

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 538 OF 2022

1. Ganjanan W/o. Sangram Chamkure,
Age. 33 years, Occ. Service,
 2. Sangram S/o. Madhavrao Chamkure,
Age. 58 years, Occ. Retired,
 3. Sulochana W/o. Sangram Chamkure,
Age. .. years, Occ. Household,
Applicant Nos. 1 to 3, R/o. Vyankateshwar Nagar,
Ring Road, Nanded
 4. Krishna S/o. Sangram Chamkure,
Age. 36 years, Occ. Service,
 5. Varsha S/o. Krishna Chamkure,
Age. .. years, Occ. Housewife,
Applicant Nos. 4 & 5, R/o. Flat No. A113,
Godrej Prana, Undri, Tq. Haveli District Pune
 6. Rutuja Santosh Udgire,
Age. 34 years, Occ. Business,
 7. Santosh S/o. Baburao Udgire,
Applicant Nos. 6 & 7, R/o. Bajaj Nagar,
Purna Road, Nanded
- Applicants

Versus

1. The State of Maharashtra,
Through, Police Inspector,
Vasmat Police Station,
Tq. Vasmat, Dist. Hingoli

2. Sonali Gajanan Chamkure,
Age. 28 years, Occ. Nil,
R/o. Kalipeth Vasmat,
Tq. Vasmat, District Hingoli

... Respondents

Advocate for Applicants : Mr. S.S. Deshpande, APP for State : Mr. S.J. Salgare, Advocate for Respondent No. 2 : Mr. S.R. Bagal.

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

DATE : 27th JULY, 2022.

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

1. By order dated 11th March, 2022, this Hon'ble Court dismissed the Criminal Application as withdrawn as far as applicant Nos. 1 to 4 are concerned.

2. Accordingly, amendments were made in the Criminal Application. Therefore, the present Criminal Application is considered only as regards applicant Nos. 5 to 7, wherein, the applicant Nos. 5 to 7 are praying for quashing of First Information Report No. 10/2022, registered with Vasmat Police Station, Taluka Vasmat, District Hingoli, for the offence punishable under Sections 498-A, 323, 294, 506 read with 34 of the Indian Penal Code.

A. FACTS :

3. Before considering the disputed facts which gave rise to the filing of present Criminal Application, few admitted facts are as under : The applicant Nos. 1 and respondent No. 2 got married in the year 2014. There are no children from the wedlock. After marriage, few years applicant No. 1 and respondent No. 2 lived a happy married life. The applicant No. 1, on 14th September, 2021, filed divorce petition viz.

Petition A.No. 263/2021.

4. The respondent No. 2 filed criminal complaint on 12th January, 2022, against all these applicants. The respondent No. 2 in her complaint alleged that she is residing with her parents at Kalipeth Vasmat, since last four months. Respondent No. 2 further stated that applicant No. 1 (husband) demanded an amount of Rs. 10 Lakhs to respondent No. 2, for starting new business. As the demand was not fulfilled, the applicant No. 1 started beating respondent No. 2 and she was, further, threatened that if she wants to stay in matrimonial house, she has to bring Rs. 10 Lakhs. The respondent No. 2 further stated that the in-laws abused her as she was not able to bear a child and she was not looking good. Ultimately, the in-laws threw the respondent No. 2 out of house by using bad language. Accordingly, on 23rd August, 2021 at 02:00 p.m., the respondent No. 2 landed in her parents house.

5. The respondent No. 2 repeatedly telephonically called up her husband and in-laws but they did not pick up her phone calls, hence on 09th November, 2021, she went to her matrimonial house along with her brother and maternal uncle. However, she was not allowed to enter the house.

6. The applicants in present Criminal Application have prayed for quashing of First Information Report No. 10/2022 which is filed under Sections 498-A, 323, 294, 506 read with 34 of Indian Penal Code. The applicants further stated in the Criminal Application that due to non co-operation of informant (respondent No. 2) for more than eight years, the applicant No. 1 had filed divorce petition on 14th November, 2021. It is further stated that as a counter blast the respondent No. 2 filed First

Information Report against all the applicants.

7. The applicants further stated in the Criminal Application that the respondent No. 2 (wife) had also written a letter dated 25 October, 2021, to District Health Officer, Nanded, praying that the pension and retirement benefits of applicant No. 2 (father-in-law) should not be paid.

8. The applicants further stated that applicant Nos. 4 to 7 are concerned, they never resided along with respondent No. 2. So also, the applicant No. 4 lives in Pune and wife of applicant No. 4 (applicant No. 5) is running a shop in Pune. The copies of shop licence and leave and licence agreement are also annexed to the Criminal Application.

9. It is further submitted in the Criminal Application that applicant No. 6 is the married sister of applicant No. 1; the applicant No. 7 is the husband of applicant No. 6.

10. The present Criminal Application under Section 482 of the Code of Criminal Procedure is filed on 04th February, 2022, seeking therein quashing of First Information Report No. 10/2022. As the application is already withdrawn in respect of applicant Nos. 1 to 4, we are required to consider the application of applicant Nos. 5 to 7 only.

B. SUBMISSION OF PARTIES :

11. Heard learned Advocate Mr. S.S. Deshpande, for the applicants, Learned APP Mr. S.J. Salgare for State and learned Advocate Mr. Bagal for respondent No. 2.

12. According to the learned Advocate Mr. Deshpande for the applicants, so far as applicant Nos. 5 to 7 are concerned, they have not

committed any offence as alleged by the respondent No. 2 and only with a view to harass the applicants, she has lodged the present complaint. He further submits that due to the matrimonial disputes for more than eight years, as the applicant No. 1 filed divorce petition on 14th November, 2021, as a counter blast the respondent No. 2 has filed the present First Information Report. The applicant No. 5 is the wife of respondent No. 4. Whereas, respondent No. 6 is the sister-in-law of respondent No. 2 and respondent No. 7 is the husband of the respondent No. 6. All of them are residing at the different places. Respondent No. 5 resides at Pune. Respondent Nos. 6 and 7 though reside at Nanded, but they are residing in separate residence at Bajaj Nagar.

13. Learned Advocate for the applicants relied upon the judgments in the matter of *Gian Singh Vs. State Punjab*, reported in **(2012) 10 SCC 303** and *Geeta Mehrotra Vs. State of U.P.*, reported in **AIR 2013 SC 181**.

14. Learned APP prayed that specific allegations are made against all the applicants, hence there is no question of quashing the First Information Report.

C. ANALYSIS :

15. If the contents of the First Information Report are read, the only allegations against respondent Nos.6 and 7 is to the following effect:

"माझी नणंद नामे ऋतुजा उदगिरे हि नेहमी मला आम्ही श्रीमंत लोक आहोत तुला यांच्या सोबत रहावयाचे असेल तर त्या स्टेटसने राहावे लागेल असे नेहमी मला टोचून बोलते त्यास तिचा पती सुद्धा प्रोत्साहन देतो तुला राहायचे नसेल तर तू माझ्या भावाला फारकत दे असे

म्हटली तेव्हा मी त्यास तुम्ही असे कसे बोलता ताई मी गरीब घरची आहे असे म्हणताच तिने माझ्या सोबत वाद करून मला थापडबुक्यांनी मारहाण केली.”

16. If the allegations in the FIR are considered, in our view only general and omnibus allegations are leveled against respondent Nos. 6 and 7. There is no allegation as against respondent No. 5.

17. The learned counsel for applicants argued that in the matter of Geeta Mehrotra (supra), the Supreme Court in paragraph No. 19 has observed thus :-

“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.”

18. The Apex Court in the matter of Gian Singh (supra), has laid down the guideline as to when the High Court should exercise power under Section 482 of the Code of the Criminal Procedure to prevent the abuse of process of law in Court or to secure ends of justice. So far as present matter is concerned, the relevant guideline laid down in para No. 48 of the judgment in the matter of Gian Singh (Supra) reads thus :

“48.

“21.....(a) Cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.”

19. We have in our recently decided Criminal Application No. 2230/2020 [Narayan S/o. Eknath Devkar and others Versus State of Maharashtra and others, decided on 25th July, 2022], after considering the various judgment in paragraph No. 27, held that continuation of prosecution against far off relatives would amount to abuse of process of law. The paragraph No. 27 reads thus :

“27. Thus, we are of the considered view that the respondent No. 2 only with an intention to harass the applicant No. 1, with ulterior motive, has filed the complaint also against far off relatives i.e. respondent Nos. 4 to 15. Continuation of prosecution against Applicant Nos. 4 to 15, who are far off relatives of husband and who stay separately in their own house, in our opinion, would amount to abuse of process of law.”

20. Considering the ratio laid down in the matters of Geeta Mehrotra (supra), Gian Singh (supra) and Narayan Devkar (supra), we are of the considered view that the ratio in the said decisions is squarely applicable to the facts in the present case. Also taking into consideration that only general allegations were made in First Information Report against respondent Nos. 5 to 7, we are of the opinion that this is a fit case wherein we should exercise our discretion under Section 482 of the Code of the Criminal Procedure, to quash the First Information Report No. 10/2022 as against applicant Nos. 5 to 7 :

ORDER

- i. The Criminal Application of applicant Nos. 5 to 7 is allowed in terms of prayer clause (A).
- ii. Criminal Application stands disposed of, accordingly.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)

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