IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

43 CRIMINAL APPLICATION NO. 2328 OF 2025

Mahadev Tukaram Gholap And Another
VERSUS
The State Of Maharashtra And Another
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Mr. Satish Bappasaheb Parnere, Advocate for Applicant.
Mr. C. V. Bhadane, APP for Respondent – State.
Mrs.Vanita Haribhau Sangole, Advocate for Respondent No.2 Appointed Through Legal Aid.

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CORAM : SUSHIL M. GHODESWAR, J.

DATE : 2 NOVEMBER, 2026

PC:

1. By this Criminal Application filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”), the applicants seek quashing of the First Information Report in Crime No. 56 of 2025 dated 20.02.2025, registered with Patoda Police Station, District Beed, for the offences punishable under Sections 85, 115(2) and 352 read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 (“BNS”), and of the proceedings, if any, arising from it.

2. At the hearing, the learned advocate for the applicants sought to withdraw the application to the extent of applicant No.1, who is the husband. It is dismissed as withdrawn to that extent. The application is, therefore, considered only for applicant No.2.

3. Applicant No.1 is a driver with the Maharashtra State Road Transport Corporation. Applicant No.2 is his wife. Respondent No.3 is the informant, who claims to be the wife of applicant No.1.

4. According to the First Information Report, respondent No.3 married applicant No.1 on 27.11.2002 at the Rameshwar temple, Soutada, and lived with him at his place of posting, where a daughter was born to her. She alleges that he pressed her to undergo a family planning operation, ill-treated her and left her at her parents' house, finally in the year 2015, and has not taken her back since. She further alleges that on 30.01.2025, applicant No.1 and applicant No.2, whom she describes as her co-wife, came to her house at Beed, asked her to withdraw the maintenance case, abused her, beat her with kicks and fist blows and said that she would not be taken back. She then approached the Women Complaint Redressal Centre, Beed. Counselling failed, and on the letter issued by the Centre she lodged the report on 20.02.2025.

5. The applicants' case is that applicant No.1 married applicant No.2 on 25.05.1995 and has three children from her, and that he never married respondent No.3. Respondent No.3 had filed Miscellaneous Criminal Application No. 193 of 2016 at Beed under Section 12 of the Protection of Women from Domestic Violence Act, 2005, in which applicant No.1 denied the marriage. After the evidence closed and the

matter was kept for decision, respondent No.3 lodged the present report.

6. Shri Parnere, learned advocate for the applicants, submits that applicant No.2 has been deliberately added as an accused only to harass her, and that the continuation of the prosecution against her would be an abuse of the process of law.

7. Per contra, the learned APP submits that the First Information Report discloses specific allegations of abuse and assault against applicant No.2 in the incident of 30.01.2025, therefore, deserves to be dismissed.

8. Section 85 of the BNS applies only to the husband of a woman or a relative of the husband. The first question is therefore whether, on the case of respondent No.3 herself, applicant No.2 falls in either category.

9. Respondent No.3 herself describes applicant No.2 as her co-wife in the First Information Report. In her application of 2016, she states that in December 2015 she found a woman at the house at Kambi who claimed to be the wife of applicant No.1. The school records and Aadhaar cards on record show applicants Nos.1 and 2 as the parents of Priyanka, born on 04.03.1998, and Santosh, born on 08.02.2002. Both births precede 27.11.2002, the date of the marriage alleged by

respondent No.3. Nothing on record suggests that the marriage of applicants Nos.1 and 2 was ever dissolved.

10. Thus, taken at its highest, the case of respondent No.3 is of a marriage performed during the subsistence of the earlier marriage of applicant No.1 with applicant No.2. Such a marriage is void under Section 11 read with Section 5(i) of the Hindu Marriage Act, 1955, and no decree is needed to make it so, as held in ***Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav***, (1988) 1 SCC 530.

11. The point is covered by ***Shivcharan Lal Verma v. State of M.P.***, AIROnline 2002 SC 715 : (2007) 15 SCC 369, a decision of a Bench of three Hon'ble Judges of the Supreme Court. There, Shiv Charan had married Mohini during the lifetime of his first wife, Kalindi. Both Shiv Charan and Kalindi were convicted under Sections 306 and 498-A of the Indian Penal Code for the torture of Mohini. Section 498-A corresponds to Section 85 of the BNS. The Supreme Court held as under:

> *"One, whether the prosecution under Section 498A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the life time of Kalindi. … There may be considerable force in the argument of Mr. Khanduja, learned counsel for the appellant so far as conviction under Section 498A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498A of the IPC."*

12. The conviction under Section 498-A was set aside for both appellants, including the first wife. This decision was followed in ***P. Sivakumar v. State***, Criminal Appeal Nos. 1404-1405 of 2012, decided on 09.02.2023 : 2023 LiveLaw (SC) 116. Applicant No.2 stands in the same position as Kalindi. On the informant's own case, she is the first wife, and she is neither the husband nor a relative of the husband. Section 85 of the BNS is, therefore, not attracted against her.

13. I am conscious that in ***Reema Aggarwal v. Anupam***, (2004) 3 SCC 199, and ***A. Subash Babu v. State of A.P.***, (2011) 7 SCC 616, Benches of two Hon'ble Judges held that a person who enters into a marital arrangement cannot escape Section 498-A merely because the marriage is void. Those decisions were concerned with the man who contracted the later marriage, in the context of dowry harassment. They do not deal with a first wife. The present report alleges no demand of dowry, and ***Shivcharan Lal Verma*** is the decision of a larger Bench.

14. What remains against applicant No.2 are Sections 115(2) and 352 read with Section 3(5) of the BNS. These are non-cognizable offences. As regards these allegations, the following circumstances emerge from the record :

(a) The allegations of ill-treatment up to the year 2015 are made against applicant No.1 alone. Applicant No.2

appears only in the incident of 30.01.2025.

(b) That incident is stated in general terms. No separate role is attributed to applicant No.2, and the narrative states no time of the incident.

(c) The report was lodged 21 days later. The column for reasons of delay is blank, and no injury or medical treatment is mentioned.

(d) The report was lodged after the evidence in Miscellaneous Criminal Application No. 193 of 2016 had closed, and, as stated in applicant No.1's representation, shortly before the date of 01.03.2025 fixed for its decision.

15. Where proceedings are alleged to be manifestly frivolous or vexatious, the Court is not confined to the averments in the report and may look into the attending circumstances emerging from the record, as held in ***Mohammad Wajid v. State of U.P.***, (2023) 20 SCC 219. Applying that test, and the parameters in ***State of Haryana v. Bhajan Lal***, 1992 Supp (1) SCC 335, the report does not disclose the offence under Section 85 of the BNS against applicant No.2, and the remaining allegations against her appear to be a counterblast to the pending dispute. Continuation of the proceedings against her would be an abuse of the process of law.

16. These observations are confined to the claim of applicant No.2 in

the present application. They shall not influence any proceeding against applicant No.1, the decision in Miscellaneous Criminal Application No. 193 of 2016, or any proceeding concerning the status of respondent No.3 or the rights of her daughter. Hence, the following order :

ORDER

(a) The Criminal Application is allowed to the extent of applicant No.2 and is dismissed as withdrawn to the extent of husband.

(b) FIR No.56 of 2025 dated 20 February 2025 registered with the Patoda Police Station, District Beed at the behest of respondent No.3 and the further proceedings arising therefrom, are hereby quashed and set aside qua applicant No.2.

(c) Ms. Vanita Sangole, leaned counsel for respondent No.3 is appointed by this Court. Therefore, her fees be quantified and paid to her as per rules, by the High Court Legal Aid Services Sub-Committee, Aurangabad Bench.

(SUSHIL M. GHODESWAR, J.)