

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

CRIMINAL APPLICATION NO. 604 OF 2022

1. Parasram Dhondbaji Deshmukh,
Age. 70 years, Occ. Agri,
R/o. Kanha, Tq. Mahagaon,
District Yeotmal.
2. Gayabai W/o. Parasram Deshmukh,
Age. 68 years, Occ. Agri,
R/o. Kanha, Tq. Mahagaon,
District Yeotmal.
3. Sahebrao S/o. Parasram Deshmukh,
Age. 52 years, Occ. Service,
R/o. Kanha, Tq. Mahagaon,
District Yeotmal.

At present Sambhaji Nagar, Pusad,
Tq. Pusad, District Yeotmal.

4. Simabai W/o. Sabebrao Deshmukh,
Age. 52 years, Occ. Household,
R/o. Kanha, Tq. Mahagaon,
District Yeotmal.

At present Sambhaji Nagar, Pusad,
Tq. Pusad, District Yeotmal.

5. Shankar S/o. Parasram Deshmukh,
Age. 48 years, Occ. Service,
R/o. Kanha, Tq. Mahagaon,
District Yeotmal.

.... Applicants

Versus

1. The State of Maharashtra,

Through Investigation Officer,
Police Station Kalamnuri,
Tq. Kalamnuri, District Hingoli.

2. Sou. Swati Shankar Deshmukh,
Age. 29 years, Occ. Household,
R/o. Kanhavana, Tq. Mahagaon,
District Yeotmal.

At present Nandapur, Tq. Kalamnuri,
District Hingoli.

... Respondents

Advocate for Applicants : Mr. P.B. Ganpat h/f. Mr. V.S. Pawar
APP for Respondent No. 1 / State : Mr. A.M. Phule
Advocate for Respondent No. 2 : Mr. H.I. Pathan

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

DATE : 21st SEPTEMBER, 2022.

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

1. By the present application filed under Section 482 of the Code of Criminal Procedure, the applicants are praying for quashing and setting aside the proceeding bearing RCC No. 221/2021, which is pending before Judicial Magistrate First Class, Kalamnuri, District Hingoli, arising out of Crime No. 270/2021, registered with Kalamnuri Police Station, Hingoli, for the offences punishable under Sections 498-A, 323, 504 read with 34 of the Indian Penal Code.

A. FACTS :

2. The respondent No. 2 has lodged FIR which is registered

as Crime No. 270 of 2021. It reports that the marriage of applicant No. 5 and respondent No. 2 was solemnized in the year 2010. Out of the said wedlock, they have one girl aged 10 years. The respondent No. 2 was treated well for one and half year. Thereafter, the applicants started demanding Rs. Four Lakhs for purchasing tractor and as she has not fulfilled the said demand, the applicants started harassing her physically and mentally. Her mother-in-law, father-in-law, brother-in-law and wife of brother-in-law used to provoke her husband and due to that her husband used to beat her. The applicants gave a phone call to the father of respondent No. 2 and called him at her matrimonial house and sent the respondent No. 2 along with her daughter to her parental house with her father. The respondent No. 2 had called the applicants to take her back to the matrimonial house for co-habitation through President and Vice-president of Grievance Redressal Committee but the applicants refused to come there by saying that they do not want to co-habit the respondent No.2. On 10.07.2021, the respondent No. 2 has filed a complaint to District Women Redressal Committee, Superintendent of Police Office, Hingoli. Even there compromise could not take place. Hence, the respondent No. 2 filed the present FIR.

3. After completion of the investigation the police have filed charge sheet which was registered as R.C.C. No. 221/2021 in the Court of learned Judicial Magistrate First Class, Kalmnuri, District Hingoli.

4. The Applicants/Accused being dissatisfied by registration of FIR No. 270/2021, have filed this criminal application under section 482 of Cr.p.c., before this Hon'ble Court for quashing of the FIR and the proceedings arising therefrom.

4.1 The Applicants have stated that the Applicants no.1 to 4 are the in-laws of Respondent no.2, and Applicant no.5 is the husband of Respondent no.2. The marriage between the Applicant no.5 and Respondent no.2 was solemnised in the year 2010. The Respondent no.2 cohabitated for some days and thereafter started visiting her parental home frequently. Thereafter, the Respondent no.2 on 13/3/2011 after attending the marriage ceremony of Rangrao Kondbarao Devaskar's son, at village Mahagaon, went missing. Accordingly, missing complaint was lodged with the police station. She was ultimately found at village Pardi on 16/3/2011 at her uncle (Mama's) village. The police have handed over her custody to her father on 16/3/2011. Since that day she is residing at her father's home .

