

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 83 OF 2019

1. Sameer s/o Pandurang Phule,
Age. 34 years, Occ. Agriculture.
R/o : “Spandan Niwas”,
Plot No. 3, P – Sector, Utkarsh H. Society,
N-11, CIDCO, Aurangabad.
2. Durgabai Pandurang Phule,
Age. Major, Occ – Household
R/o - “Spandan Niwas”,
Plot No. 3, P – Sector, Utkarsh H. Society,
N-11, CIDCO, Aurangabad.
3. Pandurang Jaysing Phule
Age. Major, Occ – Household
R/o - “Spandan Niwas”,
Plot No. 3, P – Sector, Utkarsh H. Society,
N-11, CIDCO, Aurangabad.

... Applicants

Vs.

1. The State of Maharashtra,
Through the Incharge Police Station
Officer, Harsul, Police Station,
District – Aurangabad.
2. Neha w/o Sameer Phule,
Age 28 years, Occu. Housewife
& student, R/o – Plot No. 20,
Prasanna H. Society, Jatwada
Road, Radhaswami Colony,
Harsul, Aurangabad.

... Respondents

Advocate for the Applicants : Mr. P. R. Katneshwar
APP for the Respondent – State : Mr. D. S. Jape
Advocate for the Respondent No. 2 : Mr. A. T. Jadhavar

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ
DATE : 18TH JUNE, 2019.**

ORAL JUDGMENT [PER K. K. SONAWANE, J.]

Heard. Rule made returnable forthwith. Matter is taken up for finality on merit with the consent of learned counsel for the parties.

2. The applicants moved present application u/s 482 of Cr.P.C., seeking relief to quash and set aside the penal proceeding bearing FIR No. 186 of 2018 registered at Harsul Police Station, District Aurangabad u/s 498-A, 494, 323, 504, 506 read with Section 34 of IPC, initiated against the applicants .

3. The prosecution case in nutshell is that the complainant Neha Samir Phule on 26/9/2018 approached to Harsul Police Station and filed the report that her marriage was solemnized with applicant No. 1 Samir on 11th May, 2011 as per Hindu rites. After marriage, she joined the company of Husband for cohabitation. It has been alleged that within a month of marriage, her husband

Samir came to the house in an inebriated condition and divulged to the complainant wife that he did not like her. But she remained in the company of her husband for the sake of her parents. According to complainant, on 19.9.2011 when she was returning home from MIT College, CIDCO, at that time she met with an accident. There was fracture injury caused to her left hand. It has been alleged that her left hand was not completely recovered from injury and on that count, she was subjected to maltreatment and harassment by her husband and in-laws. They used to torture her on flimsy grounds. They used to say that her injured hand was looking shabby. When the complainant had been to her parents house, she disclosed about her ordeals to her parents. They had given understanding to her and send back for cohabitation at matrimonial home. But the husband and in-laws were reluctant to allow her for cohabitation. They started suspecting her character. They were insisting to get mutated the 0.22 R agricultural land in the name of her husband. Eventually, fed up with the maltreatment and harassment, she approached to the Police and filed the report for taking action against them.

4. Pursuant to FIR, police registered the crime No.186 of

2018 u/s. 498-A, 494, 323, 504, 506 read with Section 34 of IPC and set the penal law in motion. Pending investigation, the applicants preferred the present application, for quashing the penal proceeding filed against them.

5. Learned counsel for applicants submit that the applicants are innocent of the charges pitted against them. They have not committed any crime. But they are falsely implicated in this crime. The respondent – wife filed the impugned FIR only to harass the applicants. According to learned counsel, the respondent – wife was insisting the husband to reside separately from in-laws and therefore, she used to pick up quarrels with the husband. The complainant – wife also initiated maintenance proceedings against the applicant – husband and as per the order of Court, the applicant husband has deposited in all Rs.3.57 lakhs in the Court towards maintenance for the wife.

6. In regard to allegations of transfer of agricultural land, learned counsel drawn attention towards the litigation filed by the complainant bearing RCS No. 514 of 2016 against the husband for partition and separate possession. Therefore, no question arises for maltreatment to the wife for agricultural land. The learned counsel

submits that there is no substance in the allegations made by respondent – wife in the impugned FIR.

7. Learned counsel for the respondent No.2 and the learned APP for the State of Maharashtra raised objection and submits that the complainant described the entire episode of maltreatment and harassment to her on the part of applicant – husband. There were Court litigation under the Domestic Violence Act and Hindu Marriage Act, etc. filed in the Court of law on behalf of spouses. The circumstances indicate cruelty and maltreatment to the respondent – wife. Therefore, it would unjust and improper to cause interference by exercising powers u/s 482 of Cr.PC to quash and set aside the impugned FIR.

8. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also perused the FIR lodged by the respondent wife against the applicants. Admittedly, the marriage of respondent wife with the applicant No.1 Samir was solemnized in the month of July, 2011 and since then, she was in the company of the applicants for co-habitation. The applicant Nos. 2 and 3 are the in-laws of complainant Neha. We have also perused

the petition filed by the complainant Neha against applicants under Domestic Violence Act. There were allegations about the maltreatment and harassment as well as demand of money from the complainant Neha. In the petition filed by Neha, under the Domestic violence Act, the learned Magistrate considered the contentions propounded on behalf of applicants and respondent wife and allowed the petition. The learned Magistrate granted maintainance as well as other monetary benefits to the complainant – Neha. The applicant Samir also preferred an application under Section 9 of the Hindu Marriage Act for restitution of Conjugal Rights, but he did not pursue the petition. Eventually, it came to be dismissed in default for want of prosecution.

9] The respondent – wife also initiated proceeding under Section 13(1) of the Hindu Marriage Act for dissolution of marital relations. In all those proceedings, the respondent -wife cast allegations about the maltreatment and harassment by the applicants. In such circumstances, we are of the opinion that there is no propriety to quash and set aside the impugned FIR in exercise of inherent powers under Section 482 of Cr.P.C. It cannot be said

that the penal proceeding initiated on the basis of impugned FIR would be an abuse of process of law. There are specific allegations made in the FIR against the applicants for the charges pitted against them. Therefore, the petition being devoid of merit deserves to be dismissed.

In sequel, the application stands dismissed.

[K.K. SONAWANE]
JUDGE.

[T. V. NALAWADE]
JUDGE

grt/-