



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2427 OF 2021

**PRAVIN YASHAWANT RAUT AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for Applicants : Mr. Sunita G. Sonawane
APP for Respondent – State : Mr. A.R. Kale
Advocate for Respondent No.2 : Ms. M.V. Narwade
...

**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATE : 06th DECEMBER, 2023

ORDER [PER : SANJAY A. DESHMUKH, J.] :

1. This is an application for quashing of the FIR bearing Crime No.0515/2021, registered with Tophkhana Police Station, Ahmednagar, for offences punishable under Sections 498-A, 376, 377, 323, 504, 506 of the Indian Penal Code and consequential charge-sheet in Sessions Case No.46/2022, pending before the learned Extra Joint District Judge – 1, Ahmednagar.

2. Informant averred in the report that she married with applicant No.1 on 01/06/2005 and begotten two sons namely Om and Vedant who are of 14 years and 6 years old respectively. It is further averred that when she was residing at Kalyan Road, Ahmednagar, applicant No.2 her brother-in-law used to come there. In January, 2021, he committed rape on her. He also threatened to

kill her children and also committed rape for four to five times thereafter, but she did not lodge report because of his threats. Her husband also committed carnal intercourse with her. When she was residing at Kalyan road, Ahmednagar. On 29/05/2021, at about 09:30 a.m. when she requested her husband/applicant No.1 to compromise the case, applicant No.1 had beaten her by fist and kick blows and abused her. Therefore, she lodged the report on the same day against present applicants.

3. Learned advocate for applicants submits that marriage petition No.73/2020 is filed by applicant No.1 husband against respondent No.2 on 30/07/2020 and thereafter this report is lodged. Learned advocate for applicants further pointed out the written statement filed by respondent No.2 in that proceedings dated 07/03/2022, in which there are no allegations about alleged commission of rape by applicant No.2 and carnal intercourse by applicant No.1. Learned advocate for applicants, therefore, prayed to quash the report and charge-sheet.

4. Learned advocate for respondent No.2 and learned APP for the State strongly oppose the application and pointed out the statement of witness namely Prashant Pawar, who is landlord of the rented house wherein respondent No.2 was residing. It is stated that since one month before 24/06/2021, applicant No.1 and

informant i.e. respondent No.2, left that room which shows that they were residing under one roof. It is lastly prayed to reject the application as *prima facie* there are serious allegations against applicants.

5. Perused the report and charge-sheet as well as various reports of applicant No.1, brother-in-law applicant No.2 and respondent No.2 and the copy of written statement in divorce petition filed by respondent No.2. On 04/12/2019 respondent No.2 left the house and went to her parental house. There are no such allegations in the written statement submitted in the divorce proceedings about the alleged rape by applicant No.2 on respondent No.2. This conduct of respondent No.2 shows that false and omnibus allegations are made by respondent No.2 against the applicants about rape and alleged cruelty, after the filing of divorce proceedings. Therefore, statement of landlord and other witnesses cannot be relied upon as *prima facie* evidence of their staying together, as pointed out on behalf of respondent No.2. Thus, *prima facie* no case is made out by respondent No.2 establishing essential ingredients of Section 498-A, 376, 377, 323, 504, 506 of the Indian Penal Code. In such facts and circumstances, if applicants are compelled to face the trial, it would be certainly abuse of process of Court. Therefore, we are inclined to allow the application.

6. Criminal application is allowed in terms of prayer clause 'B'. Application is accordingly disposed of.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)