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

CRIMINAL WRIT PETITION NO.989 OF 2024

1. Rushikesh Prakashrao Deshmukh,
Aged about 38 years, Occ.: Agriculturist,
2. Prakashrao Laxmanrao Deshmukh,
Aged about 65 years, Occ.: Agriculturist,
3. Sau. Vidya Prakashrao Deshmukh,
Aged about 60 years, Occ.: Housewife,
4. Pushkaraj Prakashrao Deshmukh,
Aged about 33 years, Occ.: Doctor,
5. Sau. Shruti Pushparaj Deshmukh,
Aged about 29 years, Occ.: Doctor,
6. Sau. Sonali Shridhar More,
Aged about 42 years, Occ.: Service,
7. Shubhangi Sangramsinh Deshmukh,
Aged about 40 years, Occ.: Housewife,

All R/o Mangalmurti Nagar, Parbhani,
Taluka and Dist. Parbhani.

..... PETITIONERS

// VERSUS //

State of Maharashtra,
Through Police Station Officer,
Police Station, Rajapeth, Amravati,
Taluka and District Amravati.

.... RESPONDENT

Mr. P. R. Agrawal, Counsel for petitioners.
Mr. C. A. Lokhande, APP for respondent /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 10.01.2025

ORAL JUDGMENT :

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1. **Rule.** Rule made returnable forthwith.
2. Heard finally with the consent of learned Counsel appearing for the parties.
3. By this petition, the petitioners have challenged the order of framing of charge by the learned Additional Chief Judicial Magistrate Court No.8, Amravati below Exh.51 in RCC case No.739/2023 dated 03.08.2024.
4. As per the contention of the petitioners, the petitioners are the original accused in RCC Case No.739/2023 and they are charge sheeted for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code. On 16.07.2022 the wife of the petitioner No.1 namely Prachi Rushikesh Deshmukh lodged report with respondent Police Station alleging that her marriage with the petitioner No.1 was performed on 26.04.2021 and thereafter, she resumed the cohabitation at the house of the present petitioners, but she was not treated well and she was ill-treated for the illegal demand and therefore, she constrained to leave the house and she lodged the report. On the basis of the said report, police have registered the crime.
5. After completion of the investigation, the charge-sheet was submitted against the present petitioners and

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the case was registered as RCC No.739/2023. It is submitted that before framing of the charge, it was obligatory on the part of the Presiding Officer to hear the present petitioners, but the said opportunity was not granted and directly the charge was framed. Learned Counsel for the petitioners invited my attention towards Chapter XIX of the Code of Criminal Procedure (for short 'the Cr.P.C.') and invited my attention towards Sections 239 and 240 of the Cr.P.C. He submitted that Section 239 of Cr.P.C. deals with when accused shall be discharged as far as the warrant case is concerned. Section 239 deals with if, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

6. Section 240 of the Cr.P.C. deals with framing of charge which states that if, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could

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be adequately punished by him, he shall frame in writing a charge against the accused.

7. A bare perusal of the above said sections makes it clear that in warrant trial cases, the case has to be begin with opening of a case by the prosecution and the accused should be heard prior to framing of the charge. It is not mere a formality. It has been enacted so that the accused knows in advance the nature of the evidence which the prosecution proposes to lead to prove the charge brought against him. It is not mere a formality. The Magistrate has not followed the same and directly proceeded to frame a charge against the present petitioners without complying with the provisions of Sections 239 and 240 of the Cr.P.C. In view of that, the framing of the charge dated 03.08.2024 deserves to be quashed and set aside and the matter is remanded back to the Additional Chief Judicial Magistrate, Court No.8, Amravati, to pass appropriate orders after complying with Sections 239 and 240 of the Cr.P.C.

With these directions the writ petition is disposed of.

Rule is made absolute in the above terms.

(URMIL A JOSHI-PHALKE, J.)