

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

CRIMINAL APPLICATION NO. 910 OF 2015

1. Momin Alikhan s/o Gulam Ali Khan
Age : 78 Yrs., Occ. : Business.
2. Afsari Begum W/o Momin Ali Khan
Age : 68 Yrs., Occ. : Household.
3. Majeed Khan s/o Momin Ali Khan
Age : 60 Yrs., Occ. : Agriculture.
4. Wajeed Ali Khan s/o Momin Ali Khan
Age : 43 Yrs., Occ. : Agriculture.

All R/o : Silk Mill Colony,
Railway Station road, Aurangabad. **APPLICANTS**

V E R S U S

The State of Maharashtra
Through the Police Inspector,
Osmanpura Police Station,
Aurangabad. **RESPONDENT**

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Mr. B.R.Waramaa, Advocate for Applicants.

Mr. A.S.Shinde, A.P.P. for R.No.1 - State.

Mr. A.T.Patel, Advocate for R.No. 2.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 29th JULY, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally by the consent of the learned counsel for the parties.

2. Present applicants are father-in-law, mother-in-law and brothers-in-law of first informant Asiyabegum, who is respondent No. 2 in the present Criminal Application.

3. Present applicants are facing prosecution in Sessions Case No. 107/2012 as per Crime No. 282/2010 for the offences punishable u/s 498-A,307,342,323,504,506 read with 34 of the Indian Penal Code and u/s 3 and 4 of Dowry Prohibition Act.

4. During the pendency of Sessions Case No. 107/2012, application u/s 227 of the Code of Criminal

Procedure is filed on behalf of the present applicants for discharge. Said application is at Exh. 23 on record. Said application is rejected by the learned Additional Sessions Judge, Aurangabad on 22/12/2014.

5. Feeling aggrieved by such dismissal, present applicants are before this Court.

6. Heard Mr. B.R.Waramaa, learned counsel for the applicants, Mr. A.S.Shinde, learned A.P.P. for Respondent No. 1 – State and Mr. A.T.Patel, learned counsel for Respondent No. 2 in extenso.

7. Submission of the learned counsel for the applicants would be that in view of the material available in the challan, no case is made out against the present applicants. He submitted that if the F.I.R. dated 08/10/2010 and the application filed on behalf of the first informant with the Police Inspector of Women Cell dated 05/10/2010 is perused, then it is clear that the present applicants can not be held responsible for any atrocities, both mental and physical, as claimed by the first informant.

Learned counsel for the applicants also invited my attention to page No. 112 of the charge sheet which is Chemical Analyzer's report to buttress his point that there is no ingredient for the offence punishable u/s 307 of the Indian Penal code.

Learned counsel for the applicants also submitted that on earlier occasion, sisters-in-law who are also specifically named along with present applicants, moved an application u/s 227 of the Code of Criminal Procedure before the learned trial Court, however, their application was also rejected. He submitted that, therefore, sisters-in-law preferred petition under Article 482 of the Constitution of India before this court, which was registered as Criminal Application No. 750 of 2013. He submitted that in the said Criminal Application, application bearing Criminal Application No. 5999 of 2013 was filed by present respondent No. 2/first informant against the sisters-in-law. Said application is also solemnly affirmed by the present first informant, wherein she has admitted that she has already settled her dispute with her husband Javed Khan and she has no grievance against her sisters-in-law.

Learned counsel for the applicants also invited

my attention to the settlement that was arrived in between the first informant and her husband. Said settlement is available in the compilation at page No. 131. Said settlement is between the first informant and her husband, who is joined as accused No. 1 in Crime No. 282/2010. Statement is made by the learned counsel for the applicants before this Court that in pursuance to the said settlement between the husband and wife that took place before the Principal Judge of the family Court, Aurangabad, first informant is residing happily with her husband Javed Khan. This statement is not at all controverted by the learned counsel for the first informant/respondent No. 2. Thus, it is crystal clear that the husband and wife are leading happy married life. He, therefore, submitted that if the cumulative effect is given to all the happenings and also after perusal of the charge sheet, it is clear that the learned trial court has committed wrong in not allowing the application for discharge.

8. Per contra, Mr. A.T.Patel, learned counsel for respondent No. 2 /first informant has vehemently opposed the prayer made on behalf of the applicants for discharge. According to him, the settlement is arrived between

respondent No. 2 and her husband and in pursuance to that settlement, they are leading happy married life. However, according to him, if the F.I.R. is perused, then it is clear that in the F.I.R., there are clear-cut allegations warranting the trial u/s 498-A of the Indian Penal Code. He submitted that to that extent, surely the applicants are required to face the trial. He submitted that now the respondent No. 2/first informant is not residing with her husband.

