

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

CRIMINAL APPLICATION NO.2309 OF 2018

1. Mohd. Ibrahim Sahebali Shaikh, **...APPLICANTS**
[wrongly referred as Mohd. Ibrahim
Mohd.Ali Shaikh in First Information Report]
Aged:-74 years, Occu:- Retired,
R/o. Behind Jama Masjid, Subhedar
Wasti, Ward No.2, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar
2. Mrs. Azmat Fatima Mohd. Ibrahim Shaikh,
Age:-65 years, Occu:- Household,
R/o. As Above
3. Dr. Nikhat Rafik Shaikh,
Age:-46 years, Occu:-Medical Practice,
R/o. Medshi, Tq. Malegaon,
Dist. Washim
4. Mrs.Aasma Atik Shaikh,
Age:-40 years, Occu-Service,
R/o. House No.6-30/B/1,
Darga Road, Near National Chowk,
Haft Gumbad, Gulbarga,
GBN Gunj, Karnataka
5. Mateen Ibrahim Shaikh,
Age:-43 years, Occu:-Business,
R/o.Behind Jama Masjid, Subhedar
Wasti, Ward No.2, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar
6. Mubeen Ibrahim Shaikh,
Age:-48 years, Occu-Teacher,
House No.D-13, Fatima Housing

Society, Ward No.1, Tq. Shrirampur,
Dist. Ahmednagar

7. Mrs.Nishat Mateen Shaikh,
Age:-30 years, Occu:-Household,
R/o. Behind Jama Masjid, Subhedar
Wasti, Ward No.2, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar
8. Miss. Sana Afreen Rafik Shaikh,
Age:-19 years, Occu:-Education,
R/o. Medshi, Tq. Malegaon,
Dist. Washim

VERSUS

1. The State of Maharashtra ...**RESPONDENTS**
Through in-charge
Shrirampur City Police Station,
Tq. Shrirampur, Dist. Ahmednagar
2. Mrs.Rifat Mohsin Shaikh,
Age:-28 years, Occu-Medical Practitioner,
R/o.Sanjivani Hospital, Waje Aali,
Narayangaon, Tq. Junnar,
Dist. Pune

Mr.V.D.Sapkal, Advocate for the applicants
Mr.S.B.Joshi, APP for the respondent/State
Mr.Gaurav L. Deshpande, Advocate for respondent No.2

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

**RESERVED ON : 05.10.2018
PRONOUNCED ON : 11.10.2018**

J U D G M E N T [PER: S.M.GAVHANE, J.]

. Rule. Rule made returnable forthwith. With the consent of the learned counsels for the parties the application is heard finally at the admission stage.

2. By this application under section 482 of code of Criminal Procedure applicant Nos. 1 to 8 original accused Nos. 2 to 9 against whom and one Mohsin Shaikh who is arrayed as accused No.1, the First Information Report bearing No.508/2018 dated 28.07.2018 for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code (for short 'the IPC') has been registered with the City Police Station, Shrirampur, Dist. Ahmednagar on the complaint of respondent No.2/complainant Rifat W/o. Mohsin Shaikh, have requested to quash and set aside the said FIR to their extent.

3. Mr. Sapkal, learned counsel for the applicants submitted that respondent No.2 got married with Mohsin Shaikh on 14.12.2013. At the time of marriage both respondent No.2 and Mohsin Shaikh had completed their MBBS Course. Mohsin

Shaikh is pursuing his Post-Graduation in DMRE at Dhule. Respondent No.2 was admitted in Pravaranagar Medical College for DGO course from 01.02.2014. She passed the said course on 31.01.2016. Both respondent No.2 and her husband Mohsin Shaikh-accused No.1 are Doctors.

4. Mr. Sapkal, learned counsel for the applicants further submitted that applicant No.1 and 2 are respectively father-in-law and mother-in-law of respondent No.2. Applicant Nos. 3 and 4 are the married sister-in-laws of respondent No.2. Applicant Nos. 5 and 6 are brother-in-laws of respondent No.2. Applicant No.7 is wife of applicant No.5 and applicant No.8 is daughter of applicant No.3.

5. It is further submitted that applicant No.3 is a Doctor and she is holding DHMS Degree. She is married with Rafik Chandbhai and she resides with her husband at Medshi, Tq. Malegaon, Dist. Washim. Applicant No.8 is daughter of applicant No.3 and permanent resident of Medshi, Tq. Malegaon, Dist. Washim. She is prosecuting her studies in MBBS Course at G.S. Medical College, Mumbai. Applicant No.4 is also married and she is M.A.D.Ed and teacher

by profession and she resides with her family having two daughters and a son at Gulbarga (Karnataka State).

