

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1226 OF 2018

APPLICANTS :-

1. Ashraf Farukh Dhekiya, Age : 28 years, Occ: Private.
2. Yasmin Farukh Dhekiya, Age: 65 years, Occ: Household,
3. Irfan Farukh Dhekiya, Age : 40 years, Occ: Private,
4. Rauf Farukh Dhekiya, Age: 35 years, Occ: Private,

App. No.1 to 4 R/o Itwara Bazar, Ghodagalli, Nanded.

...VERSUS...

NON-APPLICANTS :-

1. The State of Maharashtra, PSO, PS Ramnagar, Chandrapur.
2. Sameera Ashraf Dhekiya, Aged abut 25 years, occ. Housewife, R/o C/o Habib Ahmed Popatiya, Rehmatnagar, Chandrapur.

Mr. M.N.Ali, Advocate for the applicants.
Mr.S.P Deshpande, A.P P for non-applicant No.1.
Mr. S.A.Malani, Advocate for non-applicant No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.

DATED : 22.04.2021.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.
2. **Rule.** Rule is made returnable forthwith.
3. This application under section 482 of the Code of Criminal Procedure lays challenge to registration of First Information Report No.864 of 2018, dated 01/09/2018 registered with non-applicant No.1-Police Station and consequent charge-sheet bearing Regular Criminal Case No.572 of 2018 pending before the Judicial Magistrate First Class, Chandrapur for the offences punishable under sections 498-A, 323 and 506 read with section 34 of the Indian Penal Code.
4. The First Information Report came to be registered against the applicants with the accusations that the marriage between applicant No.1 (Husband) and non-applicant No.2 (Wife) was performed on 01/05/2011. It is alleged that the family members of applicant No.1 physically and mentally harassed non-applicant No.2 and therefore, on 30/06/2017, non-applicant No.2 came to her parents' house along with her children. The non-applicant No.2 returned to her matrimonial home in the month of September, 2017, but the relatives of applicant No.1 did not allow her to enter the house and she was thrown out of her house by the family members of applicant No.1. It is alleged that on

12/03/2018, non-applicant No.2 received a letter, wherein it is alleged that non-applicant No.2 was given Talak by applicant No.1. It is alleged that on 23/07/2018 she filed complaint against the applicants with the Women Cell, but there was compromise between the applicants and non-applicant No.2 with the condition that they will not harass non-applicant No.2. Thereafter, on 04/08/2018, there was meeting between the family members of non-applicant No.2 and the applicants wherein applicants Nos.2 to 4 assured non-applicant No.2 that they will convince applicant No.1 to treat non-applicant No.2 well. It is alleged that on the said day, applicant No.1 came to her parents' house and abused non-applicant No.2 in filthy language. The non-applicant No.2, therefore, filed report with non-applicant No.1-Police Station on 01/09/2018 against the applicants. The Investigating Agency carried out investigation and filed charge-sheet against the applicants.

5. The applicants have therefore, challenged the registration of FIR and consequent charge-sheet by way of filing the present application. This Court on 25/02/2019 issued notice for final disposal to the non-applicants. The non-applicant No.1 in pursuance of the said notice, filed reply stating that there is sufficient material on record to implicate the applicants and therefore, there is no merit in the application.

6. The non-applicant No.2 also filed her reply and stated similar contentions raised in the FIR. It is stated that there is *prima facie* material available against the applicants and therefore, the application deserves to be dismissed.

7. We have heard Mr. M.N.Ali, learned Advocate for the applicants, Mr. S.P. Deshpande, learned APP for non-applicant No.1 and Mr. S.A.Malani, learned Advocate for non-applicant No.2.

8. Mr. M.N. Ali, learned Advocate for the applicants stated at the outset that he has instructions from applicant No.1 not to press relief sought in the application and applicant No.1 desires to withdraw the application to the extent of himself by giving up challenge to the FIR and the charge-sheet. We, therefore, allow applicant No.1-husband to withdraw the application for himself and dismiss it to the extent of applicant No.1 only.

9. We have carefully considered the allegations in the FIR and material produced on record in the form of charge-sheet. The applicant No.2 is mother-in-law, applicant Nos.3 and 4 are brother-in-law of non-applicant No.2. Now a days, it has become a tendency to make vague allegations against every member of the family of the

husband implicating everybody under section 498-A and other offences of the Indian Penal Code. Hence, it has become necessary for the Courts to carefully scrutinize the allegations and to find out if the allegations made really constitute an offence and meet requirements of law at least *prima facie*. The Hon'ble Supreme Court in the case of ***K. Subbarao & oths. v. State of Telangana***, reported in ***(2018) 14 SCC 452*** observed that relatives of husband should not be roped in on the basis of vague allegations unless specific instances of their involvement are set out.

10. Having carefully considered the allegations in the FIR and the material produced on the record by way of charge-sheet, we are satisfied that the allegations against the applicant Nos.2 to 4 are vague and there are no specific instances of involvement of applicant Nos.2 to 4 are set out. On overall reading of the FIR and the charge-sheet, we are of the opinion that there are no allegations against the present applicant Nos.2 to 4, which constitute offences under sections 323 and 506 read with section 34 of the Indian Penal Code against the applicants. Hence, we are satisfied that the material produced by the prosecution along with charge-sheet *prima facie* does not fulfill ingredients of offences punishable under sections 498-A, 323 and 506 read with section 34 of the Indian Penal Code.

11. In the above circumstances, we pass following order:
- i) Criminal Application No.1226 of 2018 is partly allowed.
 - ii) First Information Report No.864 of 2018 and charge-sheet bearing Regular Criminal Case No.572 of 2018 pending before Judicial Magistrate First Class, Chandrapur for the offences punishable under sections 498-A, 323 and 506 read with section 34 of the Indian Penal Code against applicant Nos.2 to 4 are quashed and set aside.
 - iii) The challenge to First Information Report No.864 of 2018 and the charge-sheet bearing Regular Criminal Case No.572 of 2018 qua applicant no. 1 is dismissed as withdrawn.
12. Rule is made partly absolute in the above terms.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)