

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

CRIMINAL APPLICATION NO. 2527 OF 2016

1. Ibrahim Mohammad Ismail Zhagde,
Age : 35 years, Occ. Service as driver,
 2. Karimunisa W/o Mohammad Ismail Zhagde,
Age: 53 years, occu: Household,
 3. Lala Mohammad s/o Basiruddin Buknewale,
Age: 51 years, Occu: Labour,
 4. Salim Mohammad s/o Basiruddin Buknewale,
Age: 39 years, Occu: Labour,
 5. Kalimuddin Mohammad s/o Basirudin Buknewale,
Age: 51 years, Occu: Labour,
All R/o : Eitwara Momin Galli,
Old Jalna, Jalna,
Tq. & Dist. Jalna
- ...APPLICANTS

versus

1. The State of Maharashtra
Through the Police Inspector,
Partur Police Station,
District Jalna.
 2. Rihana Begam w/o Ibrahim Zhagde,
Age: 27 years, Occupation: Household,
R/o : Mominpura, Partur,
Tq. Partur & Dist. Jalna.
- ...RESPONDENTS

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Mr. S.G. Chapalgaonkar, Advocate for applicants
Ms. P.V. Diggikar, APP for Respondent No. 1 - State
Mrs. S.A. Dhumal(Tambat), Advocate for respondent No. 2

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**CORAM : S.S. SHINDE AND
K.K. SONAWANE, JJ.**

RESERVED ON : 3rd MARCH, 2017.

PRONOUNCED ON : 8th MARCH, 2017.

ORAL JUDGMENT :- (Per : K.K. Sonawane, J.)

1. Rule. Rule made returnable forthwith. The matter is taken up for final hearing at the admission stage with consent of parties.
2. This application is moved by the applicants invoking remedy under section 482 of the Criminal Procedure Code (for short "Cr.P.C."), to quash and set aside the First Information Report (for short "FIR") bearing crime No. 58 of 2016 registered at Partur Police Station District Jalna for the offence punishable under sections 498-A, 494, 323, 504 and 506 read with section 34 of the Indian Penal Code (for short "IPC").
3. It has been contended that marriage of applicant No. 1 - Ibrahim Mohammad Ismail Zhagde was performed with respondent No. 2 - first informant - Rihana Begum on 29-10-2011. After the marriage, wife -Rihana Begum joined the company of husband - Ibrahim Mohammad. Initially, for about one and half years, the husband - Ibrahim Mohammad and inmates of matrimonial home treated, the first informant Rihana Begum in good manner. But, thereafter she was being harassed and maltreated for demand of Rs. 5,00,000/- (Rupees Five lakhs) to facilitate her husband - Ibrahim Mohammad to go to Dubai for employment. There were allegations of giving threat of second marriage of husband - Ibrahim Mohammad and on that count first - informant - Rihana Begum was subjected to cruelty. They used to hurl abuses and beaten up the first informant - Rihana Begum to fulfill their unlawful demand. She was also threatened to life on the part of applicants. Eventually, in the month of August, 2015, she was driven out of the matrimonial home after subject to mental and physical

torture. Thereafter, she has filed complaint to the Police Women Cell against her husband - Ibrahim Mohammad, his mother and three maternal uncle. But, there was no response from them. It has been alleged that maternal uncle performed the second marriage of applicant No. 1 - Ibrahim Mohammad with one girl Tabassum daughter of their sister and sent her to Dubai for cohabitation with husband i.e. applicant - Ibrahim Mohammad. At last, the first informant - Rihana Begum W/o Ibrahim approached to the Police Station, Partur and lodged the FIR for the allegations of mental and physical torture, assault and criminal intimidation etc.

4. Pursuant to the FIR of the wife Rihana Begum , Police of Partur Police Station registered the crime No. 58 of 2016 for the offence punishable under sections 498-A, 494, 323, 504 and 506 read with section 34 of the IPC against the applicants and swung into action. Investigating Officer has recorded statements of witnesses acquainted with the facts of the case. I.O. also collected the relevant documents etc. At this juncture, the investigation is in progress. Pending the investigation, applicants have preferred the present application and put in question the validity, legality and propriety of the impugned FIR registered at the behest of wife- Rihana Begum , for the charges pitted against them.

5. The learned counsel appearing for the applicants vehemently submits that the entire allegations levelled against the applicants in FIR are false, baseless and fabricated one. Applicant No. 1 Ibrahim Mohammad, husband of the first informant is serving in Dubai as private car driver since 2008. He had returned to Jalna on 16-10-2011

for his marriage ceremony with first informant – Rihana Begum and immediately thereafter on 27-12-2011 he returned back to Dubai. In the month of October, 2012 he again come, he had been to Jalna from Dubai for about a month and since then he was in Dubai uptill 09-03-2016. After returning from Dubai he came to know about filing of FIR against himself and other members of his family. He further submits that, all the allegations are baseless and unsustainable. The applicants No. 3 to 5 are maternal uncle of applicant No. 1 – Ibrahim Mohammad and they used to reside separately from the family of applicant No. 1. Therefore, they had no occasion to interfere in the family matter of spouse. The learned counsel for applicants further submits that despite several notices and efforts for cohabitation, respondent No. 2 did not turn up. He submits that even if the allegations in the FIR are taken at its face value and read in its entirety, ingredients of the alleged offences are not attracted. The allegations in the statements of witnesses are general and vague in nature. He further submits that proceedings based on the crime No. 58 of 2016 registered at Partur Police Station, District Jalna for the offence punishable under sections 498-A, 494, 323, 504 and 506 read with section 34 of the IPC against the applicants would be an exercise in futility, abuse of process of law and ultimately wastage of valuable time of the court and the prosecution agency. Therefore, the applicants knocked the door of this court by invoking remedy under section 482 of the Cr.P.C. and prayed to quash and set aside the impugned FIR registered against them.

