

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.635 OF 2021

1. Vasant Namdeo Bhatewal
Age: 60 years, Occu.: Retired,
R/o. Mahal Patane, Tq. Devla,
Dist. Nashik
2. Arun Vasant Bhatewal
Age: 33 years, Occu.: Engineer,
R/o. Mahal Patane, Tq. Devla,
Dist. Nashik
3. Pappu Alias Popat Bhivrav Kumawat
Age: 34 years, Occu.: Labour,
R/o. Kadegaon Road, Tq. Chalisgaon,
Dist. Jalgaon.

... Applicants

Versus

1. The State of Maharashtra
Through In-charge
Chalisgaon City Police Station,
Tq. and Dist. Jalgaon.
2. XYZ

... Respondents

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Mr. M. R. Bhokarikar and Mr. J. V. Patil, Advocate for applicants.
Mr. S. D. Ghayal, APP for respondent No.1 – State.
Mr. C. V. Thombre, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 10th August, 2022.

JUDGMENT [Per Vibha Kankanwadi, J.] :-

. Rule. Rule made returnable forthwith. Heard learned Advocates
for the parties finally, by consent.

2. By invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure, the applicants who are original accused Nos.2 to 4, seek quashing of FIR vide Crime No.291 of 2020 registered with Chalisgaon City Police Station, Dist. Jalgaon dated 24.10.2020 for the offence punishable under Sections 376(2)(n) and 420 of Indian Penal Code and by way of amendment, to quash and set aside the proceedings in Sessions Case No.252 of 2021 before the learned Additional Sessions Judge, Jalgaon.

3. Heard learned Advocate Mr. M. R. Bhokarikar and Mr. J. V. Patil, for the applicants, learned APP Mr. S. D. Ghayal for respondent No.1 – State and learned Advocate Mr. C. V. Thombre for respondent No.2.

4. Informant – present respondent No. 2, who is aged 22 years, has stated that she got acquainted with one of her relatives, who is presently accused No.1, when she had gone to attend the marriage ceremony on 06.04.2018. The said acquaintance then turned into love affair and they used to talk with each other thereafter. On 29.07.2018, the informant was taken by accused No.1, whose birthday was to be celebrated on that day, by saying that present applicant No.3 is his friend and relative and, therefore, he requested her to accompany him. By saying so, he had

taken her to the room, which was taken on rent by applicant No.3, however, they were the only two persons present there. By giving promise to marry, he had kept physical relations with her and according to her, thereafter, also on many occasions, they had kept relations with each other at different places including the room taken on rent by applicant No.3. Applicant No.1 is the father of accused No.1 and applicant No.2 is the brother of accused No.1. The informant further says that when her parents and relatives came to know about the love relationship as well as physical relationship between her and accused No.1, her parents had gone to meet applicant No.1 and at that time, applicant No.1 told that since it is not possible to have relations, instead of getting defamed in the society, the girl should be given in marriage to another person. Then, against her wish, it is stated that, her father had forced her to perform marriage with another boy. But at that time accused No.1 threatened her to commit suicide. He gave threat that if she does not keep similar relations prior to her marriage, then he would inform about their relationship to the husband. Thereafter, she says that she informed about her relationship with accused No.1 to her parents-in-law and husband and, therefore, by taking a meeting, it was decided that she would take divorce from her husband. She left her matrimonial home and started residing with her parents. It is then stated that

accused No.1 got selected as PSI and went for training. In spite of that they used to meet each other and had sexual intercourse. Thereafter, there was fight between them on 29.09.2019 and accused No.1 flatly denied to marry her. She then says that she along with her parents went to the house of accused No.1, at that time, applicant Nos.1 and 2 abused her in filthy language and applicant No.1 told that his son will not carry her. She is at liberty to do whatever she want. Four days prior to the date of FIR she came to know through her relatives that accused No.1 has already married three months prior to that with another girl and, therefore, she has then lodged the report.

5. Perusal of the FIR would show that statements of witnesses, who are mainly the relatives of the informant, are on the same line. Further, the other witnesses have stated that there was some agreement or writing that has been given by accused No.1 as a compromise to marry informant. There is also evidence in the form of stay of accused No.1 with informant in hotel. Said accused No.1 is not before this Court. We are required to consider what is the evidence against present applicants. Perusal of the entire charge-sheet would show that since beginning applicant No.1 was insisting that the marriage is not possible and, therefore, the girl should be married with another person. Under such

circumstance, how he can be said to have committed any offence. What has been allegedly stated to have taken place on 01.10.2019 is very vague in nature and does not attract ingredients of any offence. Merely by stating that filthy language was used, it cannot come within either under Section 504 of Indian Penal Code or any other Section and in fact, at this stage, the Sections which have been invoked by the prosecution are 376(2)(n) and 420 of Indian Penal Code. There was no promise made by any of the applicants to the informant to do anything and those Sections are attracted only against accused No.1 at the most. Applicant No.3 is stated to be the friend of accused No.1, but in the entire charge-sheet including the FIR it is not stated that at any point of time either there was any talk between applicant No.3 and informant or he was present on any of those occasions at that place.

6. Taking into consideration the evidence that has been collected, it would be a futile exercise to ask the present applicants to face trial and it appears that since the informant could not get her relationship back with original accused No.1, the applicants have been roped. We find this to be a fit case where our powers under Section 482 of the Code of Criminal Procedure should be exercised, as the case is falling within the parameters laid down in *State of Haryana and others Vs. Ch. Bhajanlal*

and others, [AIR 1992 SC 604]. Hence, the following order :-

ORDER

- I) The application stands allowed.
- II) The First Information Report bearing Crime No.291 of 2020 dated 24.10.2020 registered with Chalisgaon City Police Station, Dist. Jalgaon for the offence punishable under Sections 376(2)(n) and 420 of Indian Penal Code and further proceedings in Sessions Case No.252 of 2021 pending before the learned Sessions Court, Jalgaon stands quashed and set aside.
- III) Rule made absolute in above terms.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]

scm