



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4948 OF 2024

1. Bapu Baban Misal
Age : 42 years, Occ. Business
R/o. Pangri, Shivajinagar, Beed,
Tq. Dist. Beed
2. Sangita Sarweshwar Ghayal
@ Priyanka Sunil Joshi,
Age : 48 years, Occ. Service
R/o. Samarth Niwas, Datta Prabhu Nagar,
Pimpargavhan Road, Beed
Tq. Dist. Beed
3. Sarweshwar @ Suresh Radhakrushna Ghayal
Age : 77 years, Occ. Pensioner
R/o. Vishweshwar Colony, Bhakti Construction,
Beed, Tq. Dist. Beed
4. Mangal Sarweshwar Ghayal
Age : 72 years, Occ. Homemaker,
R/o. Vishweshwar Colony, Bhakti Construction,
Beed, Tq. Dist. Beed

.... **Applicants**

VERSUS

1. The State of Maharashtra
Through Police Station Officer,
Police Station Shivajinagar, Beed
Dist. Beed
2. Sunil Rangnath Joshi
Age : 54 years, Occ. Service,
R/o. Civil And Criminal Court Karmala,
Tq. Karmala, Dist. Solapur

... **Respondents**

Advocate for Applicants : Mr. S. J. Salunke
APP for Respondent-State : Ms. P. R. Bharaswadkar
Advocate for Respondent No. 2 : Mr. G. L. Deshpande

**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

Dated : August 1, 2025

ORDER :-

1. Present application has been filed for quashing FIR vide CR No. 508 of 2024 dated 10.10.2024, registered with Shivajinagar Police Station, Beed, for the offence punishable under Section 305, 3(5) of Bhartiya Nyaya Sanhita, 2023 (BNS).

2. Heard Mr. Salunke, learned Advocate for applicant, Ms. Bharaswadkar, learned APP for the State and Mr. Deshpande, learned Advocate for respondent No. 2.

3. The learned Advocate appearing for the applicants submits that the applicant No. 2 is the wife of respondent No. 2 and their relationship has become strain. They have two children. The applicants submit that the informant is a Public Prosecutor at Karmala Court, Dist. Solapur. The applicant No. 2 is residing with her two children in Beed. According to applicant No. 2, the

informant has performed second marriage and the applicant No. 2 has lodged FIR vide CR No. 623 of 2023 on 05.12.2023, under Section 498-A, 494, 323, 504 and 506 of IPC with Shivajinagar Police Station, Beed. Applicant No. 1 is a Milk Distributor who used to give milk, when the applicant No. 2 and informant were residing together. Applicant No. 3 is the father of applicant No. 2 and applicant No. 4 is mother of applicant No. 2. They are residing separately at Vishweshar Colony, Bhakti Construction, Beed. Now, when the relationships are strain, a false and concocted FIR has been lodged stating that when the informant had gone to his house at Datta Prabhu Nagar, Pimpargavhan Road, Beed, he found that a bag which he had kept in the northern room has been opened. By opening the said room and from the said bag, two gold rings i.e. with precious stone and his educational certificates were stolen. He states that when he made inquiry, he came to know that the said act has been done by the present applicants. According to the informant, the incident has taken place between 01.07.2024 to 01.09.2024, and then, he lodges a report about the same on 10.10.2024, which is belated and there is no explanation for the delay. The learned Advocate for the applicants relies on the FIR lodged by the applicant No. 2 and the other documents to support his contention about the strain relationship and even, the charge-

sheet that has been filed containing the statements of witnesses. He also points out that on 17.04.2024, applicant No. 2 had lodged an N.C. complaint under Section 504 and 506 of IPC, wherein, he had threatened the applicant No. 2 to take back the case lodged by her. The learned Advocate for the applicants relies on Property Register (PR) Card of CTS No. 1422, Sy. No. 56, 58 and 59, wherein, it is stated that the plot was purchased in the name of the informant as well as the applicant No. 2. Even, in respect of the house i.e. standing, the Tax Assessment List for the year 2009 – 2010, would show that it is in the name of both of them. Under such circumstance, there is no question of attracting the ingredients of the offence under Section 305 of BNS.

4. Per contra, the learned APP submits that the investigation is still going on. However, the Investigating Officer has not come to any conclusion even *prima facie*. According to the Investigating Officer, there is no witnesses to the incident and the incident is not even known to the neighbourers. The learned APP fairly submits that perusal of the spot *panchnama* would show that there were no signs of breaking or opening any door or window.

