

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

CRIMINAL APPLICATION NO. 282 OF 2019

1. Shobha Bhagwan Patil @
Shobha Milind Baisane (Balsane),
Age 42 years, Occu. Service,
R/o. Block No. 1, Prathmesh Apartment,
Mahavir Colony, Behind Maleriya Office,
Sakri Road, Dhule.
2. Jijabai Vasant Baisane (Balsane),
Age 72 years, Occu. Household,
R/o. 5(A), Nutan Krushi Nagar,
Near Maleriya Office, Sakri Road,
Dhule.
3. Pradip Vasant Baisane (Balsane),
Age 45 years, Occu. S. T. Driver,
R/o. 5(A), Nutan Krushi Nagar,
Near Maleriya Office, Sakri Road,
Dhule.
4. Meena @ Meenakshi Pradip Baisane
(Balsane), Age 34 years, Occu. Housewife,
R/o. 5(A), Nutan Krushi Nagar,
Near Maleriya Office, Sakri Road,
Dhule.
5. Lilabai Kashinath Masule,
Age 53 years, Occu. Housewife,
R/o. Udane, Taluka and District Dhule.
6. Kashinath Dharma Masule,
Age 65 years, Occu. Labour,
R/o. Udane, Taluka and District Dhule.
7. Manohar Motiram Wankhede,
Age 41 years, Occu. Driver,
R/o. House No. 4, Near Pirbaba Darga,
Shivanand Society, Mohadi,
Taluka and District Dhule.

8. Aparna Dharmbhushan Bagul,
Age 48 years, Occu. Housewife,
R/o. Rajgruh, Old Malegaon Road,
Milindnagar, Chalisgaon,
District Jalgaon.
9. Dharmbhushan Bhagwan Bagul,
Age 53 years, Occu. Service,
R/o. Rajgruh, Old Malegaon Road,
Milindnagar, Chalisgaon,
District Jalgaon.

.. Applicants
(Original Accused no. 2 to 10)

Versus

1. The State of Maharashtra
2. Mira Milind Baisane,
Age 50 years, Occu. Service,
R/o. 16, Samarth Nagar,
Near Pirbaba Darga, Sakri Road,
Dhule. Mobile No. 9823620100.

.. Respondents
(Respondent no. 2 -
original first informant)

...
Mr. Joydeep Chatterji, Advocate for applicants
Smt. P. V. Diggikar, A.P.P. for respondent no. 1
Mr. A. B. Anjanwatikar for respondent no. 2
...

**CORAM : SUNIL P. DESHMUKH
AND
NITIN B. SURYAWANSHI, JJ.**

DATE : 3rd SEPTEMBER, 2021

PER COURT :

At the outset, learned Advocate for the applicants not pressed
the application to the extent of applicant no. 1.

2. Quashing of First Information Report (FIR) bearing crime no. 17 of 2019 registered with Dhule City Police Station, Dhule, for the offences punishable under Sections 498-A, 494, 406, 323, 504 and 506 read with Section 34 of the Indian Penal Code (IPC) and the chargesheet filed pursuant thereto is sought in the present application.

3. Applicant No.2 is the Aunt of the main accused Milind Avachit Baisane (Balsane). Applicant No.3 is the son of applicant No.2. Applicant No.4 is the wife of applicant No.3. Applicant No.5 is the mother of applicant no.1. Applicant No.6 is the father of applicant no.1. Applicant No.7 is a friend of accused- Milind. Applicant No.8 is the married sister of accused- Milind. Applicant no.9 is the husband of applicant no.8.

4. In the impugned FIR, respondent No. 2 has alleged that her marriage with accused no. 1 – Milind took place on 22-02-1991, three children are born from their wedlock. Thereafter, accused no. 1 - Milind performed second marriage with applicant no.1 - Shobha in the year 2003 at Shahada Prakasha in a temple. Thereafter, they started residing together and two children are born out of the said wedlock. Since, Shobha was earning, her children were raised by respondent no.2. It is further alleged that from the month of April-2017, behaviour of Milind changed and he informed respondent no. 2 that he is going to perform third marriage. All the

applicants instigated Milind for performance of third marriage. Applicant no.1, though, was informed about plan of Milind, she in collusion with Milind assaulted respondent no.2 and took away her *stridhan* i.e. golden ornaments and cash and left the house of respondent no.2 by leaving behind her daughter and son with respondent no. 2.

