

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

CRIMINAL WRIT PETITION NO.1083 OF 2018

1. Quazi Mohammad Javed s/o Mohammad Sharifuddin, Age 44 years, Occu. Private Service, R/o Aref Colony, Aurangabad, Taluka and District Aurangabad
2. Raisa Begum w/o Mohammad Sharifuddin, Age 72 years, Occu. Household R/o Aref Colony, Aurangabad, Taluka and District Aurangabad
3. Mohammad Mujahid Mohammad Sharifuddin, Age 40 years, Occu. Nil, R/o Aref Colony, Aurangabad, Taluka and District Aurangabad
4. Rehana Parveen w/o Shaikh Parvez, Age 47 years, Occu. Household R/o Bismillah Colony, Aurangabad Taluka and District Aurangabad
5. Nasreen Parvez w/o Wahajoddin Siddiqui, Age 42 years, Occu. Teacher, R/o Mustafa Park, Vaijapur, Taluka and District Aurangabad ... **PETITIONERS**

VERSUS

1. The State of Maharashtra, (Copy to be served on the Public Prosecutor, High Court of Bombay, Bench at Aurangabad) (Police Station City Chowk, Aurangabad, Tq. & Dist. Aurangabad)
2. Humaira Firdos w/o Quazi Javed, Age 38 years, Occu. Household, R/o Bhadkal Gate, Near I.T.I. College, Aurangabad. Tq. & Dist. Aurangabad ... **RESPONDENTS**

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Mr. T.A. Quadri, Advocate holding for
Mr. Zia-ul-Mustafa, Advocate for petitioners
Mr. R.V. Dasalkar, A.P.P. for responded No.1
Mr. Vivek Rathod, Advocate (appointed) for respondent No.2
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**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

Date of reserving judgment : 29th January, 2019
Date of pronouncing judgment : 11th April, 2019

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

1. Rule. Rule made returnable forthwith and taken up for final hearing with the consent of learned counsel appearing for the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioners herein seek quashment of F.I.R., being F.I.R. No.59/2018, dated 14.3.2018, registered with City Chowk Police Station, Aurangabad for offence punishable under Sections 498-A, 323, 504 read with Section 34 of the Indian Penal Code and consequential charge sheet-cum-proceedings in R.C.C. No.1648/2018, pending on the file of Judicial Magistrate, First Class, Aurangabad.

3. The petitioner No.1 is the husband of respondent No.2 while petitioners No.2, 3, 4 and 5 are her mother-in-law, brother-in-law and sisters-in-law respectively. Marriage of the petitioner

with respondent No.2 took place in May 2005. The couple is blessed with three children. All is, however not well with their matrimonial life.

4. The respondent No.2 (first informant) lodged the First Information Report with the following allegations :-

5. Since two years before 14.3.2018, the first informant has been residing at her parental house. Her parents have to spend for her maintenance. In marriage, the parents of first informant gave the petitioner No.1 furniture like dining table, cupboard, Sofa, besides a sum of Rs.50,000/- in cash towards dowry. In the marriage itself, the mother-in-law and sisters-in-law had picked up quarrel with the parents of the first informant over inferior quality of furniture given in the marriage. After 5 months of marriage, the petitioners No.1 to 3 started teasing the first informant over non-payment of remaining sum of Rs.25,000/- towards dowry. They also frequently picked up quarrel with the first informant. Once the petitioner No.1, petitioner No.2 and petitioner No.5 assaulted the first informant and turned her out of matrimonial home. She had, therefore, to take shelter at her parent's house. The parents of the first informant reasoned with the first informant and sent her back to the matrimonial home. In February 2006, the first informant delivered a baby boy. She

underwent cesarean. The petitioner told the first informant in the hospital itself that they were not going to cuff-up any expenditure of the delivery.

6. The first informant went to her parent's house after delivery from the hospital. A month thereafter, she started residing at her matrimonial home. After some days, she was afflicted with chikungunya (ailment). The petitioners No.1 and 2, therefore, turned her out of the matrimonial home. Again in February 2007, on the intervention of elders, the first informant went to her matrimonial home. The ill-treatment continued as before. The petitioner No.1 also suspected the first informant's character. In April 2007, the petitioner No.1 gave the first informant compose pills. In the month of Ramazan, she was physically assaulted and turned out of matrimonial home. In December 2007, the first informant gave birth to a baby girl. The petitioner No.1 did not visit the house of his parents-in-law for two years. Again on the intervention of elderly persons, the first informant resumed marital relations.

7. In August 2009, she had to sign some matter on a stamp paper as a condition for resumption of marital relationship. Again in July 2010, the petitioners turned her out of the matrimonial home. In September 2010, she delivered a baby boy.

The first informant requested the petitioner No.1 to get her back to matrimonial home. He refused. He even did not pay any farthing for maintenance of new born.

8. It is further alleged in the F.I.R. that, in April 2015, the first informant went back to her matrimonial home. The ill-treatment continued as before. In October 2015, the petitioner No.1 and the in-laws assaulted her and turned her out of matrimonial home. The petitioner No.1 forcibly took the children from the custody of the first informant. It was the case of 2016. The first informant, in February 2017, preferred application to Shariat Court. Again in the same year, she preferred application to Womens' Grievances Redressal Forum, Aurangabad. The efforts for resumption of marital tie failed. The petitioner No.1 issued first informant three notices giving her Talaq. The gold ornaments of the first informant have been with the petitioner No.1 and his relations.