6. Learned counsel for the applicants submitted that applicant No.6 Mubeen Ibrahim Shaikh elder brother-in-law of respondent No.2 is Electronic Engineer and he is already separated from his family and he is residing at Fatema Housing Society, Ward No.1, Shrirampur since 2013 with his wife Sabana and four kids. According to the learned counsel applicant Nos.3 and 4 sister-in-laws of respondent No.2 are not residing at Shrirampur where the incident as alleged in the FIR has taken place and they are residing with their families at their matrimonial houses. Moreover, applicant No.3 is doing medical practice at Medshi, Tq. Malegaon, Dist. Washim. Moreover, applicant No.8 daughter of applicant No.3 is prosecuting her study at Mumbai. According to the learned counsel for the applicants even if applicant No.6 is residing separate and applicant Nos.3,4 and 8 are not residing at Shrirampur they have been involved by respondent No.2 with a view to harass them only because they are relatives of her husband Mohsin Shaikh. Learned

counsel submitted that allegations made in the FIR that since 14.12.2013 to 25.04.2016 when respondent No.2 was residing in the family of her husband Mohsin Shaikh at Shrirampur she was ill-treated on account of demand of gold and cash amount are general allegations and they are vague in nature. It is submitted that husband of respondent No.2 issued notice on 19.05.2018 through Advocate to respondent No.2 claiming divorce from her. Respondent No.2 submitted her reply on 14.06.2018 to said notice. Husband of respondent No.2 had given reply on 19.07.2018 to the reply notice dated 14.06.2018 given by respondent No.2. Mother of respondent No.2 is a Lawyer by profession. As the dispute between respondent No.2 and her husband started for the purpose of divorce mother of respondent No.2 misled respondent No.2 and therefore, the present FIR making omnibus allegations has been filed by respondent No.2 involving all the family of her husband to harass them. It is submitted that respondent No.2 was studying in Pravaranagar Medical College from 01.02.2014 till April, 2016 and therefore, allegations in the FIR are self-contradictory. Learned counsel further submitted that purposeful involvement of distant relatives of

husband of respondent No.2 clearly shows her intention to harass all the relatives of her husband. It is submitted that considering the period of alleged ill-treatment i.e. 14.12.2013 to 25.04.2016 it is clear that FIR has been belatedly lodged when the husband of respondent No.2 has given notice to her. It is submitted that there are no specific allegations against the applicants and even if there are specific allegations those are only with intention to cause harassment. According to the learned counsel continuing criminal prosecution against the applicants would be misuse of legal process and therefore, it is just to quash the FIR.

7. Mr. Sapkal, learned counsel for the applicants has relied upon the following decisions to support his submissions:

1. In the case of Geeta Mehrotra and another Vs State of U.P. and another AIR 2013 Supreme Court 181 the respondent No.2-complainant wife of Ramji Mehrotra lodged FIR against her husband, his mother, brother and unmarried sister for the offences under Sections 498-A, 323, 504 & 506 read with Section 3/4 of the Dowry Prohibition Act. The brother and sister of husband of complainant filed application under

Section 482 of the Criminal Procedure Code in the High Court, Allahabad for quashing the order of Magistrate taking cognizance against them on the ground of lack of jurisdiction and absence of prima facie case against appellants. The High Court disposed of the said application observing that question of territorial jurisdiction cannot be properly decided by the High Court under Section 482 of the Criminal Procedure Code for want of adequate facts. However, the High Court granted liberty to the appellants to move before the trial Court and if the appellants moved application before the trial Court, the trial Court was directed to dispose of the said application within a period of two months from the date of moving the application. The appellants in spite of the liberty granted to them to move the trial Court, have filed this appeal for quashing the proceedings which had been initiated on the basis of FIR lodged by respondent No.2 by Special leave in the Supreme Court. The Hon'ble Supreme Court observed in paragraph Nos. 18,19,26 and 27 thus:

18. Insofar as the plea of territorial jurisdiction is concerned, it is no doubt true that the High Court was correct to the extent that the question of territorial jurisdiction could be decided by the trial Court itself. But

this ground was just one of the grounds to quash the proceedings initiated against the appellants under Section 482, Cr.P.C. wherein it was also alleged that no prima facie case was made out against the appellants for initiating the proceedings under the Dowry prohibition Act and other provisions of the IPC. The High Court has failed to exercise its jurisdiction in-sofar as the consideration of the case of the appellants are concerned, who are only brother and sister of the complainant's husband and are not alleged even by the complainant to have demanded dowry from her. The High Court, therefore, ought to have considered that even if the trial Court at Allahabad had the jurisdiction to hold the trial, the question still remained as to whether the trial against the brother and sister of the husband was fit to be continued and whether that would amount to abuse of the process of the Court.

