

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 138 OF 2021

1. Ashwini Anant Banait,
Age 40 years, Occ. Household,
R/o. Pawan Nagar, Raigad Chowk,
Nashik, Tq. & Dist. Nashik.

.... Applicant.
[Ori. Accused]

Versus

1. The State of Maharashtra,
Through Investigation Officer,
Shanipeth Police Station,
,
Jalgaon, Dist. Jalgaon.
2. Sau. Pooj Akshay Amodkar
Age 29 years, occ. Househo,d
R/o. C/o. Satish Namdeo Warulkar,
Dnyandev, Block No.20, Gut No.57,
Plot No.20, Sundar Nagar,
In front of Bank Colony, Old Khedi Road,
Shanti Peth, Jalgaon,
Tq.and Dist. Jalgaon.

.... Respondents
[Res. No. 2 Ori. Complainant]

Advocate for Applicant : Mr. Ishwar K. Wagh h/f. Adv. More Kumar
Gaurav M.

APP for Respondent No. 1 : Mr. R.V. Dasalkar,

Advocate for Respondent No. 2 : Mrs. Priyanka Shinde (appointed)

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

DATE : 25th AUGUST, 2022.

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

1] By the present application, the applicant is praying for quashing and setting aside the FIR bearing No. 0192 of 2020 registered at Shanipeth Police Station, Jalgaon under Sections 498-A, 406, 511, 323, 504, 506, 294, 295 r/w. 34 of IPC and resultant Criminal proceeding bearing RCC No. 4 of 2021.

A. FACTS :

2] The allegations in the FIR are that the respondent No.2(wife)and brother of the applicant, namely, Akshay Vijay Amodkar got married on 25th November, 2017, at Bhusawal. It is contended in the FIR that the parents of the respondent No.2 gave gold ornaments and costly items. She has alleged that from the very first day of her marriage the father in law, mother in law and sister in law started ill-treatment and harassment to her on one count or the other. The father in law and mother in law used to say that her parents have not given proper respect to them, they have not given the dowry amount.

3] The respondent No.2 has alleged that another sister in law namely, Arti Amodkar, being an Advocate knows the loopholes of law and she used to get annoyed with her and used to say that respondent No.2 is not suitable for her brother as respondent No.2 was not earning. It is further alleged that the applicant used to insult and abuse her and used to threaten her with legal action.

4] So far as the present applicant – Ashwini is concerned, it is alleged that when she came to Bhusawal, the applicant told her that as respondent No.2 has passed B.Sc. by using illegal means (copying) and hence, her husband does not like her and that he has informed Ashwini

that he does not need wife and he has married for name sake and by saying so, she snatched her ornaments and gave her a fake Mangalsutra.

5] The respondent No.2 has made various allegations, but since those relates to other accused, we do not want to dwell upon those allegations, as the present application is filed by only one applicant (sister-in-law of respondent No.2).

B. Submission of parties :-

6] Heard Mr. K.M. More, Advocate for the applicant. Mr. R.V. Dashalkar, learned APP for the State and Miss Priyanka Shinde, Advocate for the respondent No.2.

7] Learned counsel Mr. More submitted that the allegations against the present applicant are vague and omnibus in nature. According to him, the applicant was married in the year 1996 being resident of Pawan Nagar, Raigad Road, 4th Scheme, Nashik, is having a separate residence and therefore, there is no question of her harassing the respondent No.2, while Respondent No.2 got married to Applicant's brother on 25.11.2017. He, therefore, submits that the applicant being no way concerned with the harassment caused to respondent No.2, she has been falsely implicated in this case only with a view to harass her. He therefore prayed that the application may be allowed and the FIR may kindly be quashed as against the applicant -Ashwini Banait.

8] The counsel for the applicants relied upon the judgments in the matter of *Gian Singh Vs. State Punjab*, reported in **(2012) 10 SCC 303**, *Geeta Mehrotra Vs. State of U.P.*, reported in **AIR 2013 SC 181**, and *Shaikh Mushrraf Pasha and others Vs. State of Maharashtra and another*, reported in **2021(2) AVR (Cri.) 343**.

9] Learned APP – Mr. Dasalkar and learned counsel Miss Priyanka Patil submitted that specific allegations have been made against all the applicant, hence there is no question of quashing of FIR and criminal proceedings.

ANALYSIS :-

10] In the present case, the main allegations are against the husband, father in law and mother in law. So far as the present applicant – Ashwini (who is sister-in-law of respondent No.2) is concerned, it is alleged that when she came to Bhusawal, the applicant told her that as respondent No.2 has passed B.Sc. By using illegal means (copying) and hence, her husband does not like her and that he has informed Ashwini that he does not need wife and he has married for name sake and by saying so, she snatched her ornaments and gave her a fake Mangalsutra.

11] Perusal of the FIR shows, that is the only allegation against the applicant. The applicant got married in the year 1996, as submitted by the applicant's counsel; and from then she is staying at the matrimonial home. The respondent No.2 got married with brother of applicant only on 25.11.2017. The applicant is staying far away from the matrimonial house of respondent No.2. No specific allegation is attributed to the applicant and the allegations levelled are omnibus and general in nature.

12] We have in our recently decided Criminal Application No.2230/2020 [Narayan s/o Eknath Devkar and others Vs. State of Maharashtra and others, decided on 25.07.2022], after considering

the various judgment in paragraph nos. 22 to 24 held that continuation of prosecution against far off relatives would amount to abuse of process of law. The said paragraphs reads thus :

“22] It is important to consider the relevant Provision of Section 482 of the Cr.P.C. which reads thus :-

“482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

23] In the matter of **Gian Singh Vs. State Punjab**, reported in (2012) 10 SCC 303, the Supreme Court observed that it depends on facts and circumstances of each case as to when the High Court can use the powers of quashing criminal proceeding under Section 482 of Cr.P.C.

24] After taking into consideration judgments of the Apex court referred to above, for quashing the criminal proceedings under Section 482 of the Cr.P.C. we have to see, whether the allegations in the complaint and F.I.R. prima facie establish the ingredients of the offence allege. We are of the view that under Section 482 of the Cr.P.C., we have inherent powers to make such orders as may be necessary to prevent abuse of the process of any law to secure the ends of justice. It is also necessary to consider Section 498-A of the IPC, which reads thus :-

“[498A. **Husband or relative of husband of a woman subjecting her to cruelty.**—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

Therefore, the section contemplates that there has to be “cruelty” committed to a woman by her husband or the relatives of the husband, only then the offence stands proved.”

13] In the matter of Geeta Mehrotra (supra), the Supreme Court in para. 19 has observed thus :-

“... 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.”

It can thus be seen that mere 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.

14] In the matter of *Shaikh Mushraf Pasha (supra)*, the Division Bench of our High Court in para No. 10 observed thus :

“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. State of Punjab; 2000 (5) SCC 207 : (AIR 2000 SC 2324).”

Thus, the High Court observed that continuance of prosecution against relative of husband is nothing abuse of process of law.

15] We are of the considered view that the respondent No.2 only with an intention to harass the applicant, with ulterior motive, has filed the complaint also against husband’s relatives i.e. applicant who is sister-in-law of respondent No.2. Continuation of prosecution against present applicant, who is the sister in law, living separately, in our opinion, would amount to abuse of process of law. Hence, we allow the application by quashing and setting aside the FIR bearing No. 0192 of 2020 and further proceedings in RCC No. 4 of 2021 as far as applicant is concerned, who is arrayed as accused No.5.

14] In the result, we pass the following order :

ORDER

- i. The application is allowed in terms of prayer clauses (B) and (BB).
- ii. Criminal Application stands disposed of, accordingly.

iii. Fees of the learned Advocate appointed is quantified at Rs. 5,000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

grt/-