

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

CRIMINAL APPLICATION NO. 319 OF 2019

1. Awinash Shriram Waskar,
Age: 30 years, Occ. Service
2. Abhijeet Shriram Waskar,
Age: 25 years, Occu. Service
3. Bharati Shriram Waskar,
Age: 58 years, Occu. Household
All residing at: Vasantkirti Bungalow,
Policeline, Savedi-naka, Ahmednagar,
Tq. & Dist. Ahmednagar.

... **Applicants**

Versus

1. The State of Maharashtra,
Through,
The Inspector of Police,
Police Station Tophkana,
Tq. & Dist. Ahmednagar.
2. Neha Awinash Waskar,
Age: 24 years, Occ. Nil,
Residing at Tatya Nagar, Dwip Society,
Near Croma Showroom, Flat No.17,
College Road, Nashik,
Tq. & Dist. Nashik.

... **Respondents**

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Mrs. S. G. Sonawane, Advocate for the Applicants.

Mr. M.M. Nerlikar, A.P.P. for Respondent no.1-State.

Mr. Jaydeep Chinchin, Advocate for Respondent No.2 (Appointed).

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**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.
DATE : 22.04.2019**

JUDGMENT :- (Per: *Mangesh S. Patil, J.*)

Heard. Rule. Rule is made returnable forthwith. The learned A.P.P. waives service for the respondent no.1. Learned advocate Mr. Jaydeep Chinchani waives service for the respondent no.2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The applicants are seeking quashment of Crime No.431 of 2018 registered with Topkhana Police Station, Ahmednagar for the offences punishable under Section 323, 324, 504, 506 read with Section 34 of the Indian Penal Code.

3. By the order dated 05.03.2019 this Court has rejected the application to the extent of the applicant no.1 and the matter is to be considered only to the extent of the applicant nos. 2 and 3.

4. The F.I.R. was lodged by the respondent no.2 who happens to be the wife of the applicant no.1 alleging that on 15.05.2018 the applicant no.1 came home under influence of liquor at 11.30 p.m. Even after coming home he took out a liquor bottle. When she opposed he slapped her on the ear and threatened her of dire consequences. On 17.08.2018 she went back to her parental home and consulted a doctor who diagnosed that there was a tear to tympanum. She alleged that the incident had occurred at the instigation of the

applicant nos. 2 and 3 who are the brother and mother of the applicant no.1.

5. We have carefully perused the papers. As can be seen from the F.I.R., basically the allegations are levelled by the respondent no.2 only against her husband i.e. the applicant no.1 about an incident which took place on 15.05.2018 at 11.30 p.m. when he slapped her on the ear, when she tried to dissuade him from having liquor. It is only by way of a bald statement that she has alleged that the incident had occurred at the instigation of the applicant nos. 2 and 3, without giving any particulars as to the manner in which such exhortation was done.

6. It is important to note that it is not a matter of cruelty as defined under Section 498-A of the Indian Penal Code and the offence has been registered simplicitor under Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code. The F.I.R. nowhere mentions that the applicant nos. 2 and 3 were present when the incident had occurred so as to attract and attribute the principle of sharing of common intention under Section 34 of the I.P.C. On the contrary the F.I.R. itself reads that the couple i.e. applicant no.1 and the respondent no.2 were staying separately from his parents. The F.I.R. also does not specifically mention that the applicant nos. 2 and 3 were present when the incident had taken place.

7. Taking into account all these aspects, in our considered view, it

would be an exercise in futile if even the applicant nos. 2 and 3 are made to face the investigation and a possible charge, based on such bald and vague allegation. Their case is squarely covered by category nos. 1 and 3 from the case of **State of Haryana and Ors. V/s. Bhajan Lal and Ors.; AIR 1992 SUPREME COURT 604.**

8. The Criminal Application is allowed to the extent of applicant nos. 2 and 3 in terms of prayer clause '2'.

9. The Rule is made absolute to that extent.

10. The fees of the learned advocate for the respondent no.2 who is appointed by this Court to represent her is quantified at Rs.3000/- which should be paid through the High Court Legal Services Authority.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]