

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

CRIMINAL APPLICATION (APL) NO. 1108 OF 2018

1. Shweta w/o. Rajesh Chavhan
@ Shweta d/o. Balkrushna Bawane,
Aged 38 Years, Occupation : Teacher,
R/o. Paratwada, Tah. Achalpur,
District – Amravati.
 2. Balkrushna Gangaram Bawane,
Aged about : 73 Years,
Occupation : Cultivator,
 3. Sau. Shobha w/o Balkrushna Bawane,
Aged about : 68 Years,
Occupation : Household,
 4. Rajesh s/o Balkrushna Bawane,
Aged about : 47 Years,
Occupation : Cultivator,
 5. Pratibha w/o Rajesh Bawane,
Aged about : 36 Years,
Occupation : Household,
- All Nos.2 to 5 R/o. Hata, Balapur,
Tah. Balapur, District – Akola.
6. Vijay s/o Asaramji Ahire,
Aged about : 56 Years,
Occupation : Pvt. Service,
 7. Sau. Rita w/o Vijay Ahire,
Aged about : 46 Years,
Occupation : Household,
 8. Pratik s/o Vijay Ahire,
Aged about : 25 Years,
Occupation : Education.

Nos.5 to 8 R/o. Orangpur, Kachipura,
Aurangabad, Distt. Aurangabad.

9. Vinod s/o Shivram Shrinath,
Aged about : 46 Years,
Occupation : Service as Teacher,
 10. Sau. Dipa w/o Vinod Shrinath
Aged about : 43 Years,
Occupation : Household,
 11. Prathmesh s/o Vinod Shrinath,
Aged : 16 Years, Occ. Student
minor Through Natural Guardian
father Vinod Shrinath.
- Nos.9 to 11 R/o. Kandali, Datta Nagar,
Paratwada, Achalpur, Tah. Achalpur,
District - Amravati.

....APPLICANTS

// VERSUS //

1. State of Maharashtra
Through the P S.O.,
P. S. Mangrulpir,
Tah. Mangrulpir, District – Washim.
2. Sau. Sunita Raju Chavhan,
Aged about 35 years,
Occupation : Household,
R/o. Mangrulpir, Tq. Mangrulpir,
District – Washim.
3. Raju @ Rajesh Sharadrao Chavhan,
Aged 35 years, Occupation : Teacher,
R/o. Milind Nagar, Jam Road,
Mangrulpir, Tq. Mangrulpir,
District – Washim.

.... NON-APPLICANTS

Shri Subhash.U. Nemade, Advocate for the applicants.
Ms. Mayuri Deshmukh, A.P.P for the non-applicant No.1/State.
Shri Sachin D. Zoting, Advocate a/w Shri V. S. Wankhade, Advocate
for non-applicant Nos.2 and 3.

**CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATE : 20.01.2021.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Rule. Rule is made returnable forthwith.
2. This is an application under Section 482 of the Code of Criminal Procedure, challenging the First Information Report bearing Crime No.0313 of 2018 registered on dated 08.09.2018 with the non-applicant No.1- Police Station for offences punishable under Section 498-A, 494, 109, 114, 504 and 506 read with Section 34 of the Indian Penal Code.
3. The First Information Report came to be registered against the applicants with the allegations that the applicants caused physical and mental harassment to the non-applicant No.2. It is further alleged that the applicants demanded an amount of Rs.50,000/- from the non-applicant No.2. It is alleged that during the subsistence of marriage with the non-applicant No.2, the applicant No.1 entered into the marriage with non-applicant No.3.
4. The applicants have therefore, challenged registration of First Information Report by filing the present application.
5. This Court, on 06.12.2018 issued notice for final disposal. In pursuance of the notice issued by this Court, the non-applicant No.1 has filed reply and contested the averments in the Criminal Application. It is stated in the reply that there is sufficient

material on record to support the allegations made by the non-applicant No.2.

6. During pendency of the present application, the applicant No.1 has filed affidavit stating that the applicant No.1, the non-applicant No.2 and the non-applicant No.3 have resolved their matrimonial dispute by entering into an agreement. The copy of the said agreement is placed on record alongwith affidavit dated 05.01.2021. As per the averments in the affidavit it is stated that all the parties shall not do any act which will cause harassment to each other or will not do any act which will affect rights of any of the parties.

7. It appears that in spite of settlement of dispute between the applicant No.1, non-applicant No.2 and non-applicant No.3, the non-applicant No.2-Informant is not abiding by the terms of the affidavit. We are therefore, considering the present application on merits.

8. We have carefully considered the contents of the First Information Report. From the allegations in the First Informant Report, it appears that the non-applicant No.2 married with non-applicant No.3. The marriage of applicant No.1 with non-applicant No.3 was performed during subsistence of marriage between non-applicant No.2 and non-applicant No.3. It is in this context, the

allegations made by non-applicant No.2 – first wife against second wife i.e. applicant No.1 assumes importance. In the First Information Report, it has been alleged against the applicant No.1 and the family members of applicant No.1 that they have caused physical and mental harassment to non-applicant No.2.

9. We have carefully considered the allegations made against the applicant No.1 – second wife and her family members who are residing at different places. It appears that the allegations which are made against the applicant no.1 and her family members do not constitute offences alleged against them. It appears that the family members of applicant No.1 are roped in as accused only to cause harassment to them. It appears that they are residing at different places. This is not a case where provisions of Section 498-A of the Indian Penal Code are invoked against the husband. In the present matter, the first wife has filed report against the second wife and her family members.

10. We have scrutinized the contents of the First Information Report in the context of registration of the offence under Section 494 of the Indian Penal Code. The essential ingredients of Section 494 of the Indian Penal Code is that the person who is married has already a spouse and if he performs second marriage then ingredients of Section 494 of the Indian Penal

Code are attracted. In the facts of the present case, there is no accusations in the First Information Report or the material produced before the Court that the applicant No.1 was already married and had performed second marriage with non-applicant No.3.

11. From the contents of the First Information Report it appears that there are other offences alleged in the First Information Report. The said offences are under Sections 109, 114, 504 and 506 of the Indian Penal Code. We have considered the allegations in the First Information Report. After careful consideration of the accusations in the First Information Report, we are satisfied that the allegation in the First Information Report does not constitute offences under Section 109, 114, 504 and 506 of the Indian Penal Code.

12. In addition to the fact that there are no allegations of the offence alleged against the applicants, we are disturbed by the conduct of non-applicant No.2 to rope in the family members of applicant No.1. There is absolutely no justification by non-applicant No.2 as to why the family members of applicant No.1 are roped in as accused. This is one more factor which weighed with the Court for quashing the First Information Report against the applicants. We are therefore, satisfied that the registration of First Information

Report and continuance of proceedings against the applicants would amount to abuse of process of Court.

13. We therefore, pass the following order.

The First Information Report bearing Crime No.0313 of 2018 dated 08.09.2018 registered with non-applicant No.1-Police Station for the offences punishable under Section 498- A, 494, 109, 114, 504 and 506 read with Section 34 of the Indian Penal Code is quashed and set aside.

14. Rule is made absolute in the above terms. No order as to costs.

Criminal Application (APPP) No.2011/2018.

In view of disposal of Criminal Application (APL) No.1108/2018, this application for time to file the original copies of First Information Report does not survive. Hence, it is disposed accordingly.

JUDGE

JUDGE