19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are not allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference

of the names of the family members in a matrimonial dispute without allegations of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

26. The High Court in our considered opinion appear to have missed that assuming the trial Court had territorial jurisdiction, it was still left to be decided whether it was a fit case to send the appellants for trial when the FIR failed to make out a prima facie case against them regarding the allegation of inflicting physical and mental torture to the complainant demanding dowry from the complainant. Since the High Court has failed to consider all these aspects, this Court as already stated hereinbefore, could have remitted the matter to the High Court to consider whether a case was made out against the appellants to proceed against them. But as the contents of the FIR does not disclose specific allegation against the brother and sister of the complainant's husband except

casual reference of their names, it would not be just to direct them to go through protracted procedure by remanding for consideration of the matter all over again by the High Court and make the unmarried sister of the main accused and his elder brother to suffer the ordeal of a criminal case pending against them specially when the FIR does not disclose ingredients of offence under Section 498-A/323/504/506, IPC and Sections 3/4 of the Dowry Prohibition Act.

27. We, therefore, deem it just and legally appropriate to quash the proceedings initiated against the appellants Geeta Mehrotra and Ramji Mehrotra as the FIR does not disclose any material which would be held to be constituting any offence against these two appellants. Merely by making a general allegation that they were also involved in physical and mental torture of the complainant-respondent No.2 without mentioning even a single incident against them as also the fact as to how they could be motivated to demand dowry when they are only related as brother and sister of the complainant's husband, we are pleased to quash and set aside the criminal proceedings insofar as these appellants are concerned and consequently the order passed by

the High Court shall stand overruled. The appeal accordingly is allowed.

2. In the case of Rameshwar Nivrutti Bingole Vs State of Maharashtra 2017 (4) Bom.C.R.(Cri) 574, FIR under Sections 498-A, 323, 504, 506 read with Section 34 of the IPC was filed by respondent against her husband and in-laws. They have filed application under Section 482 of the Criminal Procedure Code to quash proceeding initiated against them on the basis of said FIR. It was observed that no specific incident or specific overtact is attributed qua each of the applicants. There are general allegations of demand of an amount of Rs.2,00,000/-. Though there are allegations of ill-treatment and beating, nevertheless those are omnibus in nature. It was held that on the basis of such allegation trial cannot proceed further against applicants. However, in view of specific allegations against applicant husband, his application was rejected. In the said case in so far as applicant Nos. 2 to 4 are concerned, no specific incident or specific overtact is attributed qua each of the applicants. There were general allegations of demand of an amount of Rs.2,00,000/-. It was observed that though there are allegations of ill-treatment/harassment and beating, nevertheless those are omnibus in nature and on the basis of such

allegations, the trial cannot proceed further.

3. In the case Madan Shankar Bhivsane and others Vs State of Maharashtra and another 2018 ALL MR (Cri) 2035 the FIR was registered against the applicants Nos. 1 and 2 father-in-law and mother-in-law and applicant Nos.3 and 4 married sister-in-laws of respondent No.2 for the offences under Sections 498-A, 323, 504, 506 read with Section 34 of the IPC with the Cidco Police Station, Aurangabad. In the application filed under Section 482 of the Criminal Procedure Code to quash said FIR against aforesaid applicants this Court has observed that there are casual references to their names and the allegations are general in nature and also the witnesses do not disclosed any offences against the applicants. Further it was observed that FIR is lodged maliciously with an ulterior motive and accordingly application was allowed and the FIR as against the applicants was quashed.

4. In Vimalbai Vanji Patil and others Vs The State of Maharashtra and another Criminal Application No.1363/2018 decided on 29.08.2018 by this Court [Coram:-T.V. Nalawade & Smt. Vibha Kankanwadi, JJ] the respondent No.2 wife of son of applicant No.1 had lodged FIR for the offences punishable under Sections 498-A, 406, 232, 504, 506

read with Section 34 of the IPC against applicants and her husband. Application under Section 482 of the Criminal Procedure Code was filed by the applicants for quashing the said FIR against them. It was observed that married sister of the husband of respondent No.2 was living separate from the husband of respondent No.2 first informant from prior to date of her marriage. Allegations made against them are vague in nature. Though the cousins of the husband of the informant are residents of same village, they are residing at different places and they are not living in the house where the first informant cohabited with her husband. Allegations against them are also vague in nature. It was observed that applicant No.1 mother of the husband of first informant and applicant No.2 wife of the real brother of the husband were living in the house where the first informant cohabited with her husband. Accordingly, application of applicant Nos. 3 to 11 was allowed and relief in terms of prayer clause-B which include the amended prayer of relief of quashing of the charge-sheet filed against said applicants was granted.

