



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 CRIMINAL APPLICATION NO.205 OF 2024

- 1 Saraswati w/o Narayan Waghmode,
Age 21 yrs., Occ. Household,
R/o Monika Apartment, Handewadi,
Pune.
- 2 Balaji Nagnath Amoghe,
Age 23 yrs., Occ. Labour,
R/o as above.
- 3 Chandrabhaga w/o Nagnath Amoghe,
Age 42 yrs., Occ. Household,
R/o as above.
- 4 Nagnath Maroti Amoghe,
Age 56 yrs., Occ. Labour,
R/o as above.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through Police Station,
Sambhaji Nagar, Parli Vaijnath,
Tq. Parli Vaijnath, Dist. Beed.
- 2 Narayan w/o Ankush Waghmode,
Age 27 yrs., Occ. Service,
R/o Shivaji Nagar, Near Jublee Kishor House,
Thermal Road, Parli Vaijnath,
Tq. Parli Vaijnath, Dist. Beed.

... Respondents

...

Mr. U.B. Bilolikar, Advocate for applicants

Mr. G.A. Kulkarni, APP for respondent No.1

Ms. Ashwini A. Lomte, Advocate for respondent No.2

...

**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

DATE : 22nd JANUARY, 2025

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

1 Present application has been filed under Section 482 of the Code of Criminal Procedure Code, 1973 for quashment of proceedings in Regular Criminal Case No.106/2023 pending before learned Judicial Magistrate First Class, Parli Vaijnath, Tq. Parli Vaijnath, Dist. Beed arising out of First Information Report vide Crime No.28/2023 dated 11.02.2023 registered with Sambhaji Nagar Police Station, Parli Vaijnath, Dist. Beed, for the offence punishable under Section 406 read with Section 34 of the Indian Penal Code, 1860.

2 Applicant No.1 is wife of respondent No.2, applicant No.2 is brother of applicant No.1 and applicant Nos.3 and 4 are their parents. It is not in dispute that applicant No.1 got married to respondent No.2 on

15.06.2020. They are blessed with daughter. It is not in dispute that applicant No.1 has filed First Information Report against present respondent No.2, his mother Chhaya and two other persons vide Crime No.144/2022 for the offence punishable under Sections 313, 498-A, 201, 315, 318, 504, 506 read with Section 34 of the Indian Penal Code, under Sections 3, 4, 4(b), 5, 6 of the Medical Termination of Pregnancy Act, 1971, under Section 33 of Maharashtra Medical Practitioners Act, 1961 and under Section 15(2) of the Indian Medical Council Act, 1956. Charge sheet has been filed after the investigation, which is bearing Regular Criminal Case No.271/2022. It is also not in dispute that respondent No.2 and his mother came to be arrested on 09.08.2022 in connection with said offence and they were in custody. They were granted bail on 03.11.2022.

3 It is a classic case of dispute between husband and wife and in this background learned Advocate for applicants submits that it is alleged in First Information Report that there are two sets of keys of respondent No.2's house and one of the sets was with applicant No.1. When respondent No.2 and his mother came to house after they were bailed out, they had taken search of keys of cupboard, but they could not find the same. It is then stated that they found it on 04.02.2023 and then opened. It was noticed that gold jewellery near about 7.5 tolas and cash of Rs.67,000/- was missing. When

they made inquiry with neighbours Balaji and Bhimrao, they came to know that all applicants had come to the house of respondent No.2 on 08.09.2022. They were there for about 1 - 2 hours. Thereafter applicant No.1 locked the door and went. Thereupon, informant – informant No.2 says that applicants had taken said ornaments and cash and misappropriated the same. First of all, there is delay in lodging First Information Report. Though the bail was granted on 03.11.2022, immediately they would have come to the house and then say that even they had searched for the keys but they could not find it. They had made no allegations about anything. Keys were found by mother in the kitchen rack on 04.02.2023 and then the alleged taking away all the articles was found. This is nothing but a concocted story. In fact, on 08.09.2022 applicants had gone to said house as they were called for preparation of panchnama in connection with First Information Report lodged by applicant No.1. There were police persons present, who had carried out the panchnama. When the complaint has been lodged with *mala fide* intention, then it would be unjust to ask applicants to face the trial.

4 Learned Advocate appearing for respondent No.2 and learned APP strongly opposed the application and submitted that statements of neighbours, who had seen applicants going in the house on 08.09.2022, is supporting piece of evidence. Other things can be explained by respondent

No.2 at the time of trial. The ingredients of offence are made out and, therefore, this may not be the fit case where inherent powers should be exercised.

5 We have already reproduced contents of First Information Report and, therefore, we do not want to repeat the same. Here, the section that is invoked is 406 of the Indian Penal Code, for which we must consider the ingredients of Section 405 of the Indian Penal Code.

The ingredients in order to constitute a criminal breach of trust are; i) entrusting a person with property or with any dominion over property, ii) that person entrusted is a) dishonestly misappropriating or converting that property to his own use; or b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation i) of any direction of law prescribing the mode in which such trust is to be discharged, ii) of any legal contract made, touching the discharge of such trust.

This is so held in **S.W. Palanitkar and others vs. The State of Bihar and another** [2002 SCC (Cri.) 129] and **Kailash Kumar Sanwatia vs. The State of Bihar and another** [(2003) 7 SCC 399]. Here, the relationship between applicant No.1 and respondent No.2 is still intact. They are husband and wife. No doubt, as per the story, applicant No.1 was not

residing with respondent No.2 on 08.09.2022. In First Information Report respondent No.2 has stated that his wife had gone to her parents house on 15.07.2022 and he came to know about the miscarriage on 16.07.2022. Thus, if applicant No.1 was not residing in the house of respondent No.2 from 15.07.2022 till the lodging of First Information Report on 11.02.2023, there is no question of entrustment of any property or it cannot be said that she had domain over the said property in any manner. Certainly, till the date of arrest i.e. 09.08.2022 respondent No.2 was occupying the same house.

6 Prosecution has come with a case that upon inquiry by respondent No.2, neighbours Balaji and Bhimrao told that applicants had come to the house of informant – respondent No.2 on 08.09.2022. Important point in this respect is that First Information Report came to be lodged on 11.02.2023, statement of mother of respondent No.2 has been recorded on 12.02.2023 and on the same day statements of Bhima Gulabrao Dawre i.e. Bhimrao and Balaji Shivaji Avhad were taken on 12.02.2023. At that time, they have clearly stated that they had no knowledge as to who had gone inside the house and who had taken gold ornaments and cash. Surprisingly, their supplementary statements have been recorded on 14.03.2023, at that time, they have stated that though they had stated on 12.02.2023 that they do not know anything, but in that respect their additional and true statement

they are giving now, and then they say that on 08.09.2022 applicants had come. Under the powers under Section 482 of the Code of Criminal Procedure this Court will have to read between the lines also and has to take note of the total somersault by these two witnesses, on which the informant and prosecution story want to rely. If it was true fact that they had seen applicants going inside the house, then why they had not so disclosed it on 12.02.2023. It can also be then stated that as respondent No.2 is facing trial, possibility of winning over the witnesses and getting a favourable statements made in his favour cannot be ruled out.

7 We have got it verified from learned APP that in First Information Report, that has been lodged by applicant No.1 against respondent No.2, there is a spot panchnama on 08.09.2022. Copy of the said panchnama has been produced along with additional affidavit of applicant No.4 on record. Thus, presence of applicant No.1 in the house of respondent No.2 on 08.09.2022 is coming on record in the form of panchnama which has been executed by Police Officer in presence of panchas. However, that panchnama is not clear as to from whom the keys of house of respondent No.2 were fetched.

8 Conduct of respondent No.2 and his mother will have to be

taken note of as from their own statement their bail was granted on 03.11.2022. They had searched for key of cupboard from the house but could not find it. The normal recourse would have been to search for the same and if not able to, then would try to break the lock. But till 04.02.2023 no such step was taken, though it is stated that there was cash in the said cupboard and interestingly on 04.02.2023 mother could find keys of the cupboard on upper rack of kitchen. Now, except bare statements that there were gold ornaments around 15 tolas and cash of Rs.67,000/-, there is nothing. As aforesaid, we have come to the conclusion that ingredients of Section 406 of the Indian Penal Code are not made out, but then ingredients of Section 379 of the Indian Penal Code also cannot be said to be made out, because of the relationship between applicant No.1 and respondent No.2 i.e. husband and wife. It would be unjust to ask applicants to face the trial as First Information Report appears to be filed with mala fide intention and/or in revenge and, therefore, it is within the parameters laid down in **State of Haryana and others vs. Ch. Bhajan Lal and others** [AIR 1992 SC 604]. Hence, following order.

ORDER

- i) Criminal Application stands allowed.

ii) Proceedings in Regular Criminal Case No.106/2023 pending before learned Judicial Magistrate First Class, Parli Vaijnath, Tq. Parli Vaijnath, Dist. Beed arising out of First Information Report vide Crime No.28/2023 dated 11.02.2023 registered with Sambhaji Nagar Police Station, Parli Vaijnath, Dist. Beed, for the offence punishable under Section 406 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicants viz. 1) **Saraswati w/o Narayan Waghmode**, 2) **Balaji Nagnath Amoghe**, 3) **Chandrabhaga w/o Nagnath Amoghe** and 4) **Nagnath Maroti Amoghe**.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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