

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

CRIMINAL APPLICATION NO.3938 OF 2017

1. Chandrashekhar s/o Dnyanoba Rohi
Age : 40 years, Occu : Labour
R/o. Kharola, Tq. Renapur,
Dist. Latur, at present Driver Colony,
Near Ankur Vidyalaya, old Ausa Road,
Latur, Tq. & Dist. Latur
2. Prayagbai w/o Dnyanoba Rohi
Age : 58 years, Occu : Household,
R/o. Kharola, Tq. Renapur,
Dist. Latur
3. Dnyanoba s/o Tukaram Rohi
Age : 65 years, Occu : Labour,
R/o. Kharola, Tq. Renapur,
Dist. Latur
4. Parappa s/o Ram Mudgude
Age : 55 years, Occu : Labour,
R/o. At Post Nalegaon, Tal. Chakur,
Dist. Latur
5. Satyabhama s/o Gurunath Mane
Age : 45 years, Occu : Household,
R/o. Chincholi (B), Tq. & Dist. Latur
6. Sunita w/o Bappaji Bedke
Age : 43 years, Occu : Household,
R/o. At Post Govardhanwadi,
Tq. & Dist. Osmanabad

.. Applicants

Versus

1. The State of Maharashtra
Through Police Station,
Renapur, Dist. Latur
2. Anjali w/o Chandrashekhar Rohi
Age : 34 years, Occu : Household

R/o. Shivankhed, Tq. Chakur,
Dist. Latur

... Respondents

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Shri S.S. Manale, Advocate for the Applicants
Shri G.O. Wattamwar, APP for the Respondent / State
Shri N.D. Kendre, Advocate for Respondent No.2

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**CORAM : T.V. NALAWADE
AND
B. U. DEBADWAR, JJ.**

DATED : 21-01-2021

ORAL JUDGMENT (PER: B.U. DEBADWAR, J.) :-

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter in short 'CrPC') for quashing of FIR.
2. Rule. Rule made returnable forthwith. Heard finally for final disposal.
3. Heard Mr Satish S. Manale, learned Advocate for the applicants, Mr G.O. Wattamwar, learned APP for respondent no.1 / State and Mr N.D. Kendre, learned Advocate for respondent no.2 / first informant.
4. The applicants are husband, mother-in-law, father-in-law, husband's uncle and sister-in-laws of respondent no.2, respectively.

The marriage of respondent no.2 with applicant no.1 was solemnized on 07-06-2002 as per Hindu rites and customs prevailing in their community. From the wedlock, applicant no.1 and respondent no.2 blessed with two sons namely Dadasaheb Chandrashekhar Rohi, Tukaram Chandrashekhar Rohi and one daughter Kum. Yogeshri Chandrashekhar Rohi. Initially, the complainant (respondent no.2) was treated well by the husband and in-laws, however since last 9 years husband and in-laws are harassing and ill-treating the complainant constantly. They used to keep her hungry and get excessive manual work from her. On the instigation of other applicants, applicant no.1 used to harass and ill-treat respondent no.2 physically for not offering gold ornaments to their children by her parents on the occasion of their naming ceremony. Besides, all the applicants constantly taunt and insult her. In addition to that, applicant no.1 and applicant no.2 (husband and mother-in-law) used to beat her severely. When harassment and ill-treatment became unbearable, on 10-07-2017 respondent no.2 rushed to Police Station Renapur, Dist. Latur and lodged the report narrating aforesaid facts and on the basis of the said report, Police Officials of Renapur Police Station registered crime bearing no.246 of 2017 for the offences punishable under Sections 498-A and 323 r.w. 34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') against the

applicants on very day at about 12:30 p.m. and commenced the investigation.

5. Mr Satish S. Manale, Advocate while taking us through papers annexed to the application under the list Exh.12 including copy of the bank pass book of applicant no.1, copies of *bona fide* certificates of children of applicant no.1 and respondent no.2, copy of legal notice dated 02-11-2016 issued by applicant no.1 to respondent no.2, copy of HMP No.99 of 2017, copy of application moved to the Women's Grievance Cell, Latur by respondent no.2 dated 16-03-2017, copy of FIR sought to be quashed and copy of Aadhar card of applicant no.4 Parappa Ram Mudgude, vehemently argued that, applicant no.1 is a mason by profession. He used to do masonry work at Pune. After marriage, he started living and cohabiting with respondent no.2 at Pune. They stayed at Pune till 2008. Respondent no.2 is quarrelsome lady. Since beginning she used to pick up quarrel with husband. Having fed up with nature of respondent no.2, in the year 2008 applicant no.1 along with respondent no.2 and their children shifted to native place at Renapur, Dist. Latur. They resided at Renapur along with applicant nos.2 and 3 hardly for 6 months. However, thereafter applicant no.1 along with wife (respondent no.2) and children left the house of his parents (applicant nos.2 and

3) and started living separately. In the year - 2015 they moved to Latur for the purpose of education of their children. On 28-02-2016 after picking up quarrel with husband - applicant no.1, respondent no.2 left their house at Latur and went to her sister's house at Pune along with children. After staying there for some period, she moved to her parental house at village Shivankhed, Tal. Chakur, Dist. Latur and started living there with her parents.