8. Mr.Joshi, learned APP submitted that in the FIR role is attributed to all the applicants. Charge-sheet is not yet submitted. Statement of

respondent No.2-complainant recorded before the Dilasa Cell on 10.07.2018 prior to the FIR was made with a view to settle the matter and therefore, it does not help the applicants to state that there is no prima facie case against them.

9. Mr.Deshpande, learned counsel appearing for respondent No.2 submitted that allegations are made against all the applicants as regards unlawful demand of money, gold etc from respondent No.2 as alleged in the FIR and as such role is attributed to all the applicants as regards the offences alleged against them in the FIR sought to be quashed. He also submitted that no importance be given to the statement recorded before the Dilasa Cell to state that there is no prima facie case against the applicants. It is submitted that FIR may not be quashed as requested by the applicants and the application is liable to be rejected. Mr. Deshpande, learned counsel for respondent No.2 has relied upon the decision of the Hon'ble Supreme Court in the Case of Social Action Forum for Manav Adhikar and another Vs Union of India writ petition (civil) no.73/2015 with criminal appeal no.1262/2017, writ petition (criminal) No.156/2017 dated 14.09.2018 on

the approach of exercising inherent jurisdiction under Section 482 of the Criminal Procedure Code.

10. We have considered the submissions of the learned counsel for the applicants, respondent No.2 and learned APP for the respondent/State. We have perused the copies of police papers including FIR and the statements recorded during the course of investigation. We have gone through the copies of documents produced by the applicants.

11. On perusal of complaint/FIR it appears that after her marriage on 14.12.2013 respondent No.2 had come to the house of her husband at Shrirampur for cohabitation. It is alleged that on the next day applicant No.3 younger sister-in-law compelled respondent No.2 to wear Burkha. FIR discloses that on that day there was reception in the night and applicant Nos. 1 and 2 father-in-law and mother-in-law of respondent No.2 said her that her parents have not given the expenses of marriage to them. They have spent huge amount for marriage of their daughter and that she should bring 20 tolas gold, car of Rs.10,00,000/-, expenses of reception from her parents and so also her husband said her to

bring Rs.40,00,000/- expenses of his higher education. Further, it is alleged that on 16.12.2013 her husband abused, threatened and beaten her by hands and took her to Narayangaon and left there. Thereafter, on the request of her parents husband of respondent No.2 took her to Shrirampur on 22.12.2013.

12. It is further alleged in the FIR that thereafter, while respondent No.2 was cohabiting her husband and all the applicants (whose names are disclosed in the FIR) all residents of Shrirampur, Tq.Shrirampur, Dist. Ahmednagar had taken out 14 Tolas gold ornaments on her person which were given to her by her parents and started causing mental and physical cruelty to her saying her to bring 20 Tolas gold, car of Rs.10,00,000/-, expenses of reception and expenses of Rs.40,00,000/- of higher education of her husband from her parents and on saying that she is not doing the work in the house properly. On saying so she was abused, threatened and beaten by the hands, but she was residing there. It is further alleged that while respondent No.2 was cohabiting at Shrirampur her husband said her to sweep varhanda and court yard of the house and she swept the same

and thereafter her husband, father-in-law and mother-in-law and both sister-in-laws had abused, threatened and beaten her by the hands saying that she cannot properly sweep. So also, her husband hit her head on the wall.

13. FIR further shows that thereafter, respondent No.2 was taking education in Pravaranagar Medical College at Loni and she was residing there and when she was coming to her in-laws house on Saturday and Sunday all the family members were taunting her. It is alleged that thereafter on 25.04.2016 when she had come to her in-laws house at Shrirampur with her parents, they were also abused and threatened and told that unless the demand is fulfilled they would not cohabit respondent No.2 and on saying so she was driven out of the house. It is alleged that husband of respondent No.2 and all the applicants/ accused caused cruelty to respondent No.2 for aforesaid demands and demand of Rs.1 Crore to construct hospital at Shrirampur.

14. From the above referred allegations in the FIR prima facie it appears that specific allegations are made against applicant Nos.1 and 2 father-in-law

and mother-in-law of respondent No.2 regarding demand of money, gold and car on 15.12.2013 on the next day of marriage in the nigh of reception.