5. Learned Advocate for respondent No. 2 strongly

opposes the application and submits that the dispute between the husband and wife has gone to the extent that the informant has been suspended because of her FIR. The informant has not performed second marriage as alleged. As regards the present FIR lodged by him is concerned, there are four rooms in the house and the northern room was kept by the informant in his possession. His belongings were laying in the said northern room and he used to occasionally visit his house. Accordingly, when he had come on 01.09.2024, he found that his educational certificates such as certificates of 10th, 12th, B.Sc., LL.B, LL.M., and even the *Sanad* given by the Bar Council, which he had kept in a bag and in the same bag, he had kept his two precious rings. All these articles have been stolen. Upon the inquiry, he could get the names of these persons. Nobody else resides or has access to the said house. The investigation is not yet complete and therefore, at this stage, this cannot be said to be the fit case where the Court should exercise the powers under Section 528 of Bhartiya Nagarik Suraksha Sanhita (BNSS).

6. The first and foremost fact that is required to be noted is that in the FIR, there is no statement that when any such arrangement was made between the husband and the wife that the

wife would keep three rooms and one room would be with the husband. If there would have been any such writing, it would have been reflected in the FIR. No doubt, the applicant No. 2 has given her address before this Court in this petition as 'Samarth Niwas, Datta Prabhu Nagar, Pimpargavhan Road, Beed'. From the spot *panchnama*, it can be seen that the name of house is 'Samarth'. Therefore, it can be seen that *prima facie*, the applicant No. 2 is residing in the same house. The PR Card and the Tax Assessment List show that both of them i.e. applicant No. 2 and the informant are the owners. Then in that case, a person cannot commit theft in his own house.

7. Section 305 of BNS prescribes punishment for theft in a dwelling house or means of transportation or place of worship, etc. This section corresponds to Section 380 of IPC. The *sine qua non* for or vital ingredients to prove this offence is that theft should be from dwelling house. Here, the dwelling house as aforesaid stands in the name of applicant No. 2 also. Now then, the further question will arise that as per the informant, the northern room was in his possession and he states that in the said room, there is a child bed wherein in a wooden box, there was VIP Bag, in which, all his those articles were there.

8. The learned Advocate appearing for respondent No. 2 made submission that the applicants No. 1, 3 and 4 are not the owners of the said property and therefore, Section 305 of BNS would get attracted against them. We do not agree with this submission when the act is saying i.e. theft as alleged then for one accused, it can be under Section 305 of BNS and for applicant No. 3, it can be 303 of BNS, is not the interpretation of the ingredients. Whether then, as against all, Section 303 of BNS would get attract would be a question. For Section 303 of BNS, the prosecution will have to prove that there was taking away of any immovable property dishonestly out of the possession of a person without that person's consent. This section corresponds to earlier Section 379 of IPC. In this connection, if we read the FIR once again, then it can be seen and at the cost of repetition, we would say that there is no statement that in rest of the three rooms, the wife is residing with children. It is also not mentioned that the informant had locked the said northern room and the keys used to be with him only.

9. In the second para, informant has tried to say that he could find that the door of the northern room was opened and the articles were not found in the bag. He made inquiry and came to

know about the names of the applicants and then says that the applicant No. 1 with the help of applicants No. 3 and 4, had entered the house which was closed and then committed the theft between 01.07.2024 to 01.09.2024. Thus, a picture has been painted that the applicants No. 3 and 4 are not residing in the same house but the house itself (as word 'घर' has been used and not 'खोली'). It was the impression that was tried to be given is that the entire house in his possession.

10. The fact cannot be denied even by the informant that the applicant No. 2 has lodged FIR vide CR No. 623 of 2023 on 05.12.2023, against him under Section 498-A, 494, 323, 504 and 506 of IPC. Now, the charge-sheet is also filed in respect of the same. In the said charge-sheet, it has been placed on record the applicant No. 1, the milk man, has been shown as witness. Therefore, taking into consideration all these aspects, we take that this is a fit case where under the guidelines Nos. (3) and (5) of the ***State of Haryana and Others Vs. Bhajan Lal and Others, [1992 Supp (1) SCC 335]***, the case is made out for exercise of powers under Section 528 of BNSS. Hence, we pass following order:-

ORDER

- (A) The application stands allowed.
- (B) The FIR vide CR No. 508 of 2024 dated 10.10.2024, registered with Shivajinagar Police Station, Beed, for the offence punishable under Sections 305, 3(5) of Bhartiya Nyaya Sanhita, stands quashed and set aside against all the applicants i.e. applicant No. 1 Bapu Baban Misal, No. 2. Sangita Sarweshwar Ghayal @ Priyanka Sunil Joshi, No. 3. Sarweshwar @ Suresh Radhakrushna Ghayal and No. 4. Mangal Sarweshwar Ghayal.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

Omkar Joshi