

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

CRIMINAL APPLICATION NO. 3457 OF 2019

1. Shaikh Mushraf Pasha s/o Shaikh
Mushtakh Pasha,
Age: 27 years, Occ. Service,
R/o Sneha Nagar, Nanded,
Tq. & Dist. Nanded.

Through GPA Holder
Mushtak Pasha s/o Meer Safdar Hussain,
Age: 54 years, Occ. Service,
R/o Government Quarter,
Sneha Nagar, Nanded,
Tq. & Dist. Nanded.
2. Mushtak Pasha s/o Meer Safdar Hussain,
(Shaikh Mustak Shaikh Meer)
Age: 54 years, Occ. Service,
R/o Government Quarter,
Sneha Nagar, Nanded,
Tq. & Dist. Nanded.
3. Aliya Tabassum w/o Niyaz Ahmad Khan,
(Aliyabee Anjum @ Huma)
Age: 27 years, Occ. Household,
R/o Shivaji Nagar, Nanded,
Tq. & Dist. Nanded.
4. Javeria Anjum w/o Salim Shaikh,
(Shaikh Simabee w/o Shaikh Salim)
Age: 28 years, Occ. Household,
R/o Vishnupuri, Nanded,
Tq. & Dist. Nanded.
5. Sarfraj Hussain s/o Safdar Hussain,
(Shaikh Sarfraj Shaikh Meer)
Age: 45 years, Occ. Labour,
R/o Labour Colony, Waghi,
Nanded, Tq. & Dist. Nanded.

6. Rafiya Begum w/o Eshan Mohamad Pathan,
(Shaikh Munibee)
Age: 48 years, Occ. Household,
R/o Labour Colony, Near Municipal Council,
Nanded, Tq. & Dist. Nanded.

7. Afsari Begum w/o Mohamad Rauf,
(Shaikh Afsarbee)
Age: 45 years, Occ. Labour,
R/o Labour Colony, Nanded,
Tq. & Dist. Nanded.

... **Applicants**

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Kurunda Police Station,
Tq. Basmath, Dist. Hingoli.

2. Shaikh Rukhsar w/o Shaikh Mushraf,
Age: 20 years, Occ. Household,
R/o At present Dargah Mohalla,
Kurunda, Tq. Basmath,
Dist. Hingoli.

... **Respondents**

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Advocate for Applicants : Mr. Sandeep Munde h/f. S.S. Gangakhedkar

APP for Respondent No.1/State : Mr. M.M. Nerlikar

Advocate for Respondent No.2: Mr. Deshmukh Balaji J. (Appointed)

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**CORAM : V.K. JADHAV &
M.G. SEWLIKAR, JJ.
DATE : 03.03.2021**

JUDGMENT : (Per: *M.G. Sewlikar, J.*)

Rule. Rule is made returnable forthwith. Learned A.P.P. and the learned advocate for the respondent no.2 waive service. With the consent of both the sides the matter is heard finally at the stage of admission.

2. This is an application under Section 482 of the Cr.P.C. for quashing of the F.I.R. and R.C.C. No.237/20 registered on the basis of the said FIR.

3. Facts giving rise to this application are that respondent no.2 married applicant no.1 on 19.10.2018. Applicant no.2 is the father, applicant nos.3 and 4 are the married sisters of applicant no.1. Applicant no.5 is the cousin father in law of respondent no.2, applicant no.6 is the sister of applicant no.2 and applicant no.7 is not related by marriage, blood or adoption to applicant no.1.

4. It is alleged in the FIR that respondent no.2 was maintained well for a period of two months after marriage. Thereafter, applicant no.1 started beating her, abusing her. He used to beat her with belt and used to threaten her to kill her. Applicant no.4 used to come to her maternal place and used to taunt her saying that no articles as per status of the applicants were given. They were not properly honoured in the marriage.

