

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (APL) No.1089 of 2021

1. Mr. Deva Thangrajan Ezechial,
Aged 56 years,
Occupation - Service,
R/o 84, Popular Housing Society,
Naka No.10,
Amravati Road, Wadi,
Nagpur (Maharashtra State) - 440023.

2. Smt. Bebitai W/o Late Govindrao Dhabale,
Aged 67 years,
Occupation - Housewife,
R/o Suraksha Nagar,
Wadi, Nagpur,
Tahsil & District Nagpur,
(Maharashtra State) 440023.

... Applicants

Versus

State of Maharashtra,
through Officer In-charge,
Wadi Police Station,
Wadi, Nagpur,
Tahsil & District Nagpur
(Maharashtra State).

... Non-Applicant

Shri Harish Dangre, Advocate for Applicants.
Shri T.A. Mirza, Additional Public Prosecutor for Non-Applicant.

CORAM : V.M. DESHPANDE & AMIT B. BORKAR, JJ.
DATE : 7th OCTOBER, 2021

Oral Judgment (Per V.M. Deshpande, J.) :

1. Rule. Rule is made returnable forthwith.

2. The learned counsel for the applicants and the learned Additional Public Prosecutor for the non-applicant- State prayed that though this application is listed for the first time, it can be decided today itself. Hence, by consent, the application is being decided finally.

3. Applicant No.1- Deva Thangrajan Ezechial was accused by applicant No.2- Smt. Bebitai W/o Late Govindrao Dhabale in the year 1996 that he took away her daughter Archana and she lodged a report with Police Station Wadi on 11-8-1996. In view of the report lodged by Bebitai, a crime was registered against Deva vide Crime No.114 of 1996 for the offence punishable under Section 363 of the Indian Penal Code.

4. Applicant Deva was arrested and released on bail on 12-8-1996, as it could be seen from Annexure-3 to this application.

5. It is the case of both the applicants that on 12-8-1996, Archana, the daughter of Bebitai, and Deva got married with each other. It appears that in Crime No.114 of 1996, final report was presented and the case was registered as Regular Criminal Case No.3240066 of 1996 (*State Vs. Deva*) on the file of the learned Judicial Magistrate First Class, Corporation Court No.2, Nagpur.

6. The learned counsel for the applicants submitted that the cause for these two applicants approaching this Court is because of the receipt of witness summons received by Bebitai and her other two relatives from the Court of learned Magistrate.

7. Applicant No.2- Bebitai is personally present in the Court. She is identified as such by Shri Harish Dangre, the learned counsel. Upon enquiry from the Court with her in vernacular, she submitted that her daughter has married with Deva in the year 1996 itself and they are leading a very happy married life. The couple is bestowed with two daughters and the daughters are taking education in Dubai and their younger daughter is employed very recently in Pune city. She also informed the Court that Deva and his wife, i.e. her daughter, are residing in Oman.

8. Along with this application filed under Section 482 of the Code of Criminal Procedure, certain documents are annexed. The said documents include the passport of Archana, who was allegedly kidnapped by the accused in Crime No.114 of 1996. The passport depicts her date of birth as 9-8-1978. Her residency certificate is also placed on record showing that she is resident of Oman and the expiry date of her residency is 4-3-2022.

9. The First Information Report is dated 11-8-1996 and it is in respect of the alleged incident of 21-5-1996. Thus, on the date of the incident, Archana, the daughter of applicant No.2- Bebitai, was of 17 years and 10 months. Thus, it clearly shows that she has attained the age of understanding. Apart from the fact that there is no explanation for the delay in the First Information Report, there is no direct accusation or allegation against Deva that he removed Archana from the lawful custody of Bebitai. In that view of the matter and looking to the fact that Archana has already attained the age of understanding, the law laid down in the case of *S. Varadarajan Vs. State of Madras*, reported in *AIR 1965 SC 942*, is squarely applicable to this case. In addition to that, Bebitai, the complainant before the Court, submitted that in view of the fact that her daughter is leading a very happy married life with Deva, she does not want to prosecute her complaint.

10. In view of the aforesaid set of facts, it would be appropriate on the part of this Court to exercise its discretion under Section 482 of the Code of Criminal Procedure, as directed by Hon'ble Supreme Court in the case of *Narinder Singh and others Vs. State of Punjab and another*, reported in *AIR 2014 SCW 2065*.

11. Resultantly, we pass the following order :

The First Information Report registered with Police Station Wadi against applicant No.2 Deva Thangrajan Ezechial vide Crime No.114 of 1996 for the offence punishable under Section 363 of the Indian Penal Code together with the charge-sheet filed in respect of the said offence, which culminated in registration of Regular Criminal Case No.3240066 of 1996, pending on the file of the learned Judicial Magistrate First Class, Corporation Court No.2, Nagpur, for the offence punishable under Section 363 of the Indian Penal Code, is hereby quashed and set aside.

12. Rule is made absolute in the above terms.

(AMIT B. BORKAR, J.)

(V.M. DESHPANDE, J.)