

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

CRIMINAL APPLICATION (APL) NO. 1228 OF 2021

1. Shubham s/o Santosh Ingle, aged about 26 years, Occ. Service,
2. Santosh Ingle, Aged above 52 years, Occ. Service, Both R/o Ambika Nagar, Gadge Nagar, Tah. & Distt. Amravati.

... APPLICANTS

VERSUS

1. State of Maharashtra, through Police Station, Gadge Nagar, Amravati,
2. XYZ, in Crime No.0732/21, Police Station, Gadge Nagar, Amravati.

... NON-APPLICANTS

Shri A.S. Mardikar, Senior Advocate a/w Smt. R.G. Nitnaware,
Advocate for the applicants.
Smt. M.H. Deshmukh, A.P.P for non-applicant no.1.
Smt. Preeti Rane, Advocate (appointed) for non-applicant no.2.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 28/02/2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

2. By consent of learned Counsel appearing for the respective parties, the application is taken up for final hearing.

3. Learned Counsel Smt. Rane has submitted that she has already informed the victim today's date and time of the proceedings, however her client is absent.

4. This is an application seeking to quash the First Information Report in Crime No.732 of 2021 registered with Gadge Nagar Police Station, Amravati City for the offence punishable under Sections 376(2)(n), 417 read with Section 34 of the Indian Penal Code as well as related charge-sheet bearing No.1101 of 2022.

5. At the instance of the report lodged by the victim lady aged 29 years, the crime has been registered. Precisely, it is her case that she had relationship with the applicant no.1, who under the pretext of marriage, had sexually abused her, therefore the case of rape. The applicant no.1 is throughout coming with a case that there is no aspect of giving false promise to marry as already both have been married long back on 19.03.2021 i.e. prior to the lodging of the report.

6. It is the applicants' contention that since earlier marriage was performed in the Trust even after filing of First Information Report, both of them went to the office of the Sub-Registrar and registered their

marriage on 14.07.2021. The applicants have produced the copy of birth certificate of a child born to the couple, wherein both were shown as biological parents of the child. In the circumstance, it is submitted that since both are major and had already married, the offence has not been made out.

7. Learned Counsel appearing for the informant would submit that it was a case of love relationship. The applicant no.1 has sexually abused her under farce of marriage. He never intended to live with her and thus, he has committed the offence of rape.

8. The applicant no.1 has produced a copy of registration of marriage issued by one Trust showing that on 19.03.2021 marriage took place. Likewise, he has also produced a copy of certificate of marriage registration in the office of the Sub-Registrar stating that both have appeared before the Registrar and got married on 14.07.2021. Earlier the applicants have applied for pre-arrest bail wherein also applicant no.1 has took a specific stand that the informant is his legally wedded wife and he is biological father of the unborn child. The applicants stand is consistent since beginning that they had married and therefore, the facts does not constitute the offence of rape.

9. The informant never came with a case that either while she

was minor or thereafter the applicant no.1 has sexually abused her against her will. The only stand is that the marriage was not properly performed. We cannot self undertake exercise of deciding the legality of marriage, which was registered with a Trust. However, the facts indicates that couple got married in a Trust and then their marriage was again performed and registered with the office of the Sub-Registrar.

10. In the circumstances, the allegation of rape under false pretext of marriage, does not stand. Therefore, this is fit case to exercise our inherent jurisdiction. Hence, the following order :

- (a) The application is allowed.
- (b) The First Information Report in Crime No.732 of 2021 registered with Gadge Nagar Police Station, Amravati City for the offence punishable under Sections 376(2)(n), 417 read with Section 34 of the Indian Penal Code as well as related charge-sheet bearing No.1101 of 2022 are hereby quashed and set aside.

11. Fees of the appointed Counsel be paid as per Rules.