

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

CRIMINAL WRIT PETITION NO. 358 OF 2018

1. Raju Shridhar Rakh,
Age:34 Years, Occu.- At present Nil,
R/o.: Chetan Lahanu Bhangale,
Flat No.5, Bhangale Building-A,39,
Pimple Gurav, Pune.
 2. Shridhar Shivram Rakh,
Age:66 Years, Occu.:Retired
 3. Kaushalya shridhar Rakh,
Age 57 years, Occ.: Household
Both Resp. No.2 & 3 R/o.: At Post Godegaon,
Tq. Ambegaon, Dist. Pune
 4. Rupali W/o Vijay Sanap,
Age 29 years, Occ.:Household,
R/o.: Nagarkar Chal, Vijay Stores,
Ramchandra Nagar,
Near Kaamgar Hospital, Thane.
 5. Vijay Shridhar Rakh,
Age 32 years, Occ. : Service,
R.o.: Building No.C-01, Flat No.1204,
Haware Nirmitti, Plot No.15, Sector 22, Mumbai.
 6. Babasaheb Dnyanoba Garje,
Age 52 years, Occ.: Service,
R/o.: Shama Heritage, Keshavnagar, Chinchwad,
Pune.
- ... **Petitioners**

Versus

1. State of Maharashtra,
Through Police Station Inspector,
Shirur Kasar, District - Pune.
2. Priyanka Raju Rakh,

Age 25 years, Occ. Service,
R/o.:C/o.: Ashok S. Khedkar,
Flat No. 201, Sai Balaji Apartment,
2nd Floor, B Wing, Gut No. 1361,
Hissa No.B/2/1, Kavde Vasti,
Near T.W.S. Godown, Pune Nagar Road,
Wagholi, Pune 412 207.

... **Respondents**

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Mr. Navandar Mehul Vikas, Advocate for the Petitioners.
Mr. M.M. Nerlikar, A.P.P. for respondent no.1-State.
Mr. M.V. Ghatge, Advocate for Respondent No.2

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**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**
DATE : 11.03.2019

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

Leave granted to amend the proceeding so as to add the relief for quashing of the charge-sheet since the charge-sheet has been filed interregnum. The amendment to be carried out immediately.

2. Heard. Rule. Rule is made returnable forthwith. The learned A.P.P. waives service for the respondent no.1. Learned advocate Mr. M.V. Ghatge waives service for the respondent no.2.

3. The petitioners are praying to quash the F.I.R. in Crime No.291 of 2017 registered with Shirur Kasar Police Station, District Beed for the offences punishable under Section 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code. It is filed by the respondent no.2 who is the wife of the

petitioner no.1. The petitioner nos. 2 and 3 are his parents, whereas the petitioner no.4 is his married sister, petitioner no.5 is his brother and the petitioner no.6 is his maternal uncle.

4. The F.I.R. was filed on 19.11.2017 alleging that the couple was married on 08.02.2015. For initial period she co-habited with the petitioners at Hajipur. Thereafter, since the petitioner no.1 got a job as an Accounts Manager at Pune all of them started staying at Pune. She was maintained properly for first six months. But thereafter they started demanding her money for purchasing a flat. She was subjected to ill-treatment on that count. She was physically and mentally tortured. Therefore, she went back to her parents. She stayed with her parents for three months. Thereafter, her father was able to convince the petitioners. However, the demand for money as well as ill-treatment on that count continued. On 10.08.2017 she was driven out from the house.

5. The learned advocate for the petitioners submits that the F.I.R. is a figment of imagination. At no point of time any demand for money was raised nor was the respondent no.2 subjected to any ill-treatment. The allegations are vague and omnibus. In fact the couple was staying separate from rest of the petitioners who were staying at different places and were not co-habating with the petitioner and respondent no.2. The F.I.R. has been

lodged belatedly roping in all the family members. The crime has been registered without holding any preliminary enquiry and therefore the crime as well as the charge-sheet filed pursuant thereto may be quashed and set aside.

6. The learned advocate for the petitioner would further submit that the respondent no.2 was having an extra marital affair with one Sanket and when the petitioner no.1 questioned her about it after having seen the messages she got annoyed and assaulted him. Because of such attitude he had to leave the job as he was mentally disturbed.

7. The learned advocate also submitted that it is a matter of matrimonial dispute. It is being stretched unnecessarily and the F.I.R. has been lodged with an oblique motive to harass the husband and his relatives. A marriage petition for divorce was also lodged by him and although it has been dismissed the petitioner no.1 has preferred an appeal which is pending.