Applicant no.4 used to say that her upbringing is not proper and used to call her as an offspring of a beggar. All the applicants used to say that she should bring Rupees Two Lakhs from her parents and on that count used to ill-treat her physically and mentally. She was driven out of the house on 10.05.2019 at 11.00 pm. Since then she has been staying with her parents. Accordingly, FIR came to be lodged on 25.09.2019 under Section 498-A, 323, 504, 506 read with Section 34 of the I.P.C. During the pendency of this application charge-sheet came to be filed against the applicants. Accordingly, the application was amended.

5. Heard Shri Sandeep Munde h/f. Shri S.S. Gangakhedkar learned counsel for the applicants, Shri M.M. Nerlikar learned APP for the State and Shri Balaji Deshmukh learned counsel for the respondent no.2 appointed by this Court.

6. Learned counsel Shri Munde submitted that all the applicants are staying separately from applicant no.1 and respondent no.2. They have unnecessarily been roped in, in this case. He submitted that general and vague allegations are made against all the applicants on the basis of which no cognizable offence can be said to be made out.

7. Learned APP Shri Nerlikar and learned counsel Shri Deshmukh submitted that specific allegations have been made against all the applicants especially against applicant nos.1 and 4.

8. When this Court expressed its disinclination to grant any relief to applicant nos.1 and 4, learned counsel for the applicants Shri Munde sought permission to withdraw the application to their extent. Permission was accordingly granted.

9. So far as other applicant nos.2, 3, 5, 6 and 7 are concerned vague and general allegations are made against them. No specific role is attributed to any of the applicants. On the basis of these vague and general allegations, it cannot be said that any cognizable offence is made out against these applicants. In the case of **Geeta Mehrotra and Anr. V/s. State of U.P. and Anr.; 2013 AIR (SC) 181**, the Hon'ble Supreme Court has observed as under:

“19. ...when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in

a matrimonial dispute specially if it happens soon after the wedding”

10. Therefore, continuation of prosecution would be nothing but an abuse of process of law. Moreover, tendency is growing to implicate all the near and dear relatives of the husband. The Hon'ble Supreme Court has deprecated this tendency in the case of **Kans Raj V/s. State of Punjab; 2000 (5) SCC 207.**

11. This case is also not an exception to what the Hon'ble Supreme Court has observed. Not only all the near and distant relatives have been roped, applicant no.7 has also been implicated in this case, though, she is not related to the applicant no.1 by marriage, blood or by adoption. She is a Mediator. A stranger to the family does not come within the sphere of Section 498-A of the I.P.C. In order to be covered under Section 498-A of the I.P.C., one has to be a relative of the husband by blood, marriage or adoption. The Hon'ble Supreme Court in the case of **Vijeta Gajra V/s. State (NCT of Delhi); (2010) 11 SCC 618**, it has been held that for bringing a person under the scope of Section 498-A of the I.P.C. one has to be a relative of the husband by blood, marriage or adoption. It is not alleged that the applicant no.7 is related by blood, marriage or adoption. Even otherwise, no specific role is attributed to applicant no.7. General and vague allegations are made against her. Therefore,

applicant no.7 cannot be made to face the trial. Therefore, no cognizable offence can be disclosed against these applicants. Having regard to this, it cannot be said that there is possibility of conviction being recorded against these applicants. The case of these applicants is, thus, squarely covered by condition nos. 1 and 3 as laid down by the Hon'ble Supreme Court in the case of **State of Haryana and Ors. V/s. Bhajan Lal and Ors.; AIR 1992 SUPREME COURT 604**. In view of this, we are inclined to quash the proceedings to the extent of applicant nos.2, 3, 5, 6 and 7. Hence the following order is passed:

ORDER

- I) Application of applicant nos.1 and 4 is disposed of as withdrawn.
- II) Application of applicant nos.2, 3, 5, 6 and 7 is allowed. Relief is granted in terms of prayer clause-B and B1. Rule made absolute in those terms.
- III) The fees of the appointed counsel is quantified @ Rs.4000/- and it is to be paid through the High Court Legal Services Sub-Committee.

[M.G. SEWLIKAR, J.]

[V.K. JADHAV, J.]