

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

CRIMINAL APPLICATION (APL) NO. 601 OF 2014

1. Vikas s/o Kisanji Sakhare,
Aged about : 34 years,
Occ : Private Service,
Applicant No. R/o Plot No.18,
New Thawre Colony, Nagpur.
2. Smt. Kaushalyabai wd/o Kisan Sakhare, Aged about : 85 years,
Occ : Household. (Deleted as per Hon'ble Court's order dtd.05.01.18)
3. Avinash s/o Kisanji Sakhare,
Aged about : 39 years,
Occ : Private Service.
4. Sau. Warsha w/o Avinash Sakhare,
Aged about : 32 years,
Occ : Business.
(Applicant No.2,3 and 4)
all R/o Vidya Vihar, Bhandara.
5. Pramod s/o Kisanji Sakhare,
Aged about : 54 years,
Occ : Private Service,
R/o Yerwada, Pune.
6. Arvind s/o Kisanji Sakhare,
Aged about : 48 years,
Occ : Private Service,
R/o Baramati, Pune.
7. Smt. Sharda wd/o Bhagwanji Dhawale, Aged about : 60 years,
R/o Ramnagar, Gondia.
8. Smt. Panchafula w/o Tukaramji Wasnik, Aged about : 57 years,
Occ : Household, R/o Civil Lines,
Gondia.

... **APPLICANTS**

VERSUS

1. The State of Maharashtra,
Through PSO, Police Station,
Jaripatka, Nagpur.
2. Sau. Padma w/o Vikas Sakhare,
Aged about : 44 years,
Occ : Service, R/o Plot
No.34, Gopichand Upadhye,
Vijay Chhawani, Katol Road,
Sadar, Nagpur.

... NON-APPLICANTS

Shri Anirudh Ananthakrishnan, Advocate h/f Shri Anand Parchure,
Advocate for applicants.

Shri T. A. Mirza, Additional Public Prosecutor for non-applicant
No.1.

Shri J. M. Gandhi, Advocate for non-applicant No.2.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 08/02/2021.

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

1. This is an application under Section 482 of the Code of Criminal Procedure challenging the First Information Report No.411/2014 dated 29/07/2014 under Section 498-A read with Section 34 of the Indian Penal Code and consequent charge sheet No.283/2016 pending before the Judicial Magistrate First Class, Court No.7, Nagpur for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code.

2. The First Information Report came to be registered against the applicants on 29/07/2014 with the accusation that the marriage between the non-applicant No.2 and the applicant No.1 was performed on 09/07/2010. It is further alleged that after the marriage, the applicants treated the non-applicant No.2 with cruelty by physically and mentally harassing the non-applicant No.2. It is alleged in the First Information Report that the non-applicant No.2 resided with the applicant No.1 and other family members of the applicant No.1 till 14/05/2011. It is further alleged that it is only when in the month of March, 2014 when the non-applicant No.2 got knowledge about the second marriage performed by the applicant No.1, the non-applicant No.2 filed First Information Report which is challenged in the present application. It is alleged in the report by the non-applicant No.2 that the applicants treated the non-applicant No.2 with cruelty from 09/07/2010 till 14/05/2011. It is alleged that the applicants have directly or indirectly called upon the non-applicant No.2 and her father to pay an amount of Rs.7,00,000/- to Rs.8,00,000/- for the construction of house. It is further alleged that since the non-applicant No.2 and her father refused to pay amount of Rs.7,00,000/- to Rs.8,00,000/- for the construction of house of the

applicant No.1, the applicants harassed physically and mentally to the the non-applicant No.2.

3. The applicants have, therefore, filed present application challenging the registration of First Information Report. This Court on 18/09/2014 issued notice to the non-applicants and by way of ad-interim relief, it was directed that no coercive action be taken against the applicants. This Court on 25/11/2014 issued Rule and continued the interim relief which was already granted by order dated 18/09/2014.

