



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

CRIMINAL APPLICATION (APL) NO. 885 OF 2019

Mrs. Amrapali W/o Vilas Gajbhiye,
Aged about 34 years, Occu. - Housewife,
R/o C/o Pundlik Gajbhiye, N-12,
New Sneh Nagar, Wardha Road,
Nagpur.

.... **APPLICANTS**

// VERSUS //

- 1) State of Maharashtra,
Through Police Station Officer,
Ranapratap Nagar, Nagpur.
- 2) Pundlik S/o Vishwanath Gajbhiye (Expired)
Through its L.Rs.
Mr. Vilas S/o Pundlik Gajbhiye,
Aged about 43 years, Occ. - Service
R/o. Shriram Apartments,
Swavalambi Nagar, Nagpur.

.... **RESPONDENTS**

Mr. H.G. Katekar, Advocate for applicant.
Mr. S.M. Ghodeswar, Additional Public Prosecutor for respondent
No.1/State.
Mr. A.A. Mardikar, Advocate for respondent No.2.

**CORAM : NITIN W. SAMBRE AND
VALMIKI SA MENEZES, JJ.**

DATED : 25.09.2023

ORAL JUDGMENT : (Per Nitin W. Sambre, J.)

1. Heard Mr. H.G. Katekar, learned counsel for the applicant,
Mr. V.A. Thakare, learned Additional Public Prosecutor for respondent
No.1 and Mr. A.A. Mardikar, learned counsel for respondent No.2.

2. The prayer is for quashing of the Regular Criminal Case No.4733/2022 pending on the file of Judicial Magistrate, First Class at Nagpur for an offence punishable under Sections 452, 504, 506 of the Indian Penal Code vide Crime No.0283/2019, registered on 03.07.2019.

3. The facts necessary for deciding the present application are as under :-

The applicant got married to the son of respondent No.2/complainant on 20.04.2013 and is blessed with the son namely Vihan.

It is claimed that bases of matrimonial discord between the applicant and her husband Vilas is ill-treatment by the parents of her husband Vilas i.e. respondent No.2/complainant and his wife. We are informed at Bar that both i.e. applicant Amrapali and her husband Vilas are separated through a decree for divorce by mutual consent. The applicant/accused appears to be custodian of the child.

4. In this background, the prayer for quashing is made alleging that perusal of the complaint would depict that the offence alleged cannot be made out particularly having regard to the relationship between the parties. It is claimed by the learned counsel for the applicant that at the relevant time, the applicant daughter-in-law was every right to enter into the dwelling house of her husband.

5. The genesis of the offence alleged in the complaint is the applicant, in absence of the complainant and his wife i.e. father and mother-in-law, has taken illegal possession of the premises with the help of a third party.

6. The facts remains that the applicant is already charge-sheeted in the aforesaid offence. The respondent No.2 complainant has expired on 28.10.2019, whereas his wife also stood expired on 06.06.2021, whose Death Certificates are placed on record.

7. The husband of the applicant Vilas is physically present in the Court and identified by his lawyer. Said Vilas has placed on record an affidavit extending consent for quashing of the criminal case No.4733/2022. This Court has earlier permitted Vilas to be added as legal representative of deceased Pundlik Gajbhiye i.e. his father.

8. We have seen the consent-affidavit placed by the Vilas on record stating that in divorce proceedings being Petition No. A/671/2019, divorce by mutual consent was granted by the Family Court, Nagpur on 07.09.2023. According to him, in view of above, he is not intending to pursue the present criminal proceedings against the applicant she being custodian of his child.

9. The fact remains that neither the complainant nor his wife are alive to substantiate their allegation in the FIR against the applicant. The son of the deceased complainant i.e. husband of the applicant Vilas is not willing to support the case of the prosecution. In this background, case of the prosecution, in our opinion, cannot be taken to its logical end to achieve conviction.

10. In view of the law laid down by the Apex Court in the cases of *Gian Singh Vs. State of Punjab & Anr*, reported in *2012 (10) SCC 303* and *Narinder Singh & Ors Vs. State Of Punjab & Anr*, reported in *2014(4) SCALE 195*, no purpose will be achieved in continuing the prosecution against the applicant.

11. That being so, the application **stands allowed** in terms of prayer clause a(i), in view of consent extended by the legal representative of the complainant, subject to payment of costs of Rs.10,000/- (Rs. Ten Thousand only), to be deposited in the High Court Gazetted Officers, Association, Nagpur within six weeks from today.

List after six weeks for reporting compliance.

(VALMIKI SA MENEZES, J.)

(NITIN W. SAMBRE, J.)