

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

CRIMINAL WRIT PETITION NO.1006 OF 2018

1. Wasim s/o Allauddin Shaikh
Age 31 years, Occu. Washerman,
R/o Plot No.3, 4/1, Wasim Village,
Pakhal Road, Near Vijay Tower,
Fatema Nagar, Nashik, Dist. Nashik
2. Shabnam w/o Allauddin Shaikh,
Age 50 years, Occu. Household,
R/o as above.
3. Allauddin Miya Shaikh,
Age 56 years, Occu. Washerman,
R/o as above.
4. Viqar s/o Allauddin Shaikh,
Age 28 years, Occu. Washerman,
R/o as above.
5. Amrinnaaz w/o Shaikh Wasim Dhobi,
Age 25 years, Occu. Household,
R/o Lala Sardarnagar, Deopur, Dhule
6. Mohd. Arif s/o Mohd. Shafi Shaikh,
Age 43 years, Occu. Washerman,
R/o Plot No.2, Survey No.862/1/6/2,
Pakhal Road, Dwarka Corner,
Fatema Nagar, Nashik, Dist. Nashik
7. Najama w/o Arif Shaikh,
Age 39 years, Occu. Household,
R/o as above.
8. Kausar w/o Khalil Shaikh,
Age 48 years, Occu. Household,
R/o Bagwanpura, June Nashik,
Nashik
9. Zishan s/o Khalil Shaikh,
Age 27 years, Occu. Washerman,

:: 2 ::

R/o Bagwanpura, June Nashik,
Nashik

10. Ejaz s/o Mohammad Shafi,
Age 46 years, Occu. Washerman,
R/o Plot No.2, Survey No.862/1/6/2,
Pakhal Road, Fatema Nagar,
Nashik

... **PETITIONERS**

VERSUS

1. The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of Judicature of
Bombay, Bench at Aurangabad)
2. Samina Bano w/o Wasim Dhobi,
Age 25 years, Occu. Household,
R/o C/o Israil Dhobi,
Mujawar Mohalla, Nandurbar,
District Nandurbar.

... **RESPONDENTS**

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Shri V.C. Patil, Advocate holding for
Shri I.G. Durrani, Advocate for petitioners
Shri R.V. Dasalkar, A.P.P. for respondent No.1.
Shri Y.J. Jadhav, Advocate for respondent No.2
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**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

Date of reserving judgment : 24th January, 2019

Date of pronouncing judgment : 1st March, 2019

JUDGMENT (PER R.G. AVACHAT, J.) :

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel appearing for the parties.

2. By this writ petition under Article 226 of the Constitution of India, the petitioners have prayed for quashment of the F.I.R., C.R. No.125/2018, registered with Nandurbar Police Station for offences punishable under Sections 498-A, 406, 323, 504, 506 read with Section 34 of the Indian Penal Code.

3. Heard Mr. Patil, learned counsel holding for Mr. Durrani, learned counsel for the petitioners, Mr. Dasalkar, A.P.P. for respondent No.1 and Mr. Jadhav, learned counsel for respondent No.2.

4. Learned counsel for the petitioners submitted that, the false F.I.R. has been lodged with a view to harass the petitioners. According to learned counsel, even the distant relatives and married sisters-in-law have also been roped in. According to the learned counsel, allegations in the F.I.R. do not make out any of the offences against most of the accused (petitioners named therein). He has, therefore, urged for quashment of the F.I.R.

5. The learned A.P.P. and the learned counsel for the respondent No.2 (first informant) took us through the allegations in the F.I.R. and statements of persons acquainted with the facts and circumstances of the case to ultimately submit that the offences have been made out against one and all the petitioners.

The learned counsel, therefore, urged for dismissal of the petition.

6. In case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, reported in **AIR 1992 S.C. 604**, it has been observed thus :

“In following categories of cases, the High Court may in exercise of powers under Article 226 or under S. 482 of Cr.P.C. may interfere in proceedings relating to cognizable offence to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases.

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2)

(3)

(4)

(5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that

there is sufficient ground for proceeding against the accused.

(6)

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7. In the case of **Taramani Prakash Vs. State of Madhya Pradesh & ors.**, reported in **2015 AIR SCW 1817**, it has been observed that :-

11. Law relating to quashing is well settled. If the allegations are absurd or do not make out any case or if it can be held that there is abuse of process of law, the proceedings can be quashed but if there is a triable case the Court does not go into reliability or otherwise of the version or the counter version. In matrimonial cases, the Courts have to be cautious when omnibus allegations are made particularly against relatives who are not generally concerned with the affairs of the couple."

8. Let us evaluate the allegations in the F.I.R. so as to find out whether an offence is prima facie made out.

9. The first informant Samina Bano married Wasim s/o Allauddin Shaikh (petitioner No.1) on 11.5.2011, at Nandurbar. It is alleged in the F.I.R. that, just 5 days before the marriage, the parents-in-law and maternal mother-in-law (petitioners No.2, 3 and 8 respectively) had been to the parental house of the first informant. They asked her father to cuff up Rs.1,50,000/- for purchase of motorcycle for the bridegroom. It is further alleged in the F.I.R. that, soon after the marriage, the first informant along with her husband, parents-in-law, maternal mother-in-law and sister-in-law (petitioner No.5) started demanding Innova Car for the matrimonial home. Near Nandurbar Civil Hospital, the parents-in-law relieved the first informant of her all gold ornaments and gave her threats if she informed the same to her parents. It is further alleged in the F.I.R. that, the husband and the in-laws illtreated her since she did not conceive.

10. It is further alleged that, on 13.4.2018, the husband and parents-in-law assaulted the first informant. She, therefore, took the treatment at Birla Hospital, Nasik. The further allegations in the F.I.R. are to the effect that on 9.5.2018, the first informant was confined in a room by her husband, parents-in-law, brother-in-law and sister-in-law. She was forcibly fed some powder like substance. Zishan, maternal father-in-law, Arif were called. Both of them misappropriately touched her person.

Somebody informed her parents, who, in turn, came to Nasik and took the first informant to her parental home.

11. The F.I.R. is dated 16.5.2018. The husband and the parents-in-law have specifically been alleged to have relieved the first informant of her gold ornaments, made demand for Rs.1,50,000/- for purchase of motorcycle. They threatened her if she went public. Moreover, these persons are also alleged to have assaulted her on 13.4.2018. So far as regards incident dated 9.5.2018 is concerned, the allegations are against the very accused i.e. the husband, parents-in-law, brother-in-law, sister-in-law and maternal aunt of the husband. As such, prima facie offence is made out against these 5 petitioners. So far as other accused are concerned, the allegations are general in nature. They appear to have been roped in without there being substantial cause. Allowing the investigation to proceed against them pursuant to the F.I.R. would be an abuse of process of law. The First Information Report could, therefore, be quashed so far as regards the petitioners No.6, 7, 9 and 10.

12. The F.I.R. has been lodged at Nandurbar. The petitioners are staying at Nasik. They will have to appear before the Court during enquiry and trial of the case. We hope, the trial Court would liberally grant them exemption, if asked for, from appearance during enquiry and hearing of the case as well.

13. With these observations, the petition partly succeeds in terms of the following order :

14. The petition is partly allowed. F.I.R., being C.R. No.125/2018, registered with Nandurbar Police Station is hereby quashed so far as regards petitioners No.6, 7, 9 and 10. The petition stands dismissed so far as regards petitioners No.1 to 5 and 8. Rule made partly absolute in above terms.

**R.G. AVACHAT
JUDGE**

**S.S. SHINDE
JUDGE**

fmp/-