

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPICATION NO. 5994 OF 2013

1. Mohd. Irfan s/o. Abdul Mannan Ghongade,
Age 30 years, Occu. Advocate,
2. Rehana w/o. Abdul Mannan Ghongade,
Age 53 years, Occu. Household,
3. Abdul Mannan Sahamohammad Ghongade,
Age 60 years, Occu. Agri.,
4. Shahrenaz begum w/o. Mohd. Naim Ghongade,
Age 38 years, Occu. Household,

All R/o. Near Ghanti Baba Mandir, Opp.
L.I.C. Office, Arani Road, Digras (Darvha),
Tq. Darvha, Dist. Yavatmal.

5. Shabana begum w/o. Shaikh Sajed Ghongade,
Age 38 years, Occu. Household,
R/o. Kilman Chwal, Navpada Road,
Kurla (W), Mumbai.
6. Salma Begum w/o. Shaikh Jaker Ghongade,
Age 36 years, Occu. Household,
R/o. 4-5-446, Bhuktapur, Adilabad,
Andharapradesh.
7. Samina Begum d/o. Abdul Mannan Ghongade @
Samina Begum w/o. Mohammad Parvez,
Age 24 years, Occu. Household,
R/o. Aurangabad, Dist. Aurangabad.

....Applicants.

Versus

1. The State of Maharashtra,
Through P.S. Nanalpeth, Parghani,
Dist. Parbhani.
2. Summaiya Yasmin w/o. Mohd. Irfan Ghongade,
Age 26 years, Occu. Household,
R/o. At present Amin Colony, Dhar Road,
Parbhani, Dist. Parbhani.

....Respondents.

Mr. Sachin S. Deshmukh, Advocate for applicants.

Mr. M.M. Nerlikar, APP for respondent No. 1/State.

Mr. G.R. Sayed, Advocate for respondent No. 2.

WITH
CRIMINAL APPLICATION NO. 1488 OF 2014

Mohd. Irfan s/o. Abdul Mannan Ghongade,
Age 30 years, Occu. Advocate,
R/o. Near Ghanti Baba Mandir, Opp.
L.I.C. Office, Arani Road, Digras (Darvha),
Darvha, Dist. Yavatmal.

....Applicant.

Versus

1. The State of Maharashtra,
Through Superintendent of Police,
Parbhani, Dist. Parbhani.
2. Summaiya Yasmin w/o. Mohd. Irfan Ghongade,
Age 26 years, Occu. Household,
R/o. At present Amin Colony, Dhar Road,
Parbhani, Dist. Parbhani.
3. Shaikh Wajid s/o. Shaikh Ibrahim,
Age 36 years, Occu. Business,
R/o. Ameen Colony, Parbhani.

....Respondents.

Mr. Sachin S. Deshmukh, Advocate for applicants.

Mr. M.M. Nerlikar, APP for respondent No. 1/State.

Mr. G.R. Sayed, Advocate for respondent No. 2 & 3.

WITH
CRIMINAL APPLICATION NO. 1818 OF 2014
WITH
CRIMINAL APPLICATION NO. 6271 OF 2014

1. Rehana w/o. Abdul Mannan Ghongade,
Age 53 years, Occu. Household,
2. Abdul Mannan Sahamohammad Ghongade,
Age 60 years, Occu. Agri.,

Both R/o. Near Ghanti Baba Mandir, Opp.
L.I.C. Office, Arani Road, Digras (Darvha),
Tq. Darvha, Dist. Yavatmal.

3. Shahrenaz begum w/o. Mohd. Naim Ghongade,
Age 38 years, Occu. Household,

4. Mohd. Abdul Naim Sahab Ghongade,
Age 45 years, Occu. Business,

Both R/o. Kilman Chwal, Navpada Road,
Kurla (W), Mumbai.

5. Shabana begum w/o. Shaikh Sajed Ghongade,
Age 38 years, Occu. Household,

6. Shaikh Mohd. Sajed Sahab Ghongade,
Age 36 years, Occu. Business,

R/o. 5-2-447, Fatteburuj, Killa Road,
Nanded, Dist. Nanded.

7. Salma Begum w/o. Shaikh Jaker Ghongade,
Age 36 years, Occu. Household,

8. Abdul Jaker Sahab Ghongade,
Age 35 years, Occu. Business,

Both R/o. 4-5-446, Bhuktapur, Adilabad,
Andharapradesh.

9. Samina Begum d/o. Abdul Mannan Ghongade @
Samina Begum w/o. Mohammad Parvez,
Age 24 years, Occu. Household,
R/o. Plot No. 45-P, Shahanagar, Beed
Bypass road, Aurangabad, Dist. Aurangabad.