. After conducting the investigation, Investigating Agency has filed chargesheet, on the basis of which Regular Criminal Case No. 791 of 2019 is registered, which is pending in the court of Judicial Magistrate, First Class, Dhule.

5. Heard learned Advocate for the applicants, learned APP for the respondent no.1 - State and the learned Advocate for respondent No.2.

6. Learned Advocate for the applicants submits that no case is made out against the applicants for continuation of the prosecution. Vague and general allegations are made against the applicants. The applicants are implicated only with a view to harass them and to pressurize the main accused- Milind. The applicants no. 2 to 6 are distinct relatives and applicant No. 7 is friend of accused - Milind and he has been implicated only because friend of Milind. He, therefore, contends that continuation of prosecution against the applicants is an abuse of process of law, and hence, the prosecution against the applicants be quashed.

7. On the other hand, learned APP for respondent no.1 submitted that the material collected during the course of investigation justify the prosecution of applicants.

Learned Advocate for respondent no. 2 – original informant also supported the prosecution by adopting the arguments of learned APP, he placed reliance in a case of – *Dhanalakshmi Versus R. Prasanna Kumar and others*, reported in *1990 Mh.L.J. 32*. He submitted that this Court may not exercise its jurisdiction under Section 482 of Code of Criminal Procedure, as the applicants have failed to make out any case that the complaint lodged against them is frivolous, vexatious or oppressive. This Court may not analyse the prosecution case in the light of all the probabilities in order to determine whether a conviction would be sustainable. He, therefore, submitted that this Court may not assess the material placed before it and came to a conclusion that the prosecution can not be proceeded.

8. We have perused the investigation papers in the form of chargesheet, which are placed on record. Even if the allegations in FIR and the material collected during the course of investigation are taken at their face value and accepted in entirety, complicity of applicants is not made out. We find that vague and bald allegations are levelled against the applicants, no specific role is attributed to them. The FIR is lodged after a delay of more than 16 years. The

main allegations are against applicant no. 1 and Milind. All the applicants are residing at different places. The allegations of assault and taking away of golden ornaments and cash are made against applicant no. 1 and Milind.

9. There are no allegations that applicants no. 2 to 9 were present and have participated in the alleged second marriage of accused - Milind and applicant no. 1, therefore, Section 494 of IPC has no application in the present matter. The statements of son and daughter of respondent no. 2 are recorded. Perusal of the statements indicate that they were not present at the time of alleged marriage and whatever they have stated about the marriage is hearsay. One Pramila More claims to be present at the time of marriage, however, she has not stated the date of marriage, even she does not state that the applicants no. 2 to 9 have played any active role in the alleged second marriage.

10. In view of the aforesaid reasons, we are of the considered view that continuation of the prosecution against applicants would be an abuse of process of law. The applicants are made to suffer unnecessary harassment due to their implication by respondent no. 2. The charges levelled against the applicants are groundless and there is no material on record to substantiate those charges.

11. In *Dhanalakshmi Versus R. Prasanna Kumar and others* (*supra*), the Honourable Apex Court has held that the High Court was not justified in assessing the material before it and concluding that the complaint cannot be proceeded with, as there were specific allegations in the complaint disclosing the ingredients of the offence of which cognizance was taken.

12. In the instant case, as we have noted above there are vague and general allegations and the involvement of the applicants not spelt out from the FIR or from the material collected during the investigation.

13. For the aforesaid reasons, criminal application is allowed. The proceeding of Regular Criminal Case No. 791 of 2019 registered on the basis of First Information Report bearing Crime No. 17 of 2019 registered with Dhule City Police Station, Dhule, for the offences punishable under Sections 498-A, 494, 406, 323, 504 and 506 read with Section 34 of the Indian Penal Code, is hereby quashed and set aside to the extent of applicants no. 2 to 9.

14. Criminal application is disposed of, accordingly.

[NITIN B. SURYAWANSHI]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE