



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION NO. 1236 OF 2019

1. Santosh Rajak S/o Johanlal Rajak,
Aged about 39 years, Occupation :
Labour
2. Johanlal Rajak S/o Mohan Rajak, Aged
66 years, Occ. Nil.
3. Sakunbai Rajak W/o Johanlal Rajak,
Aged 53 years, Occ. Household, No. 1
to 3 resident of Ward No. 15, Bilaspur
(Chattisgrah)
4. Smt. Durga Kanojiya W/o Deepal
Kanojiya, aged 37 years, Occupation
Household, Panjara Koradi, Nagpur
5. Neetu Kanojiya W/o Suresh Kanojiya,
aged 37 years, Occupation Household
Ward No. 15, Bilaspur (C.G)

... Applicants.

// VERSUS //

1. State of Maharashtra, through Police
Station Officer, Gondia (City), District
Gondia
2. Smt. Sarita W/o Santosh Rajak,
Aged 29 years, Occupation Labour
Krishnapura Ward, Dargah Galli,
Gondia, District Gondia

... Non-applicants.

Shri A.V.Muley, Advocate for the applicants.

Shri Nikhil Joshi, APP for the non-applicant/State.

Shri Kabir Jhamb Advocate h/f Shri V.S.Mishra, Advocate for the non-applicant no.2.

**CORAM : SMT. VIBHA KANKANWADI, AND
MRS. VRUSHALI V. JOSHI, JJ.**

**Reserved on : 4th July, 2024
Pronounced on : 19th July, 2024**

ORAL JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The present application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashing of charge-sheet in Regular Criminal Case No. 226 of 2019 pending before the learned Chief Judicial Magistrate, Gondia for the offence punishable under Section 498 read with Section 34 of the Indian Penal Code.

4. The relationship between the parties is not disputed. The applicant no.1 is the husband of non-applicant no.2, applicant nos. 2 and 3 are the parents of applicant no.1. Applicant no.4 is the married sisters of applicant no.1. Applicant no.5 is alleged to be the second wife of the applicant no.1.

5. Heard Shri A.V.Muley, learned advocate for the applicants, Shri Nikhil Joshi, learned Additional Public Prosecutor for the non-applicant/State and Shri Kabir Jhamb learned advocate for the non-applicant no.2.

6. It has been vehemently submitted on behalf of the applicants that the First Information Report is based on a concocted story. The applicant no.1 and non-applicant no.2 got married on 21st May, 2013 and they have one daughter, now aged six years. However, according to the applicants, the non-applicant no.2 left the company of the applicant no.1 and went to Gondia, somewhere in late 2018. After waiting for a long time, the applicant no.1 had filed the petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights before the Family Court at Bilaspur, Chattisgarh. The said petition came to be decreed and non-applicant no.2 was directed to resume the cohabitation. However, she did not resume, but then falsely filed the First Information Report.

7. Learned advocate for the applicants submits that even if considered the contents of the First Information Report and the statement of witnesses, it can be said that there was no cruelty alleged, which can be subject to attract the offence under Section 498-A of the Indian Penal Code. Further, even the married sister of the applicant no.1 has been roped.

8. Per contra, learned Additional Public Prosecutor as well as learned advocate for the non-applicant no.2 strongly opposed the application and submit that the applicants should face the trial.

9. At the outset, it is to be noted from the documents which are on record that the petition for restitution of conjugal rights appears to have been filed by the applicant no.1 before the learned Family Court,

Bilaspur, Chattisgarh on 19th November, 2018. She appeared in the said matter. Judgment would show that there were attempts of mediation/counseling. It appears that thereafter the non-applicant no.2 remained absent and had not entered into the witness box. She has not rebutted the allegations or contentions of the husband and therefore decree has been passed. She was asked to resume the cohabitation with the applicant no.1.

10. Here in this case, she has not filed any reply and has not given any explanation as to why till the First Information Report was lodged in present matter i.e. on 10th June, 2019, she had not resumed the cohabitation. In the First Information Report also she is totally silent regarding the proceedings which were filed before the Family Court, Bilaspur by the applicant no.1.

11. Independently also, if we consider the contents of the First Information Report, she has stated that the gifts amounting to Rs.10,00,000/- were given by her parents to the applicant no.1 and his family in marriage and thereafter she started residing at Bilaspur. Sister-in-law i.e. applicant no.4 used to come to their house and used to instigate the applicant nos. 1 to 3. Thereupon, the applicant no.1 used to assault her, abuse her by closing the doors. In the First Information Report, it is stated that the applicant no.1 has allegedly performed the marriage with the applicant no.5. However, it is to be noted that inspite of the investigation, the police have not added Section 494 of Indian Penal Code. As she is not related to the husband, she cannot be

prosecuted for the offence punishable under Section 498-A of Indian Penal Code. First Information Report is very cryptic and cannot be said to explain acts of 'cruelty'. Total married life of the applicant no.1 and non-applicant no.2 was of almost more than six years. Omnibus statements against even the applicant nos.2 to 4 will not amount to cruelty. It appears that the First Information Report is nothing but the outcome of the decree that was passed in favour of the applicant no.1 and it would be futile exercise to ask the applicants to face the trial. The statements of the witnesses are nothing but the copy paste of the First Information Report. Therefore, the application deserves to be allowed. Accordingly, we proceed to pass the following order.

- i. The criminal application no. 1236 of 2019 is allowed;
- ii. The charge-sheet and the proceedings i.e. Regular Criminal Case No. 226 of 2019 pending before the Chief Judicial Magistrate, Gondia for the offence punishable under Section 498-A read with Section 34 of Indian Penal Code as against the applicant no.1 Santosh Rajak S/o Johanlal Rajak, applicant no.2 Johanlal Rajak S/o Mohan Rajak, applicant no.3 Sakunbai Rajak W/o Johanlal Rajak, applicant no.4 Smt. Durga Kanojiya W/o Deepal Kanojiya and applicant no. 5 Neetu Kanojiya W/o Suresh Kanojiya stands quashed and set aside.

[MRS. VRUSHALI V. JOSHI, J.] [SMT. VIBHA KANKANWADI, J.]