10. Shaikh Yunus s/o. Shaikh Kasim Ghongade,
Age 40 years, Occu. Business,
R/o. Behind Jama Masjid, Mahur,
Tq. Mahur, Dist. Nanded.

....Applicants.

Versus

1. The State of Maharashtra,
Through Superintendent of Police,

Parbhani, Dist. Parbhani.

2. Summaiya Yasmin w/o. Mohd. Irfan Ghongade,
Age 26 years, Occu. Household,
R/o. At present Amin Colony, Dhar Road,
Parbhani, Dist. Parbhani.

....Respondents.

Mr. Sachin S. Deshmukh, Advocate for applicants.

Mr. M.M. Nerlikar, APP for respondent No. 1/State.

Mr. G.R. Sayed, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.**

**RESERVED ON : 27/07/2018
PRONOUNCED ON : 01/08/2018**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The first three proceedings are filed under section 482 of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for short) for relief of quashing of F.I.R. and criminal proceedings and Criminal Application No. 6271/2014 is filed in Criminal Application No. 1818/2014 for permission to produce some documents in the main proceeding. As the applicants of Criminal Application Nos. 5994/2013, 1488/2014 and also 1818/2014 are the same and as respondent No. 2 of these proceedings Summaiya Yasmin is the same, though in Criminal Application No. 1488/2014, there is also Shaikh Wajid as one respondent and as the dispute is mainly matrimonial in nature, this Court is deciding all the matters together. Both the sides are heard.

2) Criminal Application No. 5994/2013 is filed for relief of quashing of F.I.R. No. 225/2013 registered for the offences punishable under sections 452, 223, 34 etc. of Indian Penal Code (hereinafter referred to as 'IPC' for short), section 2, 3, 4 of the Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Ordinance, 2013. Allegations are made in the F.I.R. by Smt. Summaiya against applicant No. 1, husband and relatives of the husband. Applicant No. 2 is mother of the husband, applicant No. 3 is father of the husband, applicant Nos. 4 to 7 are married sisters of the husband. Place of residence of the husband and his parents is given as 'Near Ghanti Baba Mandir, Opp. L.I.C. Office, Aarni Road, Digras (Darvha), Tq. Darvha, Dist. Yavatmal' when the addresses of the married sisters is given of different places like Mumbai, Andhra Pradesh and Aurangabad.

3) In F.I.R. No. 225/2013, allegations are made that all the accused persons were believing in black magic (जादुटोणा) and they used to harass and illtreat the first informant out of that belief. She has made allegations that the accused used to chant Mantras and they used to compel the first informant for Namaz and Roza. Allegations are made that in the food of the first informant, they used to mix something after doing the activity of black magic and

they used to compel her to eat that food. Allegations are made that even the sisters of the husband used to give threat to finish her if she was not acting as per their instructions involving black magic. It is contended that on one occasion when she was living with her parents i.e. on 22.10.2013 after coming to the house of her parents, all the accused gave beating to her and the first informant has made allegations against all the accused that on 26.10.2013 when the first informant was present in the house of her parents they came there with one Mantrik and they created a show that Mantrik was possessing supernatural, extraordinary powers due to his capacity as Mantrik and some rites were performed against her in her house and her hair were virtually pulled to remove her hair. It is contended that she was told that to have a good healthy children from her, this activity was done. The allegations made in the F.I.R. No. 225/2013 show that allegations as against married sisters of the husband are very vague. When they are residents of different places than the place of her husband, it was necessary to give specific reason for coming of all the accused together on that day to the house of parents' of first informant. In the F.I.R., the names of witnesses are not given. It is her contention that 20 days prior to the date of incident she had returned to parent's house and after that two incidents took place like the incident dated 22.10.2013 and 26.10.2013.

4) In second proceeding, criminal proceeding Nos. 773/2013 and 774/2013 are involved. These applications are filed by Summaiya in the Court of Chief Judicial Magistrate, Parbhani for seeking direction of investigation under section 156 (3) of Cr.P.C. In proceeding No. 773/2013 incident dated 22.10.2013 is mentioned by Shaikh Wajid who is a relative of first informant Summaiya. He has made allegations that his bag containing valuables including cheque book was lost in marriage ceremony dated 13.5.2013 and on 22.10.2013 at 3.00 p.m. accused Nos. 1 and 2, the husband of Summaiya and brother of husband came to Amin Colony, Parbhani and demanded Rs. two lakh by saying that his missing bag was with them. Even when incident took place on 22.10.2013, he filed proceeding on 29.10.2013 for making allegations of theft and cheating. Allegations are made that there was an attempt of extortion by demanding Rs. two lakh from him.