4. The non-applicant No.1 has filed reply on 05/11/2014 and it is stated in the reply that the Investigating Agency had recorded the statements of witnesses which support the case of prosecution. It is further stated that on perusal of the statements of the complainant and three witnesses, prima facie, case against the applicants is made out.

5. The non-applicant No.2 has also filed her reply and it is stated that material on the record discloses the offences under Section 498-A and 34 of the Indian Penal Code. It is further stated that the applicant No.1 has performed second marriage during the subsistence of first marriage. It is further stated that the

Investigating Agency had not registered the offence on the basis of original report filed by her dated 06/06/2014. She, therefore, prayed for dismissal of the application.

6. We have carefully considered the contents of the First Information Report and the material produced by the applicants in the form of charge sheet. On carefully reading of the First Information Report, it is undisputed that the period mentioned by the non-applicant No.2 in her report dated 29/07/2014 is between 09/07/2010 till 14/05/2011. The non-applicant No.2 herself has stated in her report that she was residing along with the applicants till 14/05/2011. The allegations which according to the non-applicant No.2 constitute the offence under Section 498-A of the Indian Penal Code is to the effect that the applicants have directly or indirectly forced her and her father for payment of Rs.7,00,000/- to Rs.8,00,000/- for the purpose of construction of house of the applicant No.1 and it is due to refusal of the non-applicant No.2 to pay the said amount to the applicants, the non-applicant No.2 meted with physical and mental harassment. Having considered the said allegations, we are satisfied that the allegations regarding demand of money is vague in nature. The non-applicant No.2 has not mentioned the month

or year or has not attributed specific role to any of the applicants which who had demanded the said amount. The allegations regarding abuses to her is also vague as the non-applicant No.2 has stated that the applicants have abused her from time to time. On the basis of vague allegations, we are satisfied that the prosecution launched by the non-applicant No.2 cannot be said to be legitimate prosecution.

7. Apart from the above reason, as per the accusation in the First Information Report itself, the period of physical and mental harassment caused to the non-applicant No.2 is from 09/07/2010 to 14/05/2011. The First Information Report has been registered on 29/07/2014 which is after a period of more than three years. There is no explanation provided by the non-applicant No.2 which can be said to be sufficient explanation to justify delay in filing the First Information Report. From the averments in the First Information Report, it appears that it is only when the non-applicant No.2 got knowledge about the second marriage performed by the applicant No.1, the non-applicant No.2 has registered First Information Report on 29/07/2014 i.e. after three months from the knowledge of the second marriage of the applicant No.1.

8. Shri Gandhi, learned Advocate appearing for the non-applicant No.2 has relied upon the judgment of the Hon'ble Apex Court in the case of Taramani Parakh Vrs. State of Madhya Pradesh and others, reported in AIR 2015 SC (supp) 704. We have carefully considered the facts of the case before the Hon'ble Apex Court where marriage was performed on 18/11/2009 and wife left matrimonial home on 02/04/2010. The complaint in the said case was filed on 19/05/2011. In the meantime, there was mediation proceeding between the parties in the said case. Having taken consideration of the facts of the present case, there is unexplained delay of more than three years in filing the First Information Report.

9. Taking into consideration the vague nature of allegations made against the applicants and unexplained delay of more than three years in registration of First Information Report, we are satisfied that continuation of proceedings against the applicants would amount to abuse of process of Court.

10. It will be open for the non-applicant No.2 to take steps according to law to pursue the complaint dated 06/06/2014

filed with the Police Inspector, Police Station, Sadar, Nagpur in accordance with law.

11. We, therefore, pass the following order :-

First Information Report No.411/2014 dated 29/07/2014 and the charge sheet No.283/2016 pending before the Judicial Magistrate, First Class, Court No.7, Nagpur in Regular Criminal Case No.2717/2016 for the offences punishable under Sections 498-A and 34 of the Indian Penal Code are quashed and set aside.

12. Rule is made absolute in the above terms.

JUDGE

JUDGE

Choulwar