

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

CRIMINAL APPLICATION (APL) NO. 518/2016

- 1] Prasad S/O Pradip Kulkarni,
Aged about 34 years, Occ. Labour,
- 2] Pradip S/O Raghunath Kulkarni,
Aged about 64 years, Occ. Nil,
- 3] Sau. Aasha W/O Pradip Kulkarni,
Aged about 62 years, Occ. Household
- 4] Prasanna S/O Pradip Kulkarni,
Aged about 31 years, Occ. Service

All are resident of Plot No. 67,
Near Maruti Temple, Prabhat Nagar,
Deopura, Dhule

.... **APPLICANT(S)**

// VERSUS //

- 1] State Of Maharashtra,
Through P.S.O., P.S. Borgaon Manju,
Dist. Akola
- 2] Mayuri W/O Prasad Kulkarni,
Aged about 28 years, Occ. Private,
C/o. Avinash Vinayak Bhure,
R/o. Ramji Nagar, Borgaon Manju,
Tq & Dist. Akola

.... **NON-APPLICANT(S)**

Shri M.I. Dhattrak, Advocate for the applicant(s)
Ms. M. Deshmukh, APP for the non-applicant no. 1

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.
FEBRUARY 9, 2021

ORAL JUDGMENT : (PER:- AMIT B. BORKAR, J.)

1] Heard.

2] **RULE.** Rule made returnable forthwith.

3] This is an application under Section 482 of the Code of Criminal Procedure challenging registration of F.I.R. No. 130/2016 dated 10/05/2016 registered with the non-applicant no. 1 – Police Station.

4] The first information report came to be registered against the applicants with the accusations that marriage between the applicant no. 1 and non-applicant no. 2 was performed on 04/03/2014 and thereafter the applicants physically and mentally harassed the non-applicant no. 2. It is also alleged that the non-applicant no. 2 was forced to live in her paternal house in the month of September, 2014 on the ground that the non-applicant no. 2 has not paid dowry of Rs. 3,00,000/-. It is further alleged that in the month of January, 2015, the applicant no. 1 and his relatives came to the house of parents of the non-applicant no. 2 and demanded dowry.

5] The applicants have therefore challenged registration of the first information report by filing the present application. This Court on 01/08/2016 issued notice to the non-applicants and by way of ad-interim

order, it was directed that charge-sheet should not be filed without leave of this Court.

6] In pursuance of the notice issued by this Court, the non-applicant no. 1 has filed reply and it is stated that the applicants have caused physical and mental harassment to the non-applicant no. 2. It is further stated that the non-applicant no. 2 is residing with her parents from January, 2015. It is further stated that the applicant no. 1 has lodged missing report pertaining to the non-applicant no. 2 as she had not returned after communicating to the applicant no.1 that she will return after charging her mobile phone. In the statement recorded by the officials of Civil Lines, Police Station Akola, the non-applicant no. 2 clearly stated that she had left her matrimonial house without informing the applicant no. 1 as she was angry due to the ill-treatment and with the act and attitude of the applicant no. 1.

7] Learned advocate for the applicants invited our attention to the Petition A. No. 57/2018 filed by the applicant no. 1 before the Judge, Family Court, Dhule seeking decree of divorce on the ground of desertion. In the said proceedings also, the non-applicant no. 2 failed to remain present and *ex-parte* judgment is delivered by the Family Court, Dhule declaring that the marriage between the applicant no. 1 and non-applicant no. 2 stands dissolved. It is pertinent to note that the ground for divorce pleaded by the

applicant no. 1 was desertion by the non-applicant no. 2. In the present proceedings also, inspite of service of notice of this criminal application on the non-applicant no. 2 on 24/01/2021, the non-applicant no. 2 has not appeared either personally or through advocate.

8] Having considered the allegations in the first information report, it appears that the allegations made in the first information report are vague in nature. It also appears that the first information report has been filed after period of more than one year. It also appears from the first information report that the non-applicant no. 2 was residing with her parents from September, 2014 and the first information report came to be registered against the applicants on 10/05/2016. From the reply filed by the non-applicant no. 1, we are satisfied that the non-applicant no. 2 has deserted the applicant no. 1 and has left her matrimonial house on her own. The said fact is fortified by the conduct of the applicant no. 1 by filing missing report in the police station. The non-applicant no. 1 has placed on record the statements of the neighbours of the non-applicant no. 2, where she was residing after deserting the applicant no. 1. From the statements of the neighbours, it appears that the statements are not supporting the case of the non-applicant no. 2 that the applicants meted out physical and mental cruelty to the non-applicant no. 2.

9] On overall consideration of the first information report and the reply filed by the non-applicant no. 1 and the judgment of the Family Court, Dhule in Petition A. No. 57/2018, we are satisfied that the prosecution launched by the non-applicant no. 2 is not a legitimate prosecution. Therefore, continuation of the proceedings against the applicants would amount to abuse of process of the Court.

10] Hence, the following order:-

F.I.R. No. 130/2016 dated 10/05/2016 registered with the non-applicant no. 1 – Police Station for the offences punishable under Sections 498-A, 323 and 34 of the Indian Penal Code is quashed and set aside.

Rule is made absolute in the above terms.

JUDGE

JUDGE