

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1627 OF 2016

- 1) Abdul Wahab s/o Abdul Rashid Maniyar,
Age-30 years, Occu:Business,
- 2) Abdul Rashid s/o Abdulla Maniyar
(Abdul Rashid s/o Katalu Maniyar),
Age-45 years, Occu:Business,
- 3) Khurshidbee w/o Abdul Rashid Maniyar,
Age-45 years, Occu:Household,
- 4) Wahed s/o Abdul Rashid Maniyar,
Age-28 years, Occu:Business,
- 5) Abdul Siddique s/o Abdul Rashid Maniyar,
Age-26 years, Occu:Business,
- 6) Aarjumand d/o Abdul Rashid Maniyar,
Age-24 years, Occu:Household,
- 7) Saleha @ Munni w/o Sajed Ansari,
Age-29 years, Occu:Household,

All R/o-Gulshanbaag, Wangi Road,
Parbhani, Tq. & Dist-Parbhani.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,

- 2) Zinat Fatema w/o Wahab Maniyar,
Age-25 years, Occu:Household,
R/o-Gulshanbag, Wangi Road,
Parbhani, at present Phule Nagar,
Majalgaon, Dist-Beed.

...RESPONDENTS

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Mr.G.R. Syed Advocate for Applicants.
Mr.D.R. Kale, A.P.P. for Respondent No.1.
Mr.K.H. Surve Advocate h/f. Mr. Hemant Surve
Advocate for Respondent No.2.

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**CORAM: S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

DATE : 6TH OCTOBER, 2016

ORAL ORDER [PER SANGITRAO S. PATIL, J.] :

. Rule. Rule made returnable forthwith. By
the consent of the learned counsel appearing for
the parties, heard finally.

2. The Applicants have prayed for quashing
of criminal proceedings bearing Regular Criminal
Case No.43 of 2016 instituted in the Court of
Judicial Magistrate, First Class, Majalgaon for
the offences punishable under Sections 498-A, 323,

504, 506 read with 34 of the Indian Penal Code ("I.P.C." in short).

3. Applicant No.1 is the husband, Applicant Nos.2 and 3 are the parents, Applicant Nos.4 and 5 are the brothers while Applicant Nos.6 and 7 are the sisters of Applicant No.1, who is the husband of Respondent No.2 (informant).

4. At the outset, the learned counsel for Applicant No.1 submits that he is not pressing the application so far as Applicant No.1 is concerned.

5. The learned counsel for Applicant Nos.2 to 7 submits that the F.I.R. does not contain any specific allegations against these Applicants. There are vague and general allegations made against them about having ill-treated Respondent No.2. He states that the F.I.R. has been lodged because Applicant No.1 filed Regular Civil Suit No.305 of 2015 on 28th October 2015 for divorce.

He submits that the F.I.R. is an outcome of after-thought, which has been lodged after about four months of the departure of the informant from the house of Applicant No.1. He submits that continuation of the criminal proceedings on the basis of the said vague and general allegations would be nothing but an abuse of process of law. He, therefore, prays that the above numbered criminal proceedings may be quashed and set aside against Applicant Nos.2 to 7.

6. On the other hand, the learned A.P.P. for Respondent No.1/State and the learned counsel for Respondent No.2 submit that there are allegations made against Applicant Nos.2 to 7 that they tortured Respondent No.2 physically and mentally. According to them, there are prima facie grounds to proceed against these Applicants for the above mentioned offences. Therefore, they pray that the Application may be dismissed.

7. The F.I.R. dated 1st February 2016 lodged by Respondent No.2 contains that Applicant Nos.2 to 7 were asking her to bring Rupees Two Lakh from her maternal home and on that count they used to quarrel with her, hurl abuses against her and insult her. It further contains that ultimately they drove her out of their house in August 2015. These allegations ex-facie are very vague and general. No specific date of any particular incident of torture has been given. There is nothing in the F.I.R. to show as to which out of Applicant Nos.2 to 7 did any particular offending act against Respondent No.2. The contents of the F.I.R. do not prima facie disclose the ingredients of "cruelty" as defined under Section 498-A of the I.P.C. The statements of the witnesses also contain the same vague and general allegations against Applicant Nos.2 to 7.

8. Apart from the contents of the F.I.R. and statements of witnesses, it is obvious that

Applicant No.1 filed Regular Civil Suit No.305 of 2015 for divorce against Respondent No.2 on 28th October 2015 and thereafter the present F.I.R. came to be lodged against the Applicants on 1st February 2016. When it was the case of Respondent that she was driven out of her matrimonial house after being tortured by Applicant Nos.2 to 7 in the month of August 2015, there was no reason for her to wait until 1st February 2016 to lodge the F.I.R. against them for the alleged offences. There is absolutely no explanation given in the F.I.R. for the delay in lodging it after the lapse of about four months on her departure from her matrimonial house.

9. In the above circumstances, we are of the considered view that continuation of the criminal proceedings against Applicant Nos.2 to 7 would be nothing but an abuse of the process of law. It would be a futile exercise to allow continuation of such proceedings. In view of these facts and

circumstances of the case, we are inclined to quash and set aside the above numbered criminal proceedings instituted against Applicant Nos.2 to 7 only. Hence the order:-

O R D E R

(I) The Application to the extent of Applicant No.1 is dismissed.

(II) The Application to the extent of Applicant Nos.2 to 7 is allowed and the criminal proceedings bearing Regular Criminal Case No.43 of 2016 pending in the Court of Judicial Magistrate, First Class, Majalgaon are quashed and set aside so far as Applicant Nos.2 to 7 are concerned.

(III) The Rule is made absolute accordingly.

(IV) The Criminal Application stands
disposed of accordingly.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

asb/OCT16