

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

CRIMINAL APPLICATION (APL) NO. 704 OF 2019

Raju S/o Babanrao Shatgopamwar
Aged about 44 years, Occ : Business
R/o Maulana Azad Ward, Ballarpur,
Tahsil Ballarpur, Dist. Chandrapur

.... **Applicant**

- **Versus** -

(1) State of Maharashtra,
Through Police Station Officer,
Police Station Mul
Tah. & District Chandrapur.

(2) Prashant W/o Vilas Mutyarpawar,
aged about 37 years, Occ : Business,
R/o Indira Nagar, Ward No. 11,
Mul, Tah. Mul, Dist. Chandrapur.

(3) Sau. Kantalaxmi W/o Anil Sadamwar,
Aged about 50 years, Occ : Housewife,
R/o C/o Anil Nanayya Sadamwar,
Chaudampalli, Tah. Chamorshi,
Dist. Gadchiroli.

(4) Anil S/o Nanayya Sadamwar,
Aged about 61 years Occ : Business,
R/o Chaudampalli, Tah. Chamorshi,
Dist. Gadchiroli.

.... **Non-applicants**

Mr. Shankar Borkute, Advocate for the applicant
Mr. S. S. Doifode, APP for the State/non-applicant no. 1
None for non-applicant Nos. 2 to 4

**CORAM : ROHIT B. DEO, J.
DATED : 27TH JANUARY, 2021.**

ORAL JUDGMENT

Heard.

2. With consent, the application is finally heard at the admission stage.

3. This application is directed against the judgment dated 13-3-2019 rendered in Criminal Revision 36/2017 whereby the revision preferred by the applicant challenging the order dated 17-4-2017 rendered by the learned Judicial Magistrate First Class, Mul, District Chandrapur in Regular Criminal Case 74/2015, is rejected. The effect of the revisional order is that the dismissal of the complaint by the learned Magistrate under Section 203 of the Code of Criminal Procedure (Code) is confirmed.

4. The applicant preferred private complaint alleging commission of offences punishable under Sections 496, 497 and 498 read with Section 34 of the Indian Penal Code.

5. The learned Magistrate called for report under Section 202 of the Code and then concluded that there is no case made out to

issue process and dismissed the complaint.

6. The learned Sessions Court noted that *prima facie* the petitioner was already married having two issues and during the subsistence of the marriage, he married Mrs. Shraddha at Balaji Mandir Deosthan on 2-4-2011. Mrs. Shraddha left the company of the applicant – complainant alleging cruelty. The relevant discussion of the learned Sessions Judge is thus :

3] *I have to see whether the Ld. Trial Court has committed an error. For that I have gone through the record, particularly the report u/s 202 of Cr.PC at Exh. 10. Apparently, seen that the petitioner/complainant was already married person having two issues, yet he developed love relation with Shraddha and married with her at Balaji Mandir Deosthan on 2.4.2011 without giving intimation to others. Thereafter, he started to harass her for amount of Rs.50,000/-. Being unbearable cruelty, she left his company in the month of December, 2011 and went to her maternal house. She had lodged the report before S.D.P.O., Aheri. In the enquiry, the present petitioner was called on 4.6.2012 wherein he categorically undertook that he would not maintain any relation with Shraddha, even would not make any contact and also would not take any step in her future life. In spite of that undertaking, he has initiated complaint case on 24.4.2013 before the Court at Aheri by levelling charges u/s 312, 316, 406 r/w 34 of the I.P.C., in consequence the concerned Police Officer made an enquiry and found that the complaint was false, in result they had put up "C" Summary. Thereafter, he again lodged the report*

on 26.7.2015 alleging that Shraddha has been abducted forcibly. Shraddha also lodged report on 26.7.2015 leading to register offences u/s 448, 365, 506 r/w 34 of I.P.C. against the present petitioner and others. In that enquiry, it was found that Shraddha had performed marriage with Prashant in the presence of relatives, yet this petitioner had lodged report alleging that they had committed an offence u/s 496, 497, 498 r/w 34 of I.P.C. In consequence, the statements of witnesses were recorded, it found that the complainant herein was at fault. He did not stop his activities and lodged criminal complain i.e 74/2015.

4] On a set of facts, it apparently seen that the petitioner himself has committed an offence by performing second marriage though first was in existence. Also, seen that he has initiated number of proceedings with an intention to harass that lady Shraddha and her parents. Even he has intentionally forgotten his undertaking dated 4.6.2012 before the police. In short, this is a perfect example of abuse the process of law. Needless to say that due to the aforesaid act on the part of the petitioner, the opponents, even the police department had to spend much time. Moreover, he consumed valuable time of the Court.

7. If the petitioner was already married, then there is no question of legal marriage between Shraddha and the applicant, and, therefore, both the Courts were perfectly justified in not proceeding against the accused. The learned counsel for the applicant has limited grievance. The submission that while costs directed by the learned Sessions Judge shall be paid if not already paid, the observation in clause [2] that Shraddha is the wife of accused Prashant Mutyarpawar

be deleted. The operative part of the order reads thus :

- [1] Criminal Revision No. 36/2017 is hereby dismissed with cost of Rs. 20,000/-.*
- [2] Rs. 10,000/- out of the cost be paid to said Shraddha w/o Prashant Mutyarpawar r/o Indira Nagar, Weekly Bazar, Mul, District Chandrapur towards compensation.*
- [3] The petitioner has to deposit the aforesaid cost within 15 days else it would be recovered as a land revenue.*
- [4] The record and proceedings be returned back to the learned Trial Court within three days.*
- [5] Criminal Revision No. 36/2017 is hereby disposed of accordingly.*

8. I do not see any reason to direct that operative order should be modified. It is trite law that the observations made or rather the reference to status is only for the purpose of deciding the 397 revision and if such an issue becomes relevant in any further proceedings, the reference in the judgment impugned shall be subservient and subject to declaration of status by the competent Court.

9. The application is dismissed.

JUDGE

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