15. It appears from the record that applicant No.5 brother-in-law of respondent No.2, and his wife applicant No.7 are residing in Ward No.2 Subhedar Wasti, Shrirampur on which address applicant Nos.1 and 2 father and mother of applicant No.5 are residing. Considering the fact that applicant Nos.5 and 7 are residing with applicant Nos.1 and 2 and allegations made against them with other applicants regarding unlawful demand of money and gold from respondent No.2 we prima facie do not find a case is made out for quashing the complaint against them in the light of view taken by this Court in the case of *Vimalbai Vanji Patil (supra)*.

16. Applicant Nos.3 and 4 are married sister-in-laws of respondent No.2. Applicant No.3 is Doctor. She is doing medical practice at her native place Medshi, Tq. Malegaon, Dist. Washim. Documents i.e. copies of certificate issued by Grampanchayat, Aadhar Card and Ration Card show that applicant No.3 is resident of Medshi, Tq. Malegaon, Dist. Washim. So also, Exh.G document shows that her occupation is

Doctor and she is having her own hospital. Similarly, copy of marriage certificate shows that applicant No.4 is resident of Gulbarga (Karnataka State). When applicant Nos. 3 and 4 married sister-in-laws of respondent No.2 are residing at different places as above and applicant No.4 is teacher by profession and applicant No.3 is Doctor and when they are not residing at Shrirampur as alleged by respondent No.2 in the FIR, allegations against them of respondent No.2 that they had demanded money, gold and expenses of education of her husband from her are vague in nature and said allegations are not specific.

17. As regards the applicant No.8 who is daughter of applicant No.3 record shows that her birth date is 27.12.1998. Considering said birth date during 14.12.2013 to 25.04.2016 when alleged incident took place, she was below 17 years. It appears from the certificate of residence that she is permanent resident of Medishi, Tq. Malegaon, Dist. Washim. However, it appears that in 2014-2015 she was studying in the college at Shrirampur. Considering her age in 2013 and allegations in the FIR that she alongwith applicants caused cruelty to

respondent No.2 for demands of money, gold and car which allegations are omnibus in nature and not specific, are not sufficient to state that there is prima facie case against her.

18. As regards applicant No.6 who is younger brother-in-law of respondent No.2 record shows that since 2013 he is residing in the house No.D-13, Fatema Housing Society, Ward No.1, Shrirampur with his family separate from his parents. Therefore, omnibus allegations made against him alongwith other applicants in the FIR are not sufficient to proceed against him.

19. It appears from the record that after her marriage on 14.12.2013 respondent No.2 went to Pravaranagar for further education from 01.02.2014 and she was residing in the hostel. Moreover, as referred earlier according to respondent No.2 applicants have committed the alleged offences during 14.12.2013 to 25.04.2016 however she lodged the complaint in Narayangaon Police Station on 19.07.2018 and after the said complaint was transferred to the Shrirampur Police Station FIR came to be registered against the applicants and

husband of respondent No.2 on 28.07.2018. Thus, if the period of alleged offences and date of complaint/FIR is considered there appears considerable delay even in lodging the complaint against the applicants.

20. For all the reasons discussed herein above and considering the allegations in the FIR and the statements of witnesses, we find that the allegations against applicant Nos. 3,4, 6 and 8 are general in nature and said applicants are not residing with the husband of respondent No.2 in his family and applicant Nos. 3 and 4 are married sisters of the husband of respondent No.2 and therefore continuation of FIR and criminal proceeding against applicant Nos. 3,4,6 and 8 would amount to abuse of process of law and they would be unnecessarily harassed. Therefore, the FIR in question needs to be quashed to the extent of these applicants and it cannot be quashed as against applicant Nos. 1,2,5 and 7. Therefore, application needs to be partly allowed.

21. We make it clear that the observations made herein above are prima facie in nature for the

purpose of deciding this application only.

22. In light of above we pass the following order:

ORDER

1. The application is partly allowed to the extent of applicant Nos. 3,4,6 and 8.

2. FIR bearing No.508/2018 registered in the City Police Station, Shrirampur against applicant No.3-Dr.Nikhat Rafik Shaikh, applicant No.4-Mrs.Aasma Atik Shaikh, applicant No.6-Mubeen Ibrahim Shaikh and applicant No.8-Miss.Sana Afreen Rafik Shaikh for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the IPC is quashed and set aside.

3. Request of applicant No.1-Mohd. Ibrahim Sahebali Shaikh, applicant No.2-Mrs.Azmat Fatima Mohd. Ibrahim Shaikh, applicant No.5-Mateen Ibrahim Shaikh and

(24)

criapl2309.18

applicant No.7-Mrs.Nishat Mateen Shaikh to quash the aforesaid FIR against them is rejected.

4. Rule is made absolute in aforesaid terms.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]