9. Court is not expected to make any observation in respect of the compromise that took place in between husband Javed Khan and first informant Asiyabegum, since to that compromise the present applicants were not at all parties.

10. F.I.R. is lodged on 08/10/2010. From the F.I.R., it is clear that the marriage of first informant took place with Javed Khan prior to six years of lodging of the F.I.R. In the first paragraph of F.I.R., it is stated that after the marriage for first one year, all the in-laws have given good treatment to her. However, if the first paragraph of the F.I.R. is scanned properly, then every allegation is against husband Javed

Khan. Not a single word is used against any of the present applicants.

In the second paragraph of the F.I.R., there is reference of the incident dated 29/09/2010. According to the F.I.R., on the said date husband Javed Khan and the applicants along with discharged accused asked the first informant to bring ₹ 50,000/-, gave abuses and also gave slaps to her and ultimately subjected her to cruelty. It is also stated that on 30/09/2010, she was confined in a room and the ornaments on her person were removed and on 30/09/2010 at 8.00 a.m., poisonous substance was administered to her.

11. If the second paragraph of the F.I.R. is read in its correct perspective, then it would reveal that the first informant has not made any allegation against the present applicants that they confined her in a room or they have administered any poisonous substance to her. This assumes importance in view of the fact that prior to 08/10/2010, on 05/10/2010 first informant lodged written complaint with the in-charge Inspector of the Women Cell in the office of the Commissioner of Police, Aurangabad. Said complaint is

available at page No. 114 of the compilation and it was registered as Application No. 46/2010. Perusal of the said application would reveal that on 30/09/2010, poisonous substance was administered to her and thereafter her husband admitted her in the hospital and he ran away from the spot. Further, in the said complaint, every allegations are made against the husband only.

12. According to the F.I.R., applicants are responsible for the offence punishable u/s 307 of Indian Penal Code for administering the poisonous substance. According to the prosecution case, first informant was admitted in the hospital and when she was admitted, her stomach wash was taken and it was sent to the Chemical Analyzer for examination. Chemical Analyzer's report is available in the charge sheet at page No. 112. Result of analysis is as under,

*“General and specific chemical testing
does not reveal any poison ”.*

13. Thus, it is crystal clear that the stomach wash of the first informant was sent for examination as to whether

any poisonous substance was administered to her. Chemical Analyzer's report shows that no such poison was found. In addition to that, in absence of any specific allegation against any of the applicant that they were responsible for administering the poisonous substance, in my view, the applicants can not be allowed to face the prosecution u/s 307 of the Indian Penal Code.

14. In so far as the offence punishable u/s 498-A of the Indian Penal Code is concerned, which is press into service by the learned counsel for the first informant, it is clear from the F.I.R. that the allegations against the present applicants are most general in nature. Further, no allegations are found in so far as the demand part is concerned in the first complaint dated 05/10/2010. Further, even as per the F.I.R. for the incident dated 29/09/2010, the allegations against the sisters-in-law are paramateria with the present applicants and in the proceedings filed before this Court for discharge by the sisters-in-law, first informant has filed affidavit that there is no such atrocities upon her committed by the sisters-in-law. When the allegations against present applicants and the sisters-in-law are paramateria and are

inseparable, then in that event, applicants are entitled to keep reliance on the order passed by this Court in Criminal Application No. 750 of 2013.

15. Upshot of the aforesaid discussion leads me to pass the following order.

ORDER

- (i) Criminal Application No. 910 of 2015 is allowed.
- (ii) Order below Exh. 23 in Sessions Case No. 107/2012 dated 22/12/2014 passed by the learned Additional Sessions Judge, Aurangabad is hereby quashed and set aside.
- (iii) Application Exh. 23 in Sessions Case No. 107/2012 is allowed and applicant No. 1 Momin Alikhan s/o Gulam Ali Khan, applicant No. 2 Afsari Begum W/o Momin Ali Khan, applicant No. 3 Majeed Khan s/o Momin Ali Khan and applicant No. 4 Wajeed Ali Khan s/o Momin Ali Khan stand discharged from Sessions Case No. 107/2012.

(iv) Rule is made absolute.

[V.M.DESHPANDE, J.]

KNP/Cr.Appln 910.2015 - [J]