

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 340 OF 2020

1. Sandip s/o. Nilkanth Awchite
Age 47 years, Occu. Labour,
R/o. Mehetar Galli, Kazipura,
Jalna, Tq. & Dist. Jalna.
2. Nilkanth s/o. Shamrao Awchite,
Age 84 years, Occu. Nil,
3. Shakuntala w/o. Nilkanth Awchite
Age 74 years, Occu. Retired,
Both applicant No. 2 & 3 R/o. Household
No. 258, Eknath Nagar, Osmanpura,
Aurangabad.
4. Liya d/o. Shul Khandare
Age 34 years, Occu. Service,
5. Shul s/o. John Khandare
Age 49 years, Occu. Driver,
6. Chaya w/o. Shul Kandare,
Age 45 years, Occu. Service,
7. Kiminibai w/o. John Khandare,
Age 78 years, Occu. Retired,

Applicants No.04 to 7 R/o. Near
Mission Hospital, Shardabai
Compound, Jalna.

....Applicants.

Versus

1. The State of Maharashtra
Through Police Station
Sadar Bazar, Dist. Jalna.
2. Kalpana w/o. Sandip Awchite
Age 46 years, Occu. Service,
R/o. C/o. S.D. Hatagale,
Amarchaya Campus, Near
Pushkar Hospital, Jalna,
Tq. & Dist. Jalna.

....Respondents.

Mr. A.V. Lavte, Advocate for applicants.

Mr. K.S. Patil, APP for respondent No. 1/State.

Mr. P.B. Vikhe, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
SHRIKANT D. KULKARNI, JJ.**

DATED : 02/11/2020.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2) Present proceeding is filed for relief of quashing of F.I.R. No. 255/2016 registered with Sadar Bazar Police Station, District Jalna for the offences punishable under sections 498-A, 494, 323, 504, 506 and 34 of Indian Penal Code. The crime is registered on the basis of report given by respondent No. 2 Smt. Kalpana. Applicant No. 1 Sandip is husband of Kalpana. Applicant Nos. 2 and 3 are parents of Sandip. Applicant No. 4 is said to be second wife of applicant No. 1 and applicant Nos. 5 to 7 are said to be relatives of applicant No. 4.

3) It is the contention of the informant that her marriage took place with applicant No. 1 on 12.12.1997. At the relevant time, she was working as a teacher in one primary school. Her father made available his house for residence of applicant No. 1 and the informant. There they cohabited for many years. They have a son

aged about 14 years and daughter aged about 9 years. It is the contention of the informant that in this house her husband and parents were living and she was maintaining all of them. It is her contention that her husband was not doing any work to earn for livelihood.

4) It is the contention of the informant that in the year 2004 her husband married with applicant No. 4 Liya. It is her contention that the other applicants had helped and gave consent for this marriage of Liya with her husband and even parents of her husband had helped her husband in the second marriage. It is her contention that as there were threats to her, she did not make complaint of this second marriage to anybody. It is her contention that from the second marriage, her husband has a son aged about six years and she started maintaining the second family of the husband also. It appears that applicant No. 4 was not living in the house in which informant was cohabiting with the husband. It is her contention that about two years prior to the date of F.I.R. her husband and his parents asked her to transfer the house in the name of applicant No. 1 as they wanted to bring applicant No. 4 Liya to that house. It is her contention that when she refused to do so, illtreatment was given to her by husband and his parents. It is her contention that Liya and her parents were instigating her husband to give illtreatment. She has made allegations that on one occasion, her husband had tried to

finish her by pressing her neck. It is her contention that due to the harassment made by the husband and as he was not making any income she drove her out of the house on 23.2.2016. It is her contention that her husband then took her son from her custody and through the son he started harassing her. It is her contention that she made complaint to Redressal Cell, but the husband and others did not turn up to settle the dispute. The report was given on 6.5.2016.

5) The submissions made and the allegations made in the F.I.R. show that the allegations are mainly against husband and his parents, applicant Nos. 1 to 3. Admittedly, applicant No. 4 never lived in that house and she had no occasion to give illtreatment to the informant. The contentions made in the application show that the house belongs to her, she was only earning member and the things were under her control. It can be said that if there was second marriage, she had not opposed to it as it is her contention that she had maintained the second family of the husband also. The other applicants like applicant Nos. 5 to 7 cannot be treated as relatives of applicant No. 1. Due to all these circumstances, this Court holds that relief of quashing of F.I.R. needs to be given to applicant Nos. 4 to 7. As this Court was not inclined to give relief to applicant Nos. 1 to 3, learned counsel for these applicants on instruction submitted that he wants to withdraw the proceeding filed by applicant Nos. 1 to 3. In

the result, following order.

ORDER

A) Application of applicant Nos. 1 to 3 is disposed of as withdrawn.

B) Application of applicant Nos. 4 to 7 is allowed. Relief is granted to them in terms of prayer clause 'D'.

Rule is made absolute in those terms.

[SHRIKANT D. KULKARNI, J.]

[T.V. NALAWADE, J.]

ssc/