6. In refutal, the learned APP appearing for respondent No. 1 State and learned counsel appearing for respondent No. 2 vociferously

opposed the contentions put forth on behalf of applicants. They contend that allegations appeared in the FIR and the statements of witnesses will have to be taken as it is and can be tested only during the course of trial. There is no reasonable ground to quash and set aside the impugned FIR. In contrast, the allegations nurtured in the FIR *prima facie* make out the case against the applicants for registration of cognizable offence. Therefore, learned APP for respondent No. 1- State and learned counsel for respondent No. 2 fervidly urged that it would be unjust and improper to set aside and quash the impugned FIR by exercising inherent powers under section 482 of the Cr.P.C.

7. We have given anxious consideration to the arguments canvassed on behalf of both sides. We have also perused FIR of the crime and other relevant documents on record. Intense scrutiny of the allegations nurtured in the FIR reveals that arguments advanced on behalf of the applicants in this application appears not sustainable and considerable one to exercise extraordinary jurisdiction under section 482 of the Cr.P.C. Admittedly, the marriage of spouses was performed in the month of October, 2011. According to the applicant No. 1 – husband Ibrabhim Mohammad, since the year 2008 he is serving in Dubai as private car driver and he came to Jalna in the month of October, 2011 for marriage ceremony. Thereafter, in the month of December, 2011 he returned back to Dubai. In the month of October, 2012, after lapse of one year, he again came to Jalna from Dubai for a month and since then upto March, 2016 he did not return to India.

8. It is not in dispute that since the marriage the first informant – wife Rihana Begum did not receive opportunity to enjoy marital life in

the company of husband at Dubai. She remained in the India since the day of marriage. It seems that applicant No. 1 – husband Ibrahim Mohammad had been to India on two/three occasions since the date of marriage. In such circumstances, there is an ample scope to draw inference about mental cruelty to the married women, who compel to reside alone far away from her husband.

9. There are allegations about demand of money for going to Dubai on the part of husband- Ibrahim Mohammad. It has been propounded that applicant No. 1 – husband- Ibrahim Mohammad has already been in employment since 2008 in Dubai as private car driver, therefore, there was no occasion to demand Rs. 5,00,000/- for going to Dubai for employment purpose. Hence, it has been submitted that allegations of demand of Rs. 5,00,000/- are false, baseless and not sustainable one. At the initial stage of investigation, it would unjust and improper to arrive at conclusion about genuineness and correctness of these allegations but possibility of demand of money on the part of greedy persons could not be ruled out.

10. Moreover, first informant- wife Rihana Begum ventilated the grievance against maternal uncle of applicant No. 1 – husband – Ibrahim Mohammad for allegation of maltreatment and harassment to her for demand of money as well as first informant – Rihana Begum ventured to state that maternal uncle performed second marriage of her husband – Ibrahim Mohammad with one Tabssum daughter of there sister and sent her to Dubai for cohabitation with applicant No. 1 – husband – Ibrahim Mohammad. Obviously these circumstances

prima facie appears to draw adverse inference against the applicants in regard to allegations nurtured on behalf of first informant - wife Rihana Begum.

11. We are of the opinion that if entire allegations made in the FIR are taken at its face value and accepted in their entirety *prima facie* makes out a case against the applicants. In view of the nature of allegations being matrimonial dispute, we are not inclined to nod in favour of applicants.

12. It is well settled principle of law that for exercising powers under sections 482 of the Cr.P.C. to quash and set aside FIR, High Court would have to proceed entirely on the basis of allegations made in the complaint or the documents accompanying the same *per se*. It has no jurisdiction to examine the correctness or otherwise of the allegations. In paragraph No. 109 in the case of ***State of Harayana and others Vs. Ch. BhajanLal and others***¹ the Apex Court has delineated the guidelines, which reads thus :

“109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary

¹ AIR 1992 Supreme Court, 604

jurisdiction on the Court to act according to its whim or caprice.”

13. In view of the above discussion as well as the guidelines delineated by the Apex Court in the case of **Bajanlal** (Supra), we are not inclined to nod in favour of applicants. There are circumstances on record reflects from the contents of FIR which would *prima facie* constitute offence for the charges pitted against accused/applicants. Therefore, the application is devoid of merit and deserves to be rejected. Accordingly, the same stands rejected. Rule stands discharged.

14. Needless to say that findings expressed above are *prima facie* in nature and the trial court shall not influenced by the same.

Sd/-

[**K. K. SONAWANE, J.]**

Sd/-

[**S.S. SHINDE, J.]**

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