



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

966 CRIMINAL APPLICATION NO.468 OF 2024

- 1 Sanjay Munshi Barela,
Age Major, Occ. Labour,
R/o Borajanti, Tq. Chopda,
Dist. Jalgaon.
- 2 Munshi Bharata Barela,
Age Major, Occ. Labour,
R/o Borajanti, Tq. Chopda,
Dist. Jalgaon.
- 3 Sanbai Munshi Barela,
Age Major, Occ. Labour,
R/o Borajanti, Tq. Chopda,
Dist. Jalgaon.
- 4 Kamlesh Munshi Barela,
Age Major, Occ. Labour,
R/o Borajanti, Tq. Chopda,
Dist. Jalgaon.
- 5 Sushila Kamlesh Barela,
Age Major, Occ. Labour,
R/o Borajanti, Tq. Chopda,
Dist. Jalgaon.
- 6 Chetan Munshi Barela,
Age Major, Occ. Labour,
R/o Borajanti, Tq. Chopda,
Dist. Jalgaon.
- 7 Pinky Sanjay Barela,
Age Major, Occ. Labour,
R/o Borajanti, Tq. Chopda,
Dist. Jalgaon.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through it's Police Inspector,
Chopda Rural Police Station,
Dist. Jalgaon.
- 2 X.Y.Z.

... **Respondents**

...

Mr. Bhushan Mahajan, Advocate for applicants

Mr. A.V. Lavte, APP for respondent No.1

Mr. P.H. Patil, Advocate for respondent No.2

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**CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.**

DATE : 10th OCTOBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing First Information Report dated 11.01.2023 vide Crime No.3/2023 registered with Chopda Rural Police Station, Tq. Chopda, Dist. Jalgaon, for the offence punishable under Sections 120-B, 376, 323, 420, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and Charge Sheet No.33/2023 dated 22.05.2023 filed before

learned Judicial Magistrate First Class, Chopda, for the offence punishable under Sections 417, 493, 496, 120-B, 323, 504 of the Indian Penal Code, 1860.

2 It appears that respondent No.2 had filed Criminal Miscellaneous Application No.120/2022 under Section 156(3) of the Code of Criminal Procedure, which came to be allowed and then the First Information Report was lodged. In fact, First Information Report appears to have been lodged under Sections 120-B, 376, 323, 504, 506 read with Section 34 of the Indian Penal Code, however, after investigation, charge sheet was filed for the offence punishable under Sections 417, 493, 496, 120-B, 323, 504 of the Indian Penal Code.

3 Heard learned Advocate Mr. Bhushan Mahajan for applicants, Learned APP Mr. A.V. Lavte for respondent No.1 and learned Advocate Mr. P.H. Patil for respondent No.2.

4 The informant in her application under Section 156(3)/First Information Report states that respondent No.1 therein i.e. present applicant No.1 was giving her promise to marry since 2016. He used to follow informant and say that he is a wealthy person and he loves her. Thereafter, at different places he had indulged in sexual intercourse with informant. The

informant gave birth to a daughter due to such physical relations. Thereafter, due to the fear of society applicant No.1 had kept the informant in one house and had promised that he would perform marriage. Again, under the same pretext he had raped her and the second daughter was born to the informant. It was the impression of informant's father and brother that applicant No.1 has performed marriage with informant, but without informing his relatives applicant No.1 was considering informant as his wife and was indulging in physical relations. The informant gave birth to third daughter. Then, the informant came to know that applicant No.1 was already married with applicant No.7 and she has six children from applicant No.1. When informant asked him about the same, at that time, he abused her and driven out of the house. She had then lodged application under the Domestic Violence Act before Judicial Magistrate First Class, Chopda. Applicant No.1 appeared and he denied that informant is his wife. He had denied in the affidavit in Criminal Appeal No.730/2020 before Hon'ble Apex Court that he had performed marriage with informant and he has children and thereby applicant No.1 has cheated her.

5 The facts in the Criminal Application which has then been treated as First Information Report would make it very clear that after much delay the informant is contending that she has been cheated. At the cost of

repetition, the Sections those were invoked at the time of registering the First Information Report are different than the Sections those are invoked in the charge sheet. After three children, it cannot be stated that there was intention to cheat on the part of applicant No.1 under the promise of marriage. In the application under the Domestic Violence Act, the informant herself has stated that there was a marriage between herself and applicant No.1 in 2016. No doubt, statements of witnesses appear to be stating that those persons were witnessing applicant No.1 and informant residing as husband and wife for about five years. Informant has not come with a case that in 2016 she was minor. One of the witness, who is the neighbour of father of informant, states that informant had left the house and was residing with applicant No.1. If the informant and applicant No.1 were residing as husband and wife, then the question of false promise will not arise. Now, except the statement that she was not knowing that applicant No.1 was already married with applicant No.7, there is nothing on record.

6 The Sections those are invoked now in the charge sheet, as aforesaid, are 417, 493, 496, 120-B, 323, 504 of the Indian Penal Code.

6.1 Section 417 of the Indian Penal Code prescribes for punishment for cheating, for which we will have to consider ingredients of Section 415 of

the Indian Penal Code. Here, there is absolutely no strong evidence regarding deceiving any person, fraudulently or dishonestly inducing him so deceived to deliver any property or to consent for retention of property. Therefore, ingredients of this section are not fulfilled.

6.2 Section 493 of the Indian Penal Code deals with offence of cohabitation caused by a man deceitfully inducing a belief of lawful marriage. Therefore, the basic ingredient is that a man should make the woman believe that she is lawfully married to him and to cohabit or to have sexual intercourse with him in that belief. Here, the ingredients do not show that there was any marriage ceremony, may be in deceit that was undergone. In fact, it is her contention that by giving promise to marry applicant No.1 was indulging in sexual acts. Therefore, this offence is also not invoked.

6.3 The next Section is 496 of the Indian Penal Code, which deals with marriage ceremony fraudulently gone through without lawful marriage. There is absolutely no disclosure of the fact as to where the marriage ceremony was undergone, which was fake. Now, the document in the form of Aadhar card, Birth Certificate etc. are produced, which show the name of applicant No.1 as father of children cannot be considered as proof for marriage ceremony.

6.4 There was no question of criminal conspiracy for invoking Section 120-B of the Indian Penal Code against all the applicants, so also as regards Section 323, 504 of the Indian Penal Code is concerned, the details are not given as to when that offence is committed. Under such circumstance, when there is absolutely no evidence against any of the applicants, it would be futile exercise to ask them to face the trial.

7 As regards offences under which First Information Report is lodged after many years, that too, when the informant had not undergone the marriage but was staying with applicant No.1 as husband and wife, it cannot be said that there was no consent for the sexual act between applicant No.1 and informant. Even on the basis of contents of First Information Report as it is we cannot forget that applicant No.1 is denying everything. Section 420 of the Indian Penal Code will also not get attracted in view of the fact that there is no transfer of any property. Therefore, this is a fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.

ii) First Information Report dated 11.01.2023 vide Crime No.3/2023 registered with Chopda Rural Police Station, Tq. Chopda, Dist. Jalgaon, for the offence punishable under Sections 120-B, 376, 323, 420, 504, 506 read with Section 34 of the Indian Penal Code, 1860 stands quashed and set aside as against applicants.

iii) Charge Sheet No.33/2023 dated 22.05.2023 filed before learned Judicial Magistrate First Class, Chopda, for the offence punishable under Sections 417, 493, 496, 120-B, 323, 504 of the Indian Penal Code, 1860 stands quashed and set aside as against applicants.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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