Household  
r/o H.No. 785, Near Maruti Mandir  
Gaikwad Galli, Bhagur  
Tq. & Dist. Nashik
8. Balasaheb s/o Shridhar Ghorpade  
age 49 years, occ. Business  
r/o H.No. 785, Near Maruti Mandir  
Gaikwad Galli, Bhagur  
Tq. & Dist. Nashik

Respondents

Mr. D.R. Markad, Advocate for the applicants.  
Mrs. V.S. Choudhary, APP for respondent No. 1.  
Mr. S.P. Telgote, Advocate for respondents No. 2 to 8.

**CORAM : T.V. Nalawade &  
M.G. Sewlikar, JJ.**

**DATE : 29<sup>th</sup> January, 2020.**

**JUDGMENT : ( PER T. V. NALAWADE, J.)**

1. Rule. Rule made returnable forthwith.
2. By consent, heard both sides for final disposal.

3. Present proceeding is filed for recalling judgment and order passed by this Court in Criminal Application No. 3139/2018. Criminal Application no. 3139/2018 was filed by the present respondents for relief of quashing of First Information Report bearing No. 1196/2016 registered with Kranti Chowk Police Station for offence punishable under Sections 498-A, 506 r/w Section 34 of the Indian Penal Code and few sections of Dowry Prohibition Act. Relief of quashment of RCC no. 460/2018 was also claimed. The matter came to be decided on 20.06.2019. It appears that it was submitted before this Court that divorce was given by the Family Court and this circumstance was relevant for consideration of the matter. At paragraph No. 5, submissions which were made are mentioned. In view of these circumstances, relief of quashment was granted by this Court on 20.06.2019.

4. Submission made shows that decree of divorce given by the Family Court was already challenged in this Court by filing Family Court Appeal no. 46/2017 and by decision dated 22.02.2019, this Court had set aside the decree of divorce. The petition which was filed for divorce by respondent was also dismissed by this Court. Thus, on 20.06.2019, there was no decree of divorce in favour of the

husband but such submission was made in Criminal Application No. 3139/2018 on 27.02.2019. Thus, it can be said that by making false representation, relief was obtained in Criminal Application No. 3139/2018. On this ground, prayer is made to recall the decision given in that proceeding.

5. Learned counsel for applicant places reliance on observations made by the Honourable Apex Court in Criminal Appeal No. 583/2019 (S. Ramesh and others Vs. State and others) and submits that the Honourable Supreme Court has laid down that only because divorce is given and there was some settlement, the Court cannot quash the proceeding. In the present matter also, nothing in writing was produced in Criminal Application no. 3139/2018 to show that wife had no intention to give evidence against the husband.

6. Learned counsel for respondents – original applicants in Criminal Application No. 3139/2018 places reliance on observations made by the Honourable Apex Court in following six cases :

i) State Represented by DSP, SB CID, Chennai Vs. K.V. Rajendran and others (2008), 8 Supreme Court Cases 673.

ii) Ajay Singh and another Vs. State of Chhattisgarh and another (2017) 3 Supreme Court

Cases 330.

iii) Sankatha Singh and others Vs. Stat of Uttar Pradesh AIR 1962 SC 1208.

iv) Smt. Sooraj Devi Vs. Pyare Lal and another (1981) 1 Supreme Court Cases 500.

v) Atul Shukla Vs. State of Madhya Pradesh and another 2019 SCC Online SC 960.

vi) State of Madhya Pradesh Vs. Man Singh (2019) 10 Supreme Court Cases 161.

He submitted that no such representation was made by him for getting relief and there is bar of provisions of Section 362 of the Code of Criminal Procedure for recalling the decision given by this Court in Criminal Application no. 3139/2018.

7. The facts and circumstances of each and every case are always different. In no case relied by the respondents the Honourable Apex Court has laid own that even when the order was obtained by playing fraud, the provisions of Section 362 of the Code of Criminal Procedure will apply.

8. Only because the counsel representing applicant in Criminal Application no. 3139/2018 appears to be a young advocate having standing of seven years, this Court has not taken any action

against him for making such misrepresentation. Learned counsel tenders unconditional apology. He needs to be cautious in future when he makes statement in the Court when there is a record of aforesaid nature which is contrary to submissions.

9. In the result following order is passed :

**ORDER**

1. Application is allowed.
2. Decision given in Criminal Application No. 3139/2018 is hereby recalled.
3. Criminal Application No. 3139/2018 is restored.
4. List said proceeding for final disposal on 21<sup>st</sup> February, 2020.
5. Rule made absolute in above terms.

( M. G. SEWLIKAR )  
Judge

( T.V. NALAWADE )  
Judge

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