

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

CRIMINAL APPLICATION NO. 699 OF 2022

1. Mohammad Harun Jalaluddin Inamdar,
Age. 35 years, Occ. Service,
2. Jalaluddin S/o. Abdul Bashir Inamdar,
Age. 66 years, Occ. Retired,
3. Rukhsanabi W/o. Jalaluddin Inamdar,
Age. 61 years, Occ. Household,
4. Mohammad Amaan S/o. Jalaluddin Inamdar,
Age. 22 years, Occ. Student,

All R/o. 1/246/3319, near Modi Hospital,
Tagore Nagar, Vikhroli (E),
Mumbai – 400 083.

....Applicants

Versus

1. The State of Maharashtra,
Through Police Inspector,
MIDC Police Station,
Jalgaon.
2. Arshinbee W/o. Mohammad Harun Inamdar,
D/o. Qazi Abdul Majid Abdul Hameed Khalifa of
Khankhe Aliya Habibiya and Madarasa,
Age. 23 years, Occ. Private Job,
C/o. Qazi Abdul Majeed Abdul Hameed Khalifa,
Near Pillu Masjid, Dharangaon,
Tq. And Dist. Jalgaon.

....Respondents

Advocate for Applicants : Mr. S.S. Kazi

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

Advocate for Respondent No.2 : Mr. Naseem R. Shaikh

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

DATE : 15.09.2022.

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

1. By the present Application filed under Section 482 of the Code of Criminal Procedure, the applicants who are original accused are praying for quashing of FIR No. 1252/2020 registered with MIDC Police Station, Jalgaon, for the offences punishable under Sections 498 (A), 323, 504, 506 and 34 of the Indian Penal Code, and further for quashing the charge-sheet No. 8513/2021 along with the proceeding bearing RCC No. 310/2021 pending before the Chief Judicial Magistrate, Jalgaon.

A. FACTS :

2.1. In the First Informant Report, which is registered as Crime No. 1252/2020, the Informant/respondent No. 2 has stated that the marriage was solemnized in between the applicant No.1 with the (Informant) respondent No. 2, on 27.04.2016. Out of the said wedlock, respondent No. 2 gave birth to baby boy on 15.05.2018. The parents of respondent No.2 had given household articles such as Bed, Cup-board, Bajaj Company's AC, Fridge, etc., worth Rs. 3,50,000/- and also given golden and silver ornaments worth Rs. 1,50,000/-. After marriage the Informant had gone to Mumbai at Vikhroli and resided along with the applicants. She has been treated

well for about three months. Thereafter, the husband and in-laws started to give trouble on small-small issues, the in-laws started to abuse also. She was beaten/ assaulted. Her husband always used to suspect on her character and for that reason he used to abuse and beat her. When her husband was out of town due to work at that time the father-in-law and mother-in-law used to sleep in the bedroom of respondent No. 2 and compel her to sleep in kitchen. Though there was fan in kitchen, they had not allowed her to switch on the fan. When she about to went to Ajmer, her husband and in-laws had taken her all ornaments and kept with them. When she was pregnant, she was forced to fast during Ramzan month.

2.2. It is further stated that they have demanded Rs. 10,00,000/- from her for purchasing four wheeler. They said that if she wants to stay with them, she will have to fulfill their demand otherwise she has to go to her parental house. As the demand was not fulfilled, all the accused persons have ill-treated her physically and mentally.

2.3. There was a miscarriage of respondent No. 2 on 01.07.2017, at that time she was admitted in Yashwant Hospital, Vikroli, thereafter, her in-laws had called her father and sent her with her father at Jalgaon and thereafter, they were not ready to bring back her to matrimonial house. Her father had convinced them and sent her to matrimonial house for cohabiting with applicant No. 1. Thereafter, she again

became pregnant. However, there was no change in nature of applicants. They continued their ill-treatment to her. They used to give her stale food, due to that she got pain in her stomach and for that reason they drove her out of house to her aunt's house. Thereafter, her father called her at Jalgaon by making a phone call. She had stated all the ill-treatment given by the applicants to her father. Informant/Respondent No. 2 and her father had gone to Vikhroli Police Station, but Police did not registered any offence by contending that, it appears to be a household matter, so her helpless father took respondent No. 2 to his house in March, 2018.

2.4. She gave birth to a son on 15.05.2018 and the said information was given to her husband and in-laws, but nobody came to see the child. Therefore, the father of respondent No. 2 kept a meeting of her community members and in the meeting the husband and brother-in-law came, but they have not asked anything regarding the son and her husband told her that he don't want the child and take Talaq and thereafter they left the meeting. She stated in the FIR that she knows that her husband has solemnized second marriage.

3. The applicants being the husband and in-laws of complainant, have challenged the FIR for quashment by way of Criminal Application. In the Criminal Application, the applicants have stated that the entire case of prosecution is that the demand as well as physical and mental torture was

given by the husband and in-laws at Vikhroli, Mumbai, therefore, the Police Station at Vikhroli as well as the Court at Vikhroli, will have jurisdiction and the Police Station at Jalgaon, would have no jurisdiction to entertain any FIR of the incident which occurred at Vikhroli, as well as on other grounds, the applicants have approached to this Hon'ble Court by way of present criminal application for the quashing of the FIR and further Criminal proceedings.

B. SUBMISSION OF PARTIES :

4. Heard Mr. S.S. Kazi for the applicