

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

CRIMINAL APPLICATION NO. 1938 OF 2019

1. Mujatabad Khan S/o Liyakat Khan
Age : 24 years, Occ – Service.
2. Liyakat Khan s/o Namdar Khan
Age : 55 years, Occ – Service/Retired
3. Jamila Begum w/o. Liyakat Khan
Age : 51 years, Occ – Household
All above R/o. Near shahbazar Kali Masjid,
Shahbaza, Tal & District Aurangabad.
4. Tarranum W/o Imran Shaikh
Age – 32 Years, Occ – Household
R/o. Lane No. 1, Near Sikandar Park, Maqsood
Colony, Tal & District Aurangabad.
5. Anjum W/o Yasar Khan
Age – 34 years, Occ – Household
R/o. K-113, Cidco Corner, Bajrang Colony,
N-7, Tal & District Aurangabad.
6. Imran Shaikh s/o Habib Shaikh
Age : 35 years, Occ – Business
R/o. Lane No. 1, Near Sikandar Park, Maqsood
Colony, Tal & District Aurangabad.

**...APPLICANTS
(Ori. Accused)**

VERSUS

1. The State of Maharashtra
Through Investigating Officer,
City Chowk Police Station,
Aurangabad, District – Aurangabad.

2. Sana Naaz Khan W/o. Mujtaba Khan
Age : 22 years, Occ- Household
R/o. Besides Fatema Girls High School,
Kaisar colony, Tal & District Aurangabad. ... **RESPONDENTS**

Mr. A. P. Avhad, Advocate for the applicants
Mr. D. R. Kale, APP for respondent No. 1
Mr. S. G. Deshmukh (Appointed), Advocate for respondent No. 2.

**CORAM : T. V. NALAWADE &
S.M. GAVHANE, JJ.**

DATED : 15-11-2019

ORAL JUDGMENT (PER :- S.M. GAVHANE, J.)

. Rule. Rule made returnable forthwith, heard finally with the consent of the parties.

2. By this application under Section 482 of the Code of Criminal Procedure applicants-accused Nos. 1 to 6 against whom crime No. 78/2019 has been registered in City Chowk Police Station, Aurangabad for the offences punishable under Sections 498(A), 323, 504, 506 read with Section 34 and under Sections 3 and 4 of the Dowry Prohibition Act, have prayed to quash and set aside the said FIR as well as charge sheet No. 109/2019 in terms of prayer clause (B).

3. Mr. Avhad, learned Advocate for the applicants after this Court was not inclined to grant relief to applicants No. 1 to 3, stated that these applicants are withdrawing the application and application be disposed of to the extent of these applicants.

4. Mr. Avhad, learned Advocate submitted that there is no dispute that respondent No. 2 was married to applicant No. 1 on 25/05/2016 and after marriage she came to the house of applicants No. 1 to 3 for cohabitation. Admittedly applicants No. 2 and 3 are father and mother of applicant No.1, applicants No. 4 and 5 are married sisters of applicant No. 1 and applicant No. 6 is husband of applicant No. 4. Learned Advocate submitted that in the FIR lodged on 28/02/2019 respondent No. 2 alleges that after three months of her marriage her husband and in-laws started ill-treating her on account of demand of Rs. 5,00,000/- for construction of house and her husband assaulted her and her in-laws ill-treated her saying that she was not able to do household work properly. It is alleged that she was insulted in front of people. It is further alleged that applicants No. 4 and 5 forced the respondent No. 2 to do the household work and she was not given food.

It is also alleged that when respondent No. 2 was pregnant, applicants told her that they do not want any child and she was asked to abort. Moreover, applicant No. 6 allegedly used to tell respondent No. 2 that she does not prepare food on time and thus she was ill-treated. It is submitted that applicants No. 4 to 6 are not residing with applicant No. 1. The houses of these applicants are at different places from the house of applicants No. 1 to 3. Respondent No. 2 was insisting her husband for separate residence and thus applicant No. 1 started residing separately with the respondent No. 2. Respondent No. 2 suddenly left the company of applicant No. 1. The allegations made against applicants No. 4 to 6 in the FIR regarding harassment to respondent No. 2 are vague and they are not specific. Therefore, as these applicants are not residing with applicant No. 1, the alleged offences are not attracted against them. It is submitted that the FIR and the proceeding initiated on the basis of FIR at the instance of respondent No. 2 are amounting to misuse of process of law and the charge sheet filed against the applicants is just to harass them. It is submitted that both FIR and charge sheet are liable to be set aside by allowing the application.

5. Mr. Deshmukh, learned Advocate appointed for respondent

No. 2 and Mr. Kale, learned APP for respondent No.1-State submitted that on the basis of allegations made in the FIR offences alleged against the applicants are made out and therefore there is no reason to quash and set aside the FIR and the charge sheet as submitted by the learned Advocate for the applicants. Accordingly, they have claimed to dismiss the application.

6. We have carefully considered the submissions made by the learned Advocate appearing for the applicants, respondent No. 2 and the learned APP and we have gone through the documents produced alongwith the application by the applicants.

7. On perusal of the FIR lodged by respondent No. 2 on 28/02/2019 it is seen that she was married to applicant No. 1 on 25/05/2016 and she has one son Mobeen aged 2 years from the said wedlock. FIR shows that after marriage when she went to house of applicant No. 1 for cohabitation applicants No. 1 to 3 and applicant No. 6 husband of her sister-in-law applicant No. 4 treated her properly for three months and thereafter her husband used to abuse, beat and threat to kill her, he was not providing her food on time. He also sold

her gold and silver ornaments of Rs. 50,000/- he used to say her to bring Rs. 5,00,000/- for construction of house from her parents and thus used to cause mental and physical cruelty to her. FIR further shows that her mother-in-law-applicant No. 3 was also abusing, beating and threatening to kill her on trifle reasons and she was also abusing and beating her suspecting her character. Mother-in-law was also starving her. It is seen that applicant No. 2 father-in-law of respondent No. 2 was also abusing, insulting and threatening to kill her saying her that she does not know the household work and he was also not providing sufficient food to her and demanding Rs. 5,00,000/- for construction of house.

8. The FIR further shows that applicants No. 4 and 5 sister-in-laws of respondent No. 2 were forcibly telling their works to respondent No. 2 and they were compelling her to do their works and they were not allowing her to have a food. They were also abusing and beating her. Applicants No. 1 to 5 were saying her that they do not want child and applicant No. 6 was saying that she was not preparing food on time and he was torturing her.

9. Above referred allegations in the FIR against applicants No.4 to 6 are vague. As said earlier applicants No. 4 and 5 are married sisters of applicant No. 1 and applicant No. 6 is husband of applicant No.4. These applicants are not residing with the family of applicants No. 1 to 3 where respondent No. 2 was residing while she was cohabiting with her husband. When the allegations made in the FIR against applicants No. 4 and 6 are not specific and said allegations are vague said allegations are not sufficient attract any offence against these applicants. Therefore, if the FIR and the charge sheet against applicants No. 4 to 6 are continued it would amount to abuse of process of law and these applicants would be harassed. Therefore, both the FIR and charge sheet against applicants No. 4 to 6 are required to be set aside by allowing the application to the extent of these applicants. Therefore, following order is passed.

ORDER

1. Application of applicants No. 1 to 3 is disposed of as withdrawn.
2. Application of applicants No. 4 to 6 is allowed.

3. Relief is granted to applicants No. 4 to 6 in terms of prayer clause (B).

4. Fees of Mr. S. G. Deshmukh (Appointed), learned Advocate for respondent No. 2 is quantified at Rs. 3,000/- which needs to be paid through Legal Services Committee, Aurangabad.

[S.M. GAVHANE, J.]

[T. V. NALAWADE, J.]