4.2 All of sudden after 10 years she filed complaint with Women Protection Committee, Superintendent of Police Office, Hingoli on 10.7.2021. It is alleged in the said complaint that the Applicants are harassing the Respondent no.2 for bringing money for purchasing tractor. Immediately thereafter F.I.R. is lodged under section 498A, 323, 504 r/w 34 of Indian Penal Code. No case is made out in the F.I.R. against the Applicants. There is unexplained

delay in lodging the F.I.R. hence the F.I.R. and criminal proceedings thereof should be quashed and set aside.

B. SUBMISSION OF PARTIES :

5. Heard learned Advocate Mr. P.B. Gapat holding for learned Advocate Mr. V.S. Pawar for the applicants and Mr. A.M. Phule, learned APP for State as well as learned Advocate Mr. H.I. Pathan, for Respondent No. 2. Perused the record.

6. According to the learned Advocate for the applicants, the respondent No. 2 had on her own left from a marriage ceremony of relative of applicants on 13.03.2011. As she was not found, the applicant No. 5 had filed missing complaint with concerned police station on 13.03.2011 which is on record. Thereafter, the respondent No. 2 never came for cohabitation since March, 2011. On several occasions the applicants tried to convince the respondent No. 2 for cohabitation. However, the respondent No. 2 refused to come for cohabitation.

7. He further stated that the respondent No. 2 with an intention to harass the applicants filed the false FIR on 22/9/2021 against them, which contains baseless allegations and, therefore, same is required to be quashed and set aside.

8. 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**.

9. Per contra, the learned APP supported the case of the prosecution and submitted that there are specific allegations against all the applicants. Hence, the application may be dismissed.

C. ANALYSIS :

10. From perusal of the FIR which is lodged on 22/9/2021, it is crystal clear that Informant/Respondent no.2 is residing at her parental house since 2011. At the time of one marriage ceremony of relatives of applicants on 13.03.2011, from the marriage itself, the respondent No. 2 herself on her own had left the matrimonial house without intimating to the applicants. Even, the missing complaint was filed on 13.03.2011 by the applicant No. 5 / husband for her search. Thereafter, she was found at her uncle's (Mama's) village at Pardi on 16.03.2011. Then the concerned police officer has handed over the custody of respondent No. 2 to her father on 16.03.2011 and since then she is residing with her father along with her daughter at her parental home.

11. It is also noted that the respondent No. 2 had left the matrimonial house in the year 2011 and she is filing the FIR in the year 2021, there is no explanation in the FIR as to what happened in between 10 years. All of a sudden in the year 2021 FIR is lodged for the allegations of demand of monies and harassment to the

respondent No.2 by the applicants. So also before lodging the FIR , complaint was filed before the Women District Redressal Forum on 10/7/2021, by the Informant/ Respondent no.2. The allegations of demand for monies by the applicants, is stated for the first time in the said complaint. So also it is stated in the complaint that Applicant no.5 was earlier married, and he had divorced his 1st wife, however this fact was not disclosed to Informant/ Respondent no.2. This particular fact about non disclosure of 1st marriage is not to be found in the FIR. It is also crystal clear from the 'Possession Receipt' attached to the Criminal Application that Respondent no.2 was missing from 13/3/2011 and was found on 16/3/2011 at Mama's village, after that her custody was given to her father. And her father had stated in the 'Possession Receipt' that he has received her possession and he has no complaints, and he is taking her to his house. Accordingly he has signed the document. This document 'Possession Receipt' clearly shows that Respondent no.2 is residing at her father's house from March 2011. There is no explanation as to what happened from March 2011 to July 2021, in the FIR.

12. Therefore, we find substance in the submissions of learned Advocate for the applicants that the applicants are arrayed as parties only to harass them. In our view only general and omnibus allegations are levelled against them.

13. 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.”

14. 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.”

15. 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.”

16. 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 the applicants, we are of the opinion that this is a fit case wherein we should exercise our discretionary powers under Section 482 of the Code of the Criminal Procedure, to quash the First Information Report as well as R.C.C.No.221 of 2021 pending before JMFC, Kalamnur District Hingoli. Hence, we pass

the following order :

ORDER

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

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)