



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.1200 OF 2020**

1. Satish s/o Dattarao Narwade,
Age: 34 years, Occ: Service,
R/o. Ganga Nagar, Tq. Hingoli,
Dist. Hingoli.
2. Dattarao s/o Mahadu Narwade,
Age: 71 years, Occ: Nil.
R/o Kandali, Hingoli, Tq. & Dist. Hingoli
3. Shantabai w/o Dattarao Narwade
Age: 70 years, Occ: Household.
R/o Kandali, Hingoli, Tq. & Dist. Hingoli
4. Baburao s/o Ganpati Narwade,
Age: 63 years, Occ: Agri.
5. Indutai w/o Ganpat Narwade,
Age: 52 years, Occ: Household.

Applicant No.4 and 5,
R/o Kandali, Hingoli, Tq. & Dist. Hingoli

6. Amol s/o Baburao Narwade,
Age: 33 years, Occ: Service,
R/o Flat No.5, Ground Floor,
Jai Saidham Society,
Block Sector Jai Hind Colony,
Gupte Road, Dombivali (W), Thane
7. Nisha d/o Baburao Narwade,
Age: 29 years, Occ: Household,
R/o Kandali, Hingoli, Tq. & Dist. Hingoli
8. Latabai w/o Nilkanth Khandagale,
Age:- Major, Occ. Household,
9. Nilkanth s/o Satwaji Khandagale,
Age: Major, Occ: Agri.,
10. Sachin s/o Nilakanth Khandagale,
Age:- Major, Occ. Agri.

Applicant No.8 to 10,
R/o Vasmat, Tq. Vasmat, Dist. Hingoli

11. Rahul s/o Bhimrao Narwade,
Age: 35 years, Occ: Service,
R/o Police Head Quarter, Washim,
Tq. & Dist. Washim
12. Arvind s/o Mahadu Khillare,
Age:- 34 years, Occ. Service,
R/o Maldhamani, Post. Hingani,
Hingoli, Tq. & Dist. Hingoli
13. Kailash s/o Laxman Mogale,
Age:- 47 years, Occ. Service,
R/o Mogale Jamati (Kh),
Bhandegaon, Hingoli
14. Seema w/o Mahendra Narwade,
Age: 31 years, Occ. Household,
R/o Kandali, Tq. & Dist. Hingoli
15. Vaishali w/o Narayan Karwande,
Age:- 48 years, Occ. Household,
R/o At Post Mudi, Hayat Nagar,
Tq. Hingoli, Dist. Hingoli
16. Narayan s/o Limbaji Karwande,
Age:- 67 years, Occ. Agri.,
R/o As above
17. Laxmi w/o Bhimrao Jondhale,
Age: 40 years, Occ. Household,
18. Bhimrao s/o Hariman Jondhale,
Age:- 51 years, Occ. Agri.,
19. Bhavna w/o Bhimrao Jondhale,
Age:- 19 ears, Occ. Education,
Applicant No.17 to 19,
R/o Ambedkar Nagar, Purna,
Tq. Purna, Dist. Parbhani
20. Karan s/o Shivaji Goler,
Age:- 29 years, Occ. Service,
R/o Bhogaon, Post. Delub (Bk),
Tq. Ardhapur, Dist. Nanded
21. Sandip s/o Vishwnath Gite,
Age:- 28 years, Occ. Service,
R/o Hingoli Police Station,
Tq. & Dist. Hingoli

..Applicants

Versus

1. The State of Maharashtra,
Through Manatha Police Station,
Taluka Hadgaon, District Nanded
2. Chitra Satish Narwade,
(Correct Name is Chitra Vilas Khandare)
Age: 30 years, Occ: Household,
R/o: Ganga Nagar, Hingoli,
At Present Mauje Chabhara,
Tq. Hadgon, District Nanded ..Respondents

...
Mr. Ramrao G. Nirmal h/f Mr. S. S. Gangakhedkar, Advocate for
the Applicants.

Mr. A. V. Lavte, APP for Respondent-State.

Mr. R. V. Gore h/f Mr. Y. K. Delmade, Advocate for Respondent
No.2 (Appointed).

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

DATED : 18th OCTOBER, 2024.

ORDER (Per S. G. Chapalgaonkar, J):-

1. The applicants have approached this Court under Section 482 of the Criminal Procedure Code thereby praying to quash and set aside FIR in Crime No.71/2020 dated 08.06.2020 registered with Mantha Police Station, Tal. Hadgaon, Dist. Nanded for offences punishable under Sections 498-A, 495, 417, 323, 504, 506 r/w 34 of the Indian Penal Code as well as consequential criminal proceeding in R.C.C. No.8/2021 pending before Judicial Magistrate First Class at Hadgaon.

2. The respondent no.2 lodged a report alleging that on 10.09.2019 her marriage is performed with applicant no.1 as per Buddhist customs. After marriage she resided with her husband at Hingoli. However, she was not allowed to meet relatives or go out of the house. Her husband was habitual drunker. On 14.12.2019, a lady named Priti came alongwith girl at her home and she had

conversation with mother-in-law and father-in-law of respondent no.2. She introduced herself to be the first wife of Satish. Her husband Satish admitted that Priti was his first wife, however, told that she had left home because of differences between them. The Satish has apologized for marriage without disclosure of his first marriage with Priti. She informed her parents about first marriage of applicant no.1. Her parents took her back to maternal home at Chabhara. Accordingly, she complained that applicant no.1 cheated her and married with her by suppressing the earlier marriage.

3. On the basis of aforesaid information, Crime No.71/2020 has been registered against in all 21 accused persons including applicants. The investigation progressed in the matter and finally charge-sheet came to be filed in R.C.C. No.8/2021 before the Judicial Magistrate First Class at Hadgaon for aforesaid offences. The names of applicant nos.11, 12, 13 and 21 are not added as accused in charge-sheet.

4. Mr. Nirmal, learned Advocate appearing for applicants, on instructions, seeks permission to withdraw application to the extent of applicant nos.1 to 3 (husband, mother-in-law and father-in-law of respondent no.2). Consequently, application stands dismissed as withdrawn to the extent of applicant nos.1 to 3. The learned Advocate appearing for the applicants restricted his submissions to the extent of applicant nos.4 to 21 and submits that applicants have been falsely implicated in aforesaid crime. The respondent no.2 had some differences with her husband i.e. applicant no.1. Consequently, she is residing with her parents and filed false report to the police station. The applicants are unconcerned with dispute between applicant no.1 and respondent

no.2. He would submit that from the contents of FIR, none of the offence would attract against applicants.

5. Per contra, Mr. Lavte, learned Advocate appearing for the respondent-State and Mr. Gore, learned Advocate appearing for respondent no.2 vehemently opposed the application contending that respondent no.2 was cheated by all the applicants and she was made to perform marriage with applicant no.1 while his first marriage was in subsistence. They would, therefore, urge that in view of the contents of the FIR and charge-sheet, the triable case is made out against the applicants.

6. We have considered submissions advanced on behalf of the learned Advocates appearing for the respective parties. We have minutely considered the stipulations in the FIR as well as statements of witnesses recorded during the course of investigation. The respondent no.2 alleges that she married with applicant no.1 on 10.09.2019. While she was residing at her matrimonial home, she came to know about first marriage of applicant no.1 with a lady namely Priti. She alleges that applicant no.1 solemnized marriage with her by suppressing his first marriage. So far as applicants are concerned, she alleges that all the applicants were knowing about the fact of first marriage of applicant no.1, still they suppressed the said fact in connivance with applicant no.1 and cheated her. She made some allegations regarding ill-treatment by in-laws.

