

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

CRIMINAL APPLICATION NO. 3614 OF 2018

1. Shrikant S/o Kishor Aarak
Age : 30 years, Occ : Nil,
2. Usha W/o Kishor Aarak
Age : 58 years, Occ : Household,
3. Kishor S/o Dayaram Aarak
Age : 65 years, Occ : Retired,
4. Prashant S/o Kishor Aarak
Age : 35 years, Occ : Service,

Nos.1 to 4 :
R/o Near Sakhri Toll Plaza,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.

5. Swati W/o Ishwar Khandare
Age : 33 years, Occ : Service,
6. Ishwar S/o Haridas Khandare
Age : 35 years, Occ : Service,

Nos.5 and 6 :
R/o 15 Bungalow, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

.. APPLICANTS

VERSUS

1. The State of Maharashtra
Through Police Inspector,
City Police Station, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

2. Yogita W/o Shrikant Aarak
Age : 28 years, Occ : Household,
R/o R-B-II/940/A Road,
Near Mahalaxmi Temple, Limbs Club
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.

..RESPONDENTS

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Mr.S.B. Bhapkar, Advocate for applicants
Mr.R.V. Dasalkar, APP for Respondent – State.
Mr.Shaikh Mohammad Naseer

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**CORAM: S.S. SHINDE AND
R.G.AVACHAT, JJ.**

DATED : 15.02.2019

JUDGMENT (PER S.S. SHINDE, J.):

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

2. This Application is filed praying therein
to quash and set aside F.I.R. bearing Crime No.92
of 2018 dated 05.11.2018 registered with City
Police Station, Bhusawal, Dist. Jalgaon for the
offences punishable under Sections 498-A, 323,

504, 506 read with 34 of the Indian Penal Code (for short "I.P. Code").

3. Heard learned counsel appearing for the applicants, learned A.P.P. appearing for the respondent/State and learned counsel appearing for Respondent No.2.

4. Learned counsel appearing for the applicants submits that Respondent No.2 soon after the marriage started residing with her parents and applicant no.1 herein used to regularly visit her at her parents house. Out of wedlock of applicant no.1 and respondent No.2, one female child is begotten. It is submitted that the harassment as alleged against the applicants is prior to two years of lodging the first information report. Respondent No.2 never resided in matrimonial home, and therefore, there was no role of applicant Nos.2 to 6 in the alleged harassment or

illtreatment. Learned counsel invites our attention to the various documents to demonstrate that, Respondent No.2 started residing with her parents soon after the marriage. It is submitted that an allegations in the first information report are omnibus and general in nature, and an alleged offences are not disclosed against the applicants. Therefore, he submits that the application may be allowed.

5. On the other hand, learned A.P.P. appearing for the respondent/State and learned counsel appearing for Respondent No.2 invites our attention to the contents of the first information report and also the statements of the witnesses recorded during the course of investigation, and submits that the sufficient material has been collected during the course of an investigation and the trial can proceed on the basis of such material. An alleged offences are clearly

disclosed against the applicants, and therefore, the application may be rejected.

6. We have given careful consideration to the submissions of learned counsel appearing for the applicants, learned A.P.P. appearing for the respondent/State and learned counsel appearing for Respondent No.2.

7. Upon careful perusal of the contents of the first information report, it appears that the marriage of Respondent No.2 with applicant no.1 was love marriage. Upon careful perusal of the averments in the application filed under the provisions of the Protection of Women from Domestic Violence Act, 2005, it clearly appears that applicant no.1 and Respondent No.2 were good friends even before the marriage and they used to meet each other on regular basis. Upon perusal of the various documents placed on record, and even

the contents of the aforesaid application filed by Respondent No.2 would clearly shows that, Respondent No.2 after marriage started residing with her parents. All the aforesaid documents referred hereinabove are not disputed.

8. Upon careful perusal of the contents of the first information report, it is not clearly mentioned that, Respondent No.2 after marriage resided in the matrimonial house with the parents of applicant no.1. We have carefully perused the allegations in the first information report, and we find that there is no specific incident or overt act has been attributed qua applicant Nos.2 to 6. So far as applicant no.1 is concerned, there are allegations which would prima facie disclose the alleged offences against him. It is specifically alleged against applicant no.1, that he demanded Rs.5,00,000/- from Respondent No.2. Whether such demand was at all there or not, is a

matter for investigation, and therefore, to the extent of applicant no.1, this Court is not inclined to entertain the application.

9. As already observed, upon careful perusal of the first information report and also the statements of the witnesses recorded during the course of investigation, there are no specific allegations qua applicant nos.2 to 6 and also no specific overt act has been attributed to them, and all allegations are general in nature. Applicant No.5 is a married sister of applicant no.1 and applicant no.6 is her husband. They are residing separately at Bhusawal. Applicant No.2 is mother of applicant no.1 and applicant no.3 is his father. Applicant no.4 is brother of applicant no.1. Even if the allegations in the first information report are read in its entirety, no offences are disclosed as against applicant nos.2 to 6. In that view of the matter, their prayer to

quash the first information report deserves consideration.

10. The Supreme Court in the case of **Geeta Mehrotra and another Vs. State of Uttar Pradesh and another**¹ in the facts of that case held that casual reference to a large number of members of the husband's family without any allegation of active involvement would not justify taking cognizance against them and subjecting them to trial. In the said judgment, there is also reference of the judgment of the Supreme Court in the case of **G.V.Rao Vs.L.H.V. Prasad**² wherein para 12 it is observed thus:

"12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial

1 (2012) 10 SCC 741

2 (2000) 3 SCC 693

skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts."

11. In view of the discussion made hereinabove, the application on behalf of applicant No.1 - Shrikant S/o Kishor Aarak stands rejected.

12. The application in respect of Applicant No.2 - Usha W/o Kishor Aarak, Applicant No.3- Kishor S/o Dayaram Aarak, Applicant No.4 - Prashant S/o Kishor Aarak, Applicant No.5 - Swati W/o Ishwar Khandare and Applicant No.6 - Ishwar S/o Haridas Khandare is allowed. The F.I.R. bearing Crime No.92 of 2018 dated 05.11.2018 registered with City Police Station, Bhusawal, Dist. Jalgaon for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code to the extent of applicant Nos.2 to 6 is quashed and set aside. Rule made absolute in above terms.

13. It is made clear that the observations made herein above are prima facie in nature and confined to the adjudication of the present Application only.

Rejection of this application in respect of applicant no.1 shall not be construed as an

impediment to Applicant No.1 to avail of an appropriate remedy in the event of filing charge-sheet by the Investigating Officer.

[R.G.AVACHAT, J.]

[S.S. SHINDE, J.]

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