6. Mr Satish S. Manale, Advocate further argued that, respondent no.2 deserted applicant no.1 without any reasonable cause. In spite of calling her upon to resume cohabitation and issuing notice for that purpose, respondent no.2 did not resume cohabitation with applicant no.1 by returning back to his house. Since respondent no.2 did not respond to the notice, at last, applicant no.1 rushed to the Court of Civil Judge, Senior Division, Latur and instituted application for divorce against the respondent no.2 bearing HMP No.99 of 2017. After knowing about the same, respondent no.2 made false complaint to the Women's Grievance Cell at Latur against all the applicants, first and then lodged false FIR making false allegations with *malafide* intention to harass and trouble the applicants. In fact, none of the applicants, at any time, harassed and ill-treated respondent no.2 for any reason. On the contrary,

respondent no.2 after behaving with applicants in a very rude manner deserted the husband – applicant no.1 and started living at her parental house for no reason.

7. Mr Satish S. Manale, Advocate further argued that FIR has been lodged, belatedly by making utterly false and vague allegations. Therefore, it is liable to be quashed by invoking inherent powers under Section 482 of the CrPC.

8. Per contra, Mr N.D. Kendre, learned Advocate for respondent no.2 / original complainant vehemently argued that, since beginning attitude and conduct of the applicants / husband and relatives of husband towards respondent no.2 was improper. They used to constantly harass and ill-treat respondent no.2 by various means and ways. Respondent no.2 continued to live and cohabit with husband at her matrimonial house for betterment of the children and with a hope that change will take place in the conduct of the applicants, but when harassment become intolerable, she was compelled to leave her matrimonial house. The allegations made in the FIR are true and correct. Respondent no.2 had no reason to leave the matrimonial house after about 14 years of marriage. The application dated 16-03-2017 moved by respondent no.2 lends full

support to the FIR. The woman, who has three grown up children, will not leave the company of husband and in-laws unless it becomes very difficult for her to leave the matrimonial house. The notice and petition for divorce both are false and afterthought. No case of quashing FIR is made out, therefore, the application is liable to be rejected.

9. Mr G.O. Wattamwar, learned APP representing respondent no.1 / State adopted the arguments advanced by Mr N.D. Kendre, Advocate for respondent no.2.

10. In the light of aforesaid submissions made at bar, we have carefully gone through all the papers including impugned FIR annexed to the application. It is not in dispute that, the applicants are husband, mother-in-law, father-in-law, maternal uncle of applicant no.1 and sister-in-laws of respondent no.2, respectively. From the application for quashing FIR itself it can be gathered very well that applicant nos.4 to 6 are neither resident of Renapur nor Latur, but they are resident of village Nalegaon, Tal. Chakur, village Chincholi (B), Tal. & Dist. Latur and village Govardhanwadi Tal. & Dist. Osmanabad, respectively.

11. It is also evident from the record that applicant no.1 (husband of respondent no.2) is permanent resident of Renapur. Initially, he used to reside at Pune for earning livelihood and then shifted to Latur and thereafter returned back to native place. Nothing is brought on record by the applicants showing that respondent no.2 was never in the company of applicant nos.2 and 3. Allegations made in the FIR are *prima facie* sufficient to make out the case under Section 498-A of IPC. The question is only about complicity of applicant Nos.4 to 6 in the incident / incidents, of harassment of respondent no.2.

12. Having regard to the facts that applicant nos.4 to 6 are maternal uncle and real married sisters of applicant no.1, respectively and they do not reside at Renapur with applicant nos.1 to 3, but they reside at different places viz. Nalegaon, Chincholi (B) and Govardhanwadi, which are away from Renapur, therefore their complicity in the offence of harassment of respondent no.2 as alleged in the FIR cannot be believed and accepted. Nothing is mentioned in the FIR as to how they instigated applicant no.1 for ill-treating and maltreating of respondent no.2. Totality of record *prima facie* evidences that since long matrimonial relations between applicant no.1 and respondent no.2 were not cordial and there was a

matrimonial discord between them. In such circumstances, FIR cannot be thrown away branding it as false. Applicant nos.1 to 3 being husband, mother-in-law and father-in-law of respondent 2, their complicity in alleged crime cannot be denied as respondent no.2 used to reside with them for substantial period. However, in the absence of details as to how applicant nos.4 to 6, were also joined with applicant nos.1 to 3 in the act of harassment of respondent no.2 as alleged in the FIR, it would not be proper and legal to force them to face the trial, when at the face of FIR it is clear that no case makes out against them.

13. Since applicant nos.1 to 3 have withdrawn the application after hearing for sometime, question of quashing the FIR to their extent does not arise.

14. However, in view of the above, the impugned FIR is liable to be quashed to the extent of applicant nos.4 to 6. With this, we pass the following order.

ORDER

1. Application of applicant no.1 Chandrashekhar, applicant No.2 Prayagbai and applicant No.3 Dnyanoba is disposed of as withdrawn.

2. Application of applicant No.4 Parappa, applicant No.5 Satyabhama and applicant No.6 Sunita is allowed. Relief is granted to them in terms of prayer clause 'B'.

Rule is made absolute in those terms.

(B. U. DEBADWAR)
JUDGE

(T.V. NALAWADE)
JUDGE

Gajanan Punde , PA.