

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

CRIMINAL APPLICATION NO. 2718 OF 2019

1. Zuber Abdul Rahman Shaikh
Age 32 years, Occ : Business
2. Khaleda Abdul Rahman Shaikh
Age 55 years, Occ : Household
3. Iliyas Abdul Rahman Shaikh
Age 30 years, Occ : Household
4. Babli @ Unezq Abdul Matin
Age 26 years, Occ : Household

1 to 4 R/at: Dargah Road, Room No. 303,
Yadav Apartment, 3rd Floor, Mumbra,
Dist. Thane.

5. Saleha Juber Shaikh
Age 38 years, Occ : Household
R/at : 101, Subhas Nagar Colony,
Khandva Tal and Dist. Khandva,
Madhya Pradesh

.... APPLICANTS

VERSUS

1. The State of Maharashtra
Through Nandurbar City Police Station
in C.R. No. 290 of 2019.
2. Iqra Mohamed Juber Shaikh
Age 25 years, Occ : Household
R/at Manyar Mohalla, Nandurbar,
Tal and Dist. Nandurbar.

.... RESPONDENTS

(Respondent No.2 original Complainant)

Shri. Vaibhav B. Kulkarni, Advocate for the applicants
Shri. R. B. Bagul, APP for the respondent/State
Shri. Md. Acim h/f Shri. Khizar Patel, Advocate for respondent No. 2

**CORAM : T. V. NALAWADE &
M. G. SEWLIKAR, JJ.**

DATED : 14-01-2021

ORAL JUDGMENT (PER :- M. G. SEWLIKAR, J.)

1. Rule. Rule made returnable forthwith. With the consent of the parties heard finally at the stage of admission.

2. Facts giving rise to this application are that respondent No. 2, the informant, married applicant No. 1 about 8 years ago. Applicant No. 2 is the mother, applicant No. 3 is the brother, applicant Nos. 4 and 5 are the sisters of applicant No. 1. At the time of marriage applicant Nos. 1 to 5 were living together. Applicant No. 1 has clothes shop for kids by the name and style of Kids Corner. Applicant No. 1 started demanding Rs. 5,00,000/- to be brought from her parents for expansion of his business and started illtreating her when she refused to bring the amount from her parents. He would call her father as a beggar. He used to say that he did not like her and he married her against her wish. Applicant Nos. 2 and 3 also used to instigate applicant No. 1 for bringing money from her parents. Applicant No. 2 used to say that applicant No.1 should desert respondent No. 2 if he failed to bring Rs. 5,00,000/- from her parents. Applicant No. 3 also used to say that the applicants are incurring losses since the date of marriage of respondent No. 2 with applicant No. 1. He used to instigate applicant No. 1 to beat respondent No. 2. Applicant No. 1 had banged her head on the wall. Applicant Nos. 4 and 5 also used to instigate applicant No. 1 to bring Rs. 5,00,000/- from her parents. During her pregnancy she was not provided with good food. The applicants used to give her stale food. Applicant No. 1 never provided her with medical treatment during her pregnancy. He used to beat her during her pregnancy for her failure to bring amount from her parents. Applicant No. 2 also used to refuse to incur expenditure on her

medicines saying that her father had not made any arrangement of finances. On 05/04/2018 applicant No.1 called her parents to Mumbra and sent her to her maternal place at Nandurbar keeping her son Umar with him and sent other two sons i.e. Ayubkar and Mohamad Sad with respondent No. 2 to her maternal place. At Nandurbar on 05/06/2018 she was diagnosed with failure of both the kidneys since then she is on dialysis. On 20/06/2018 applicant No. 1 came to her maternal place and demanded Rs. 5,00,000/- and also he demanded money spent on her medical treatment. He took her back to Mumbra but continued the illtreatment. Applicant Nos.1 and 4 used to give her fried food when such kind of food was not at all permissible having regard to her failure of kidneys. When she refused to eat that food, applicant No.1 slapped her on her face with such a force that her hearing capacity got affected. She was also diagnosed with HBS Ag Positive and was also diagnosed with Hepatitis-B. She needed utmost care having regard to these deadly diseases. But applicant No. 1 did not take any care of her. On the contrary he used to beat her. Therefore, she lodged FIR against the applicants, on the basis of which offence under Sections 498A, 406, 323, 504, 506 (2) read with Section 34 of the Indian Penal Code came to be registered against the applicants.

3. Heard Shri. Vaibhav Kulkarni, learned counsel for the applicants, Shri. R. B. Bagul, learned APP for the respondent/State and Shri. Md. Acim h/f Shri. Khizar Patel, learned counsel for respondent No. 2.

4. When this Court expressed its disinclination to grant any relief to applicant Nos. 1 and 2, learned counsel Shri. Kulkarni sought permission

to withdraw application to the extent of applicant Nos. 1 and 2. Permission was accordingly granted.

5. So far as applicant Nos. 3, 4 and 5 are concerned, applicant Nos. 4 and 5 are married sisters. Vague and general allegations are made against applicant Nos. 3 to 5. It is vaguely alleged that applicant Nos. 4 and 5 used to instigate applicant No. 1 to demand money from the father of respondent No. 2. No overt act is alleged against applicant Nos. 4 and 5. No details of the incident are given. So far as applicant No. 3 is concerned only a single instance is quoted in the FIR against applicant No. 3. As per FIR, it is alleged against applicant No. 3 that applicant No. 3 used to say that applicants are incurring losses since the arrival of respondent No. 2. Bare perusal of the FIR clearly gives an indication that entire allegations are made against applicant Nos. 1 and 2. On the basis of these allegations, it cannot be said that any cognizable offence is made out against the applicant Nos. 3 to 5. Shri. Bagul, learned APP for the State, Shri. Patel, learned counsel for respondent No. 2 argued that specific details are given in the FIR so as to attract the offence under Section 498A of the IPC against applicant Nos. 3 to 5. Bare perusal of FIR belies their contention. The only allegation against applicant No. 3 is that he had accused respondent No. 2 that since her arrival nothing was going right. So far as applicant Nos. 4 and 5 are concerned a vague and general allegation is made that both of them instigated applicant No.1 to ask respondent No. 2 to bring amount from parents of respondent No. 2. Thus, on the basis of these vague and general allegations, it cannot be said that any cognizable offence is made out against applicant Nos. 3 to 5. Therefore, it cannot be said that any cognizable offence is made out against

applicant Nos. 3 to 5. Continuation of prosecution against applicant Nos. 3 to 5 will be an abuse of process of law. We are therefore inclined to quash FIR against applicant Nos. 3 to 5. Hence the order.

ORDER

- I) Application of applicant No. 1 – Zuber Abdul Rahman Shaikh and Applicant No. 2 – Khaleda Abdul Rahman Shaikh, is disposed of as withdrawn.
- II) Application of applicant Nos. 3, 4 and 5 is allowed. Relief is granted to them in terms of prayer clause (f).
- III) Rule is made absolute in those terms.

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE , J.]