7. On completion of investigation charge-sheet has been filed against in all 17 accused persons for offences punishable under Sections 498-A, 495, 417, 323, 504, 506 r/w 34 of the Indian Penal Code. To constitute offence under Section 498-A of the Indian

Penal Code, it is necessary to establish cruelty/ill-treatment towards woman as specified in Explanation (A) and (B) of Section 498-A of the Indian Penal Code. However, in FIR there are no stipulations to bring home ingredients of Section 498-A of the Indian Penal Code as against applicants. The FIR nowhere stipulates that either respondent no.2 was subjected to cruelty of such nature as is likely to drive her to commit suicide or any such harassment with a view to coerce her or any person related to her to meet any unlawful demand. The averments in FIR simply alleges that she was not allowed to go out of home or meet the relatives by in-laws, but that itself would not constitute offence as against applicants, when applicants never resided in shared accommodation with respondent no.2. They are not her family members. All of them are distant relatives residing at difference places.

8. The another charge is under Section 417 of the Indian Penal Code, which provides punishment for cheating. Section 415 of the Indian Penal Code defines cheating, which reads thus:

“417. Punishment for cheating —

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

9. If ingredients of aforesaid offences are considered, case can be made out only against applicant nos.1 to 3. The FIR nowhere stipulates that applicants had intentionally suppressed the fact of first marriage of the applicant no.1 or they had intention to cheat her. On the other hand, it is difficult to believe that respondent no.2 was not aware about first marriage of her husband, but such story appears to be developed in supplementary statement. On the basis of such statement, no inference can be drawn that applicant

nos.4 to 21 have intentionally suppressed first marriage and induced respondent no.2 to solemnize marriage with applicant no.1. Pertinently, applicants and respondent no.2 are said to be relatives *inter se*. In this background, parents of respondent no.2 cannot be oblivious of the fact of first marriage of applicant no.1. Pertinently, particulars of actual role played by applicant nos.4 to 21 is neither elaborated in FIR nor has been explained in statement of any witness cited in charge-sheet. The allegations against applicant nos.4 to 21 are vague, omnibus and cryptic. Hence, we find that necessary ingredients of charge under Section 417 of the Indian Penal Code cannot be made out against applicant nos.4 to 21.

10. Even on the basis of material in charge-sheet, charge under Section 495 of the Indian Penal Code can be attracted only against applicant nos.1 to 3. The charge of concealment of previous marriage or suppressing fact of former marriage can be made out only against husband and not his relatives. The FIR employ omnibus statement of concealment of previous marriage by accused, but role of the applicants in settlement or abatement of marriage is not specified by informant or any witness in charge-sheet. We find that with the material relied in charge-sheet against applicants, trial for charge under Section 495 of the Indian Penal Code need not be allowed. Pertinently, in entire charge-sheet, there are no stipulations to bring home ingredients of Section 323, 504, 506 r/w 34 of the Indian Penal Code against any of the applicant nos.4 to 21.

11. At this stage learned Advocate appearing for respondent no.2 submitted that when a person contracts second marriage during lifetime of first wife, the second wife can maintain complaint under

Sections 494 and 495 of the Indian Penal Code. There cannot be dispute on preposition of law, particularly in light of judgment of the Supreme Court of India in case of ***A. Subash Babu Vs. State Of A.P.& Anr¹***. However, we are of the considered view that offences can be made out only against in-laws and not other relatives, particularly when there is no material to indicate that they induced or abated respondent no.2 to solemnize marriage with applicant no.1. In that view of the matter, we are of the considered view that continuation of criminal proceeding as against applicant nos.4 to 21 would be abuse of process of law. Hence, we deem it proper to exercise inherent powers under Section 482 of the Criminal Procedure Code and proceed to pass following order:

ORDER

- a. Criminal Application is partly allowed.
- b. The application is dismissed as withdrawn to the extent of applicant nos.1 to 3.
- c. The FIR in Crime No.71/2020 dated 08.06.2020 registered with Mantha Police Station, Tal. Hadgaon, Dist. Nanded for offences punishable under Sections 498-A, 495, 417, 323, 504, 506 r/w 34 of the Indian Penal Code as well as consequential criminal proceeding in R.C.C. No.8/2021 pending before Judicial Magistrate First Class at Hadgaon is hereby quashed and set aside to the extent of applicant nos.4 to 21.
- d. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE