

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

CRIMINAL APPLICATION NO. 175 OF 2020

- 1] Rais Mujafar Naikwadi,
Age : 34 years, Occu. Private Service,
R/o. C/o. Supriya G. Pawar,
Vaibhav Laxmi Niwas, Saundarya Colony,
Second Floor, Nakhate Vasti, Rahatni, Pune.
- 2] Mujafar Ibrahim Naikwadi,
Age : 71 years, Occu. Nil,
R/o. Barangule Plot Gadegaon Road,
Barshi, Tq. Barshi, Dist. Solapur.
- 3] Halima Mujafar Naikwadi,
Age : 60 years, Occu. Housewife,
R/o. As above.
- 4] Anis Mujafar Naikwadi,
Age : 38 years, Occu. Private Service,
R/o. As above.

.... Applicants

Versus

- 1] The State of Maharashtra
- 2] Karishma Rais Naikwadi,
Age : 23 years, Occu. Household,
R/o. Barangule Plot Gadegaon Road,
Barshi, Tq. Barshi, Dist. Solapur,
At present Garada Galli,
Bhoom, Tq. Bhoom, Dist. Osmanabad.

.... Respondents

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Advocate for the applicant : Mr. Ganesh J. Kore

APP for respondent/State : Mr. A. M. Phule

Adv for respondent no. 2 : Mr. R. D. Thorat h/f Ms Pratibha Ghatge
(appointed)

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**CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.**

DATE : SEPTEMBER 13, 2022

ORAL JUDGMENT [PER RAJESH S. PATIL, J.] :-

1. This application is filed under Section 482 of the Code of Criminal Procedure for quashing the FIR vide C.R. No. 0191/2019 dated 22.12.2019 registered at Bhoom Police Station, Dist. Osmanabad, for the offence punishable under Sections 498A, 504, 506 r/w 34 of the Indian Penal Code, and Charge-sheet No. 71/2020 dated 22.10.2020, which is numbered as R.C.C. No. 121/2020 pending before learned Judicial Magistrate First Class, Bhoom.

FACTS :-

2.1] The marriage of respondent no. 2 – informant with applicant no. 1 was performed on 02.07.2017 as per Muslim rites and customs at Bhoom, Dist. Osmanabad. They have no issue from the said wedlock.

2.2] It is the case of Informant/respondent no. 2 in the FIR that, the father of respondent no. 2 had given Rs. 51,000/- with golden ornaments of five tolas and due respect to the applicants in the marriage ceremony of respondent no. 2 with applicant no. 1. Since applicant no. 1 was serving in Pune, respondent no. 2, after her
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marriage, went to Pimpri along with the applicants for residing in a rented house.

2.3] Respondent no. 2 has further stated in the FIR that, after the marriage, she was treated well for six months. Unfortunately, on 20.06.2018, she met with an accident on the Jamkhed Ashti road and she sustained fracture to her left hand and since then the applicants used to insult her. It is further stated that, the applicants used to say her that she became handicapped and now she doesn't like them and they would allow her to cohabit. The applicants then threatened her if she wanted to cohabit, she should bring Rs. 5.00 lakhs from her parents else she should give divorce and on this count they used to keep her hungry.

2.4] It is further the case of respondent no.2 in the FIR that, respondent no. 2 informed her parents from time to time about the said harassment and ill-treatment at the hands of applicants but neither the applicants paid heed to her grievance nor parents of respondent no. 2 could convince the applicants. It is further stated that, before six months from the date of registering the FIR, she had been dropped at her parental home in Bhoom, by giving threat of life. It is further the case of respondent no. 2 in the FIR that, on 20.07.2019, the applicants came at her home in Bhoom and abused the parents of respondent no. 2 and left away.

2.5] Respondent no. 2 has further stated in the FIR that, thereafter, on 14.12.2019, the respondent no. 2 approached the
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Women's Grievance Redressal Forum at Osmanabad and lodged complaint against the applicants but the efforts to mediate between the duo did not produce any result and, therefore, she lodged report against all the applicants at the Bhoom Police Station.

3] The applicants have stated in the Criminal Application that the marriage of respondent no. 2 with applicant no. 1 was solemnized in the year 2017 and since then both of them had been residing in Pune and she never ever visited the house of applicants no. 2 to 4 nor resided with them. The complaint in the F.I.R. and the statement recorded of the witnesses namely father, brother and aunty of Informant, that on 20.07.2019, the husband and her in-laws visited her parents house and abused her; is untruthful and fallacious, as from the copy of passport of Applicant no. 1 and no. 4, it can be seen that both of them were out of country. It is further stated that, the alleged offences do not disclose against the applicants. There is delay in lodging the FIR, which is unexplained. It is further stated that, even if the allegations made in the FIR are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out the case as alleged against the accused. Hence, the applicants have approached this Court for seeking the relief as referred to herein above.

SUBMISSIONS : -

4] Heard Mr. Ganesh J. Kore, learned counsel for the applicants, Mr. A. M. Phule, learned APP for respondent no. 1 / State and Mr. R. D. Thorat holding for Ms Pratibha Ghatge for respondent
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no. 2.

5] Learned advocate for the applicants submitted that the applicants have been falsely implicated in the offence and they had never abused the respondent no. 2. The allegations made against the applicants are vague and general in nature. There is huge delay in lodging the report against the applicants and same is unexplained. The contents of the complaint lacks the ingredients of the offences alleged. They are innocent persons. Further, the essential ingredients of cruelty and voluntarily causing hurt are not expressly mentioned to establish the alleged offence against the applicants.

6] Learned counsel for the applicants further submitted that the allegation of respondent no. 2 that on 20.07.2019 the applicants had approached her parental home in Bhoom and abused the parents of respondent no. 2 and left away, is false since on the said day both applicants no. 1 and 4 were in Saudi Arabia and to support this contention they have annexed with this application the copy of passport and airlines ticket. He further submitted that the applicant nos. 2 and 3 are the old aged parents and the Informant/respondent no. 2 never resided with them at Barshi. Hence, they prayed that the application be allowed and the FIR in question be quashed against the applicants.

7] Learned APP Mr. A. M. Phule for the respondent/State and the advocate Mr. R. D. Thorat holding for Ms Pratibha Ghatge appearing for respondent no. 2 submitted that there are specific
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allegations against all the applicants and hence opposed for grant of application.

ANALYSIS : -

8] For quashing the criminal proceedings under Section 482 of the Cr.P.C., we have to see, whether the allegations in the complaint and FIR *prima facie* establish the ingredients of the offence alleged.

9] On going through the contents of FIR and the material on record, it *prima facie* appears that the allegations against applicant nos. 1 and 4 that they had visited the parental home of respondent no. 2 on 20.07.2019 and abused her and her parents, are false, since the applicants no. 1 and 4 were out of country on 20.07.2019. Such kind of false statements of Informant, on basis of which F.I.R. is lodged; deserve to be quashed. The Informant/respondent no. 2 got married to Applicant no. 1 on 02.07.2017. the Informant's case is that she was treated well initially for six months. The Applicant no. 1 left for Saudi Arabia, for work purpose on 24.11.2018 and came back to India on 18.10.2019. In between the Informant left her matrimonial house. Therefore, the Informant is not able to prove how the applicants have abused her within few months. It appears that the applicants no. 2 and 3, who are senior citizens, are implicated only with an intention to harass them.

10] The Apex Court in **Geeta Mehrotra Vs. State of U.P.**, reported in AIR 2013 SC 181 stated "It can thus be seen that mere
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reference to family members without any specific allegations against them would not justify taking cognizance against them. There is a tendency to involve the entire family members in a matrimonial dispute.

11] Our High Court in **Shaikh Mushrraf Pasha and others Vs. State of Maharashtra and another**, reported in 2021(2) AVR (Cri.) 343, has observed that continuance of prosecution against relative of husband is nothing but abuse of process of law.

12] The Hon'ble Apex Court in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others** reported in [1992 Supp (1) SCC 335], wherein the Supreme Court has held that the High Court can quash the FIR to protect the accused from malicious prosecution. When a criminal proceeding is instituted with *mala fide* intention to harass the person, the court can quash the entire proceeding for the ends of justice. The Supreme Court has issued seven guidelines which should be followed by the Court in the exercise of its inherent power vested by Section 482 of the Code of Criminal Procedure.

13] Thus, we are of the considered view that the Informant/respondent no. 2 only with an intention to harass and with an ulterior motive, has filed the complaint against the applicants. Continuation of prosecution against the applicants, in our opinion, would amount to abuse of process of law.

14] Taking into consideration the ratio laid down in the cases of **Geeta Mehrotra, Shaikh Mushrraf Pasha and Bhajan Lal** (supra), the allegations made in the First Information Report, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused. Therefore, in our view, this is a fit case wherein we should exercise our discretion under Section 482 of the Code of Criminal Procedure to quash and set aside the FIR and the R.C.C. as against the applicants.

ORDER

- [i] Criminal Application is allowed in terms of prayer clause 'B' and 'BB' of the application.
- [ii] Criminal Application stands disposed of.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE