

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

CRIMINAL APPLICATION No. 287/2020.

1.Bhagwan s/o Shrawan Pawar,
Aged about 60 years, Occupation
Agriculturist,

2.Mrs. Kaveri w/o Bhagwan Pawar,
Aged about 54 years, Occupation
Household,

3.Sunil s/o Bhagwan Pawar,
Aged about 36 years, Occupation
Private,

All applicant no.1 to 3 resident of
House No.833, 1st floor, Sector 10-A
Near Little Buds Play School and
Day Care, Gurgaon, Delhi 122001.

4.Dr.Ashok s/o Bhagwan Pawar,
Aged about 34 years, Occupation
Service, resident of 3-C, Block – K,
Singapur City, Para Anand Nagar,
Kotha, Gudyari Road,
Raipur (C.G.) - 492001.

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APPLICANTS.

VERSUS

1.The State of Maharashtra,
through P.S.O. Digras, District Yavatmal.

2.Mrs.Narayani w/o Suraj Rathod,
Aged about 36 years, Occupation -
Service, resident of Vitthal Nagar,
Digras, District Yavatmal.

... **NON-APPLICANT.**

Shri R.M. Daga, Advocate for Applicants.
Shri H.D. Dubey, A.P.P. for Non-applicant No.1.
None for Non-applicant No.2 – Served.

CORAM : VINAY JOSHI, J.

DATE : JUNE 10, 2022.

ORAL JUDGMENT :

Heard learned Counsel present for the parties. With their
consent matter is taken up for final disposal.

Admit.

2. Applicants who are arrayed as accused nos. 9 to 12 in a
Criminal Complaint Case No.159/2019 seeks to quash the criminal
complaint filed by the complainant/non-applicant no.2, by invoking
the inherent jurisdiction of this Court. It is argued that applicants
were no where concerned with the alleged second marriage of the

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original accused no.1 Suraj with one Shivani. It is contended that applicant no.2 [accused no.10] is the real sister of husband of complainant – lady [non-applicant no.2], whilst applicant no.1 is her husband and other applicants are her children. All applicants are staying elsewhere at Gurgaon, Delhi and Raipur. It is submitted that out of a family dispute they have been falsely implicated in the case.

4. The informant / non-applicant no.2 is served, however, she has chosen not to appear. Learned A.P.P. supported the impugned complaint and order of issuance of process.

5. Initially the complainant lady had filed a criminal complaint in the Court of Judicial Magistrate First Class, Darwha for the offence punishable under Sections 494, 410, 109 read with Section 34 of the Indian Penal Code. The said complaint was filed against in all 14 persons. The main allegations were leveled by complainant against her husband Suraj, and his alleged second wife Shivani. It is the contention that during subsistence of first marriage, Suraj had married with Shivani, and accordingly had committed an offence punishable under Section 494 of the Indian

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Penal Code. According to the complainant, rest of the accused knowingly abetted the said marriage and therefore, the complaint.

6. The learned Magistrate has recorded statement of the complainant and by taking cognizance has issued summons to accused nos. 1 to 12 and 14 under Sections 494 and 109 read with Section 34 of the Indian Penal Code. Primely it is to be seen whether the contents of the complaint makes out a prima facie case to proceed further with the trial.

7. With the assistance of the learned Counsel present for the parties, I have gone through the entire complaint. Besides one line statement in paragraph no.8, there is nothing against the present applicants. The complainant has made general and vague statement that accused nos. 3 to 14 had participated in arranging second marriage. Particularly, I have gone through the verification statement of the complainant which only speaks about presence of applicants alongwith others at the time of second marriage.

8. The complaint lacks details about the role played by

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applicants in said marriage. Mere presence *ipso facto* cannot be considered as a knowledge regarding the alleged criminal act. It is argued that applicant no.3 Sunil is an Engineer serving at Gurgaon, Delhi, whilst applicant no.4 is a Medical Officer service in Indian Army and posted at Chattisgarh. It is submitted that applicant nos.1 and 2 are presently staying with their sons Sunil at Delhi. Prima facie it appears that merely because applicants are nearer relatives of husband of the informant / lady, they have been hauled in the criminal complaint. On reading of the entire complaint, I am unable to see any material against applicants so as to allow the prosecution to proceed further. Un-deserveable criminal prosecution must be nipped into bud. Continuation of unmeritorious action is a serious affair. The prosecution against present applicants is unsustainable in the eyes of law. In view of this, following order is passed.

ORDER

- [i] Criminal Application is allowed.
- [ii] The Criminal Complaint Case No.159/2019 filed by the non-applicant no.2/complainant before the Judicial

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Magistrate First Class, Darwha stands dismissed against present applicants i.e. original accused Nos.9 to 12. The learned Magistrate may proceed against rest of the accused person in accordance with law.

JUDGE