8. The learned advocate for the respondents and the learned A.P.P. oppose the petition. The learned advocate for the respondent no.2 submits that at this juncture there is nothing on record to demonstrate that the F.I.R. was lodged out of vengeance. She has specifically alleged as to how there was a demand for money by all the petitioners and as to how she was subjected to ill-treatment on that count. He would further point out as to how an amount of Rs. Two Lakh was paid by her father and his bank statement corroborates

the fact.

9. The learned advocate for the respondent no.2 further denied that she was having any affair. He denied that there were any exchange of messages and thus prayed to dismiss the petition.

10. We have carefully considered the rival submissions as well as the F.I.R. the notice and the reply exchanged between the parties, affidavit-in-reply of the respondent no.2 as well as the papers of the investigation. Suffice for the purpose to begin with a reference to the decision of the Supreme Court in the case of Raghuvir Vs. The State of Maharashtra; 2018 All MR (Cri) 4055 (S.C.). It was a case where the couple was married in the year 2011 and the F.I.R. was lodged by the wife after 10 months of leaving the matrimonial home and after four months of filing of the divorce petition by the husband. The allegations were bald and vague and it was found that the F.I.R. was lodged as a counter blast to divorce proceeding and consequently it was held that the fact situation was covered by category no. 7 laid down in the case of State of Haryana and Ors. V/s. Bhajan Lal and Ors.; AIR 1992 SUPREME COURT 604. However, in the matter in hand, the fact situation is not exactly similar. The F.I.R. has been lodged on 19.11.2017. Going by the allegations, there was a demand for money after six months of the marriage. The marriage was solemnized on 08.02.2015. She was driven out from the

house on 10.08.2017 and apparently the F.I.R. was lodged three months thereafter. The petitioner had served the respondent no.1 with a notice through his advocate on 14.01.2017 (Exhibit-B) which was duly replied by her by her reply (Exhibit-C) on 03.03.2017. Conspicuously, in her such reply she has levelled allegations only against the petitioner no.1 who is her husband and his parents i.e. the petitioner nos. 2 and 3. Conspicuously, no allegations have been made in this reply against the petitioner nos. 4 to 6.

11. True it is that the petitioner no.1 had filed Hindu Marriage Petition No.296 of 2018 in the month of February 2017 and the F.I.R. has been lodged in the month of November 2017. However, it is pertinent to note that going by the contents of the notice dated 14.01.2017 served by the petitioner no.1 to the respondent no.2, that there was a bickering between the couple. He was suspecting her character. He has also narrated various other episodes which show his version as to the marital discord. The allegations are suggestive of the fact that indeed there were matrimonial disputes and admittedly the petition for divorce was dismissed, albeit the petitioner no.1 has preferred an appeal.

12. As far as the allegations being levelled against the respondent no.2 about her extra marital relations, the learned advocate for the petitioners tendered across the bar some photo copies of the text messages. However,

neither in the petition nor by any other mode the petitioners have explained as to how they could lay hands on these texts if at all those were exchanged by the respondent no..2 with the alleged paramour. Even the learned advocate on a query put by the Court is unable to come out with any explanation about it.

13. Considering all the aforementioned facts and circumstances, there are sufficient and cogent allegations revealing complicity of the petitioner nos.1 to 3 who are husband and parent-in-laws of the respondent no.2 which clearly disclose *prima facie* the offences alleged against them in the F.I.R. However, there are no concrete allegations against the petitioner nos. 4 to 6 either in the F.I.R. or in the reply to the legal notice by her dated 03.03.2017.

14. Even the statements recorded during investigation, of her parents Ranjana Ashok Khedkar and Pandurang Sheshrao Khedkar are equally vague and omnibus qua the petitioner nos. 4 to 6. There is a statement of one Popat Murlidhar Khedkar about all the petitioners having slapped the respondent no.2. However even his statement is vague and does not specifically attribute any precise overt act on the part of any of the petitioner nos. 4 to 6. Therefore, the petition deserves to be allowed only partly. The case of the petitioner nos. 4 to 6 is duly covered by the category 1, 3 and 7 of the case of **Bhajan Lal** (supra).

15. The Writ Petition is accordingly partly allowed. The F.I.R. in Crime No.291 of 2017 and the charge-sheet filed pursuant thereto as against the petitioner nos. 4 to 6 is quashed and set aside.

16. The petition to the extent of the petitioner nos. 1 to 3 is dismissed.

17. The Rule is accordingly made absolute in the above terms.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]