5) In proceeding No. 774/2013, Summaiya has made allegations in respect of incident dated 22.10.2013 and according to her, this incident also took place at about 3 p.m. at Amin Colony, Parbhani when the incident of proceeding No. 773/2013 had allegedly taken place at the same time at the same place. Allegations are made that all the eleven accused mentioned in

proceeding No. 774/2013 had committed offence of trespass by entering her parent's house, they assaulted her, they attempted to kill her and they said that she should bring Rs. two lakh with her if she wanted to return to the matrimonial house. She has also contended that on 23.10.2013 she attempted to give report to police, but police did not accept the report and so, she filed the proceeding before Magistrate on 29.10.2013 for offences punishable under sections 498-A, 323, 34 etc. of IPC.

6) Copy of proceeding filed under section 125 of Cr.P.C. by the wife Summaiya dated 23.10.2013 is produced on the record. In this document, there is no mention of the incident dated 22.10.2013. Allegations are made that she was driven out of the matrimonial house as the demand of Rs. two lakh was not met with. In proceeding filed under section 125 of Cr.P.C., she has contended that she was driven out of matrimonial house on 10.8.2013 and even when proceeding was filed on 23.10.2013 she did mention the incident dated 22.10.2013 in which she was allegedly assaulted in her parent's house.

7) In F.I.R. No. 46/2013, allegations of illtreatment are made to make out the case for offences punishable under sections 498-A etc. of IPC as against eleven accused and main incident is

mentioned as incident dated 22.10.2013. This crime was registered on the basis of directions given by the learned J.M.F.C. to make investigation. Thus, there is repetition of the proceedings and it can be said that one relief claimed in proceeding bearing Criminal Application No. 1488/2014 is claimed in Criminal Application No. 1818/2014.

8) The submissions made show that as against relative of the wife viz. Shaikh Wajid, proceeding was taken by other persons for offences punishable under Negotiable Instruments Act. It can be said that in anticipation of such proceeding, the proceeding was filed by Shaikh Wajid bearing No. 773/2013. It can be said that he wanted to use the allegations made in this proceeding as defence in proceeding filed against him for cheque bouncing. The submissions made show that the relations between the parties were already strained. In view of these circumstances, it does not look probable that on 22.10.2013 out of eleven accused mentioned by the wife, only two accused separately accosted Shaikh Wajid and admitted that his cheque book was with them and they demanded amount of Rs. two lakh from him. If the cheque book was lost in May 2013, in ordinary course, some correspondence would have been made by Shaikh Wajid with the bank or police, but there is no such record. This Court has no hesitation to observe that it is nothing, but

exaggeration, an attempt to pressurise every relative of husband by Summaiya and her close relative Shaikh Wajid. Many proceedings are filed by them against husband and his relatives. This Court has no hesitation to hold that proceeding No. 773/2013 has no substance and it is not possible to achieve anything by making investigation of that complaint. Thus, the criminal application filed for challenging the proceeding No. 773/2013 needs to be allowed.

9) As already observed, there is one proceeding bearing No. 774/2013 and there is another proceeding having F.I.R. No. 36/2013 for the same offence. For the offence punishable under section 498-A of IPC, Summaiya has made eleven accused persons. Similarly, for the offence of trespass and offence punishable under section 452 of IPC, she has made seven accused. Even distant relatives of husband are made accused. In view of these circumstances and separate residences of other accused from the residence of husband of Summaiya, this Court holds that it is not desirable to allow the prosecution to go on or to allow the investigation to go on as against the relatives of the husband from both the proceedings. The proceedings can be allowed to go ahead as against husband and his parents. So, the following order :-

ORDER

(I) Criminal Application No. 5994/2013 of applicant Nos. 4

to 7 is allowed. Relief is granted to them in terms of prayer clause 'A'. The application of remaining applicants i.e. applicant Nos. 1 to 3 stands dismissed. Rule is made absolute in those terms.

(II) Criminal Application No. 1488/2014 filed by husband Mohd. Irfan in respect of proceeding bearing No. 773/2013 registered for the offences punishable under sections 379, 420, 34 etc. of IPC pending before the C.J.M., Parbhani stands quashed and set aside. However, other reliefs claimed in respect of proceeding No. 774/2013 filed for offence punishable under section 498-A, 34 etc. of IPC and under the provisions of Dowry Prohibition Act stands dismissed. Rule is made absolute in those terms.

(III) Criminal Application No. 1818/2014 of applicant Nos. 3 to 10 is allowed and the application of applicant Nos. 1 and 2 stands dismissed. Relief is made absolute in favour of applicant Nos. 3 to 10 in terms of prayer clause 'A' for quashing of the F.I.R. No. 46/2013.

(IV) Criminal Application No. 6271/2014 is disposed of.

(V) Interim relief is vacated. The request of continuation of interim relief is rejected.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/