

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.3176 OF 2021

KUNAL NANDKUMAR JAGTAP
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. S. S. Gangakhedkar, Advocate for the Applicant.
Mr. M. M. Nerlikar, APP, for the Respondent – State.
Ms. S. G. Sonawane, Advocate for the Respondent No. 2.

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CORAM : SMT. ANUJA PRABHUDESSAI &
R.M. JOSHI, JJ

DATE : FEBRUARY 20, 2023

ORDER (PER R. M. JOSHI, J)

1. With consent, heard finally at the stage of admission.

2. This is an application under Section 482 of Cr.P.C filed by the aforesaid Applicant to quash the Crime No. 12/2020 registered with Cyber Police Station, Ahmednagar and R.C.C. No. 950/2020 pending on the file of Chief Judicial Magistrate, Ahmednagar for the offences punishable under Sections 417, 420 of IPC read with Section 66(D) of the Information Technology Act, 2000.

3. Heard learned Counsel for the Applicant, learned APP for Respondent – State and learned Counsel

for Respondent No. 2.

4. We have perused the records and considered the submissions advanced by the learned Counsel appearing for respective parties.

5. Learned Counsel for the Applicant states that there is no material on record to indicate commission of any offence by Applicant. It is further submitted that in fact the Respondent No. 2 was into an affair and she has tried to seduce Applicant through her female friends. It is submitted that the present complaint is lodged as Applicant had issued notice to the Respondent No. 2 for seeking divorce and in response there to present complaint is lodged. According to him, the girls whom the Applicant had allegedly cheated are neither cited as witnesses nor their statements are recorded during the course of investigation. As far as e-mails and chats are concerned, it is contended that there is no authenticity of the same and that provisions of Section 66(D) of Information Technology Act, 2000 are not applicable to the present case. Thus, according to him present complaint is malicious and hence, further

criminal process deserves to be aborted.

6. Learned APP opposed the said contention by pointing out that the investigation is still in progress. He relied upon the material on record in order to suggest that even after marriage was performed with Respondent No. 2, Applicant posed himself to be a bachelor and got in conversation with number of girls. Learned Counsel for the Respondent No. 2 submitted that there is *prima facie* material on record indicating involvement of the present Applicant in registering himself on matrimonial site and continuing to operate the same posing himself with status 'never married' in spite of being married and this itself is sufficient to show his involvement in the crime.

7. The Hon'ble Apex Court in Geo Verghase Vs. State of Rajasthan & Anr, 2021 SCC OnLine SC 873 has considered the scope and ambit of Section 482 of Cr.P.C and has observed thus:

35. The scope and ambit of inherent powers of the Court under Section 482 CrPC or the extra-ordinary power under Article 226 of the Constitution of India, now stands well

defined by series of judicial pronouncements. Undoubtedly, every High Court has inherent power to act *ex debito justitiae* i.e., to do real and substantial justice, or to prevent abuse of the process of the Court. The powers being very wide in itself imposes a solemn duty on the Courts, requiring great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power vested in the Court should not be exercised to stifle a legitimate prosecution. However, the inherent power or the extraordinary power conferred upon the High Court, entitles the said Court to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court, or the ends of justice require that the proceeding ought to be quashed.

36. The following observations made by this Court in the case of State of Karnataka Vs. L. Muniswamy & Ors, (1997) 2 SCC 699 may be relevant to note at this stage:-

“The whole some power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue

would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent power, both in civil and criminal matters, to achieve a salutary public purposes. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to the laws made by the legislature"

Keeping in mind scope and ambit of Section 482 of Cr.P.C, *prima facie* the facts appearing from the material on record needs to be considered.

8. The aforesaid crime was registered pursuant to the first information report lodged by the Respondent No. 2. A perusal of the FIR reveals that in the year 2015 parents of the Respondent No. 2 had given a profile of the Respondent No. 2 on Jevansaathi.com, a matrimonial site. The Applicant, who had also given his profile on the same website, got in touch with the Respondent No. 2. They exchanged their mobile numbers and later on met at Pune. On 04.04.2015 their marriage

was solemnized, with consent of both families and on 18.07.2016 a child was born from the said wedlock.

9. The Respondent No. 2 has alleged that she had received a message on Facebook that her husband was friendly with another lady. The Respondent no. 2 later learnt that the Applicant had continued to use his profile ID on the said matrimonial site even after their marriage. His profile shows marital status as "Never Married". He used to get in touch with several girls on the said matrimonial site under the pretext that he was an eligible bachelor. In the supplementary statement, the Respondent no. 2 had given the names of the other girls with whom he had chats on the said matrimonial site.

10. The records reveal that the investigating officer had sought certain information from the Legal Head of the Jeevansaathi.com. The said matrimonial website had forwarded the said information vide letter dated 13th August, 2020. A perusal of the said communication reveals that the Applicant had three profile ID's i.e., ZZAW2752, ZZXU3529 & ZSYZ6851 which were registered on his mobile no. 7588304579. The

profile ZZAW2752 was registered on 01.04.2013, which was prior to the marriage of the applicant with the Respondent No. 2. Whereas profile ID YXYV8839 was registered on 17.05.2018, which was after the date of the marriage. Paragraph 9 of the said reply refers to the list of the girls in whose profile the applicant had shown interest.

11. In the instant case though charge-sheet has been filed, further investigation is being conducted under Section 173(8) of Cr.P.C. There is documentary evidence on record to show that the Applicant, after his marriage with Respondent No. 2 on 04.04.2015, has continued his profile on matrimonial site and was involved in conversation/contact with other girls. It is further evident that he had ported his status as "Never Married". The statement of one of the girls indicates that the Applicant had contacted her posing himself to be a bachelor. The authenticity of the said statement is being verified by the investigating officer.

12. Thus, we are not inclined to interfere and scuttle the investigation when the investigation is

still in progress.

13. In the result, the Application stands dismissed.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)