



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

CRIMINAL APPLICATION [APL] NO.1240 OF 2019

1. Gajanan Waman Kalbande
Aged about 39 years,
Occupation-Service.
2. Smt. Laxmibai Waman Kalbande
Aged 56 years, Occ. Housewife

Applicant No.1 and 2 R/o. Gokulnagar,
Umarkhed, Tq. Umarkhed,
District-Yavatmal.
3. Sau. Sangita Panjab Wadhave
Aged 37 years, Occ : Housewife
R/o. Kalamnuri, Tq. Kalamnuri,
District-Hingoli.
4. Sau. Kalabai Shankar Shingankar,
Aged 75 years, Occ : Housewife
R/o. At Post Belkhed, Tq. Umarkhed
District-Yavatmal.
5. Sau. Nanda Gautam Raut
Aged 44 years, Occ : Housewife
R/o. At Post Belkhed, Tq. Umarkhed
District-Yavatmal.
6. Sau. Menka Haribhau Dhule
Aged Major, Occ. Housewife
R/o. Shegaon, Tah. Shegaon,
District-Budana.
7. Sau. Manda Ramesh Dhepe
Aged 46 years, Occ. Housewife
R/o. Dongargaon, Tqh. Mahagaon,
District-Yavatmal.

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Applicants

..Versus..

1. State of Maharashtra,
Through its Police Station Officer,
Police Station Umarkhed,
District-Yavatmal.
2. Sau. Sharpina Gajanan Kalbande
Aged about 36 years,
Occupation-Service (Teacher)
R/o. Renuka Nagar, Umarkhed
Tq. Umarkhed, District-Yavatmal. .. Non-Applicants

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Shri D.G. Patil, Advocate for Applicants.

Shri N.H. Joshi, APP for Non-Applicant No.1/State.

Shri V.N. Patre, Advocate for Non-Applicant No.2.

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CORAM : ANIL S. KILOR AND
PRAVIN S. PATIL, JJ.

DATED : 24th APRIL, 2025.

JUDGMENT [PER : Pravin S. Patil, J.]

1. **Rule.** Rule made returnable forthwith. By consent of the learned Counsel for parties, the matter is taken up for final disposal.

2. By this application, the applicants are seeking to challenge the Chargesheet No.473/2019 dated 29.11.2019 pending before the learned Judicial Magistrate, First Class,

Umarkhed, District-Yavatmal arising out of Crime No.0187/2019 registered with Police Station Umarkhed, District-Yavatmal for the offences punishable under Sections 498-A, 323, 452, 504, 506 r/w 34 of the Indian Penal Code.

3. In short the case of prosecution is that on 24.04.2019, non-applicant no.2 lodged police complaint stating that since last 1½ year, she is residing separately from her husband. After her marriage on 23.05.2024, she was subjected to physical and mental cruelty at the instance of applicants. Earlier to this, in the year 2017, she lodged police complaint due to harassment and threats given for giving consent for mutual divorce. On refusal of the same, meeting of elders was called on 19.12.2017, which ended without any result. At that time, non-applicant no.2 was subjected to cruelty at the hands of her husband. Hence, she left his company from December-2017.

4. On 23.03.2019, applicants namely Sau. Maneka Dhule, Sau. Manda Dhepe and Sau. Sangita Wadhave, forcibly entered into her rented house and abused as well as assaulted her for not giving consent for divorce. Hence, on these allegations, offence came to be registered against applicants.

5. Applicants make a submission that, police complaint dated 24.04.2019 is nothing but counter blast to the complaints lodged by applicant no.1 against non-applicant no.2. All the allegations are after thought. There is inordinate delay in lodging the complaint against them. Non-Applicant no.2 has defamed the applicants by circulating false whatsapp message in social media. Hence, it is submitted that proceeding against them is liable to be quashed and set aside.

6. Learned APP strongly opposed the application and stated that the investigating agency has thoroughly conducted the investigation and about the incident dated 23.03.2019 quoted in the complaint, statements of independent witnesses were recorded. It is submitted that considering the specific allegations against the present applicants, this application may be rejected.

7. Non-Applicant no.2, in her affidavit dated 17.02.2020 reiterated all the allegations of complaint. She has specifically pointed out that when she was residing in a rented room, the applicant nos.3, 6 and 7 had forcibly entered into the house and

thereby caused physical harassment. Therefore, considering the specific averment which is supported by material filed along with chargesheet, the present application deserves to be rejected in the facts and circumstances of the case.

8. We have considered the rival submission of both the parties and perused the record of the matter.

From the perusal of record it is clear that, there is a matrimonial discord between applicant nos.1 and non-applicant no.2 since year 2017. Due to threats of non-applicant no.2 to commit suicide, applicant no.1 on 15.12.2017 lodged police complaint, which was registered as NCR. Then applicant no.2 lodged police complaint against non-applicant no.2 on 22.01.2018, the same also registered as NCR.

It is also clear from record that in the month of January-2019, non-applicant no.2 circulated defamatory posts in social media, therefore, applicant no.1 filed private complaint before the learned Judicial Magistrate, First Class, Umarkhed bearing Misc. Criminal Case No.52/2019. In the said complaint, by order dated 06.05.2019, learned Judicial Magistrate, First Class, Umarkhed directed to investigate and

submit report to Police Station Umarkhed.

In the meantime on 25.04.2019 the non-applicant no.2 lodged police complaint and on that basis, offence under Sections 498-A, 323, 452, 504, 506 r/w 34 of the Indian Penal Code is registered against the applicants.

9. As such, it is clear that due to matrimonial discord since year 2017 there were counter complaints between applicant no.1 husband and his family members against non-applicant no.2 and non-applicant no.2 also kept no stone unturn to defame the applicants family. Out of this enmity the incident dated 23.03.2019 is taken place. Injury report of non-applicant no.2 filed along with chargesheet supported the fact of assault on her dated 23.03.2019.

10. At the same time we noticed the fact that there are no allegation in the police complaint against applicant nos.2, 4 and 5, so also no incriminating material is available against them in chargesheet. Applicant no.2 is mother-in-law, applicant no.4 is grandmother-in-law and applicant no.5 is sister of mother-in-law of non-applicant no.2. Only their names are referred without attributing any role to them in the alleged offence.

11. In the present matter, except applicant nos.2, 4 and 5 there is material available against other applicants. This court, while exercising the powers under Section 482 of the Code of Criminal Procedure, is not expected to consider the defence accused. This is so because it would result in giving finality to the accusation levelled by prosecution without allowing the prosecution and the non-applicant no.2 to adduce evidence to substantiate the same. In the circumstances, we are not inclined to quash the proceeding against applicant nos.1, 3, 6 and 7.

12. Hon'ble Supreme Court of India in catena of cases constantly observed that in a matrimonial dispute the tendency of wife to implicate the family members of husband without any allegation against them should be deprecated. In the present case, it is seen that without any allegation against applicant nos.2, 4 and 5, they have been roped into the alleged offence. Hence, considering the settled principles of law, the criminal proceeding registered against applicant nos.2, 4 and 5 deserves to be quashed and set aside. Hence, we proceed to pass the following order :

O R D E R

(i) Criminal Application is partly allowed.

(ii) Criminal Application is hereby rejected against applicant nos.1, 3, 6 and 7.

(iii) The Chargesheet No.473/2019 dated 29.11.2019 arising out of Crime No.0187/2019 registered against the applicant nos.2, 4 and 5 for the offences punishable under Sections 498-A, 323, 452, 504 and 506 r/w 34 of the Indian Penal Code, is hereby quashed and set aside.

13. Rule is made absolute in the above terms.

(Pravin S. Patil, J.)

(Anil S. Kilor, J.)