9. Based on the aforesaid F.I.R., Crime was registered. It was investigated and the charge sheet has been laid.

10. Mr. Quadri, learned counsel appearing for the petitioners would submit that, the allegations in the F.I.R. are false, concocted and motivated. The F.I.R. is the countrblast to

the notices of Talaq issued by the petitioner No.1. Before filing of the F.I.R., the first informant had lodged a complaint before the Imam of Jama Masjid. She also preferred a complaint to the Womens' Grievances Redressal Forum, Aurangabad besides a complaint under the Protection of Women from Domestic Violence Act (Domestic Violence Act for short). According to learned counsel, the averments/ allegations in all the four complaints are grossly inconsistent with each other. The same would indicate the F.I.R. to have contained false and frivolous allegations. It is the case of the petitioners that, the first informant is a short tempered person. She would misbehave. She picks up quarrels frequently. In the matter before Shariat Court for compromise, the first informant gave assurance in writing that she would behave properly, but in vain. The father of the first informant is a Journalist. He has very good relations with police personnel and other authorities. The first informant and her father took advantage of this position to harass the petitioners. The petitioner No.1 is well educated. He is maintaining his children and family members. The petitioner No.3 is physically disabled. The petitioner No.2 is 75 years of age. If the petitioners are required to face trial pursuant to false allegations in the F.I.R., it would be an abuse of process of Court. According to the learned counsel, the F.I.R. and the proceedings in R.C.C. No.1648/2018, therefore, deserve to be quashed.

11. The learned A.P.P. and the learned counsel for respondent No.2 would, on the other hand, submit that, the allegations in the F.I.R. make out a triable case. The charge sheet therefore, came to be filed against the petitioners. Whatever the contentions the petitioners have made can only be gone into during trial. Both the learned counsel, therefore, urged for dismissal of the petition.

12. In the case of **Surylakshmi Cotton Mills Ltd. Vs. Rajvir Industries Ltd. & ors.** reported in **[2008 AIR (SC) 1683]**, the Supreme Court has observed :-

“16. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of well known legal principles involved in the matter.

17. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure should be exercised, but some attempts have been made in that behalf in some of the decisions of this Court as for example State of Haryana Vs. Bhajan Lal

[1992 Supp (1) SCC 335], Janata Dal Vs. H.S. Chowdhary and others [(1992) 4 SCC 305], Rupan Deol Bajaj (Mrs.) and another Vs. Kanwar Pal Singh Gill and another [(1995) 6 SCC 194], Indian Oil Corp. Vs. NEPC India Ltd. And others [(2006) 6 SCC 736].

In Bhajan Lal's case (supra), it has been observed :-

- (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)
- (6)
- (7) Where a criminal proceeding is manifestly attended with malafide 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.

13. For deciding the present petition, we have to have

appreciate allegations in the F.I.R. If the F.I.R. prima facie makes out an offence, the same could not be quashed. In exercise of powers under Section 482 of the Criminal Procedure Code, this Court cannot exercise powers of appellate or revisional Court.

14. Marriage of petitioner No.1 with the first informant took place way back in 2005. After little over 15 years, the marriage failed. There are three children from the wedlock. The petitioner No.1 has divorced the first informant.

15. We do not propose to again reproduce the allegations in the F.I.R. which have been narrated hereinabove. A look at the allegations in the F.I.R. would undoubtedly indicate the first informant to have made specific allegations of having been ill-treated by her husband, mother-in-law and younger sister-in-law. The brother-in-law is physically challenged. The elder sister-in-law is married. True, the first informant initiated three more proceedings, one before Shariat Court, another before Womens' Grievances Redressal Forum, Aurangabad and the third one is a complaint under Domestic Violence Act. It is also true that, there may not be consistent inter-se averments/ allegations in the complaints of all these proceedings. It would, however, be crystal clear that the first informant has a grievance of having been ill-treated by the husband, mother-in-law and younger sister-in-law.

The F.I.R. contains incidents of ill-treatments. It, therefore, cannot be said that no offence is prima facie made out against the petitioners No.1, 2 and 5. The allegations in the F.I.R. have been investigated. The relatives of the first informant have given statements consistent with the allegations in the F.I.R. As such, it cannot be said that a case for quashment of the F.I.R. and the charge sheet is made out so far as regards the petitioners No.1, 2 and 5 are concerned.

16. It is reiterated that, so far as regards the petitioners No.3 and 4 are concerned, the allegations in the F.I.R. are general in nature. The brother-in-law is physically challenged. The petitioner No.4 has been staying at her matrimonial home. Since the allegations in the F.I.R. against both of them are general in nature and there being no further material against them in the charge sheet, the petition deserves to be allowed so far as regards the petitioners No.3 and 4 are concerned.

17. The petitioner No.1 is a Medical Representative. The petitioner No.2 is 75 years of age. The petitioner No.5 is a married sister-in-law. The trial Court shall consider their prayer, if any, to grant them exemption from appearance in the matter, even during the trial as well, ensuring that one of them would be there on the dates of hearing.

18. For the foregoing reasons, the Criminal Writ Petition partly succeeds.

19. The Criminal Writ Petition so far as regards petitioners No.1, 2 and 5 are concerned, is rejected.

20. The petition is allowed so far as regards petitioners No.3 and 4. The F.I.R., and the Charge Sheet, being R.C.C. No.1648/2018 are quashed so far as regards petitioners No.3 and 4.

21. Rule made partly absolute in above terms.

22. Fees of Advocate Mr. Vivek Rathod for respondent No.2 is quantified at Rs.2500/-

R.G. AVACHAT
JUDGE

S.S. SHINDE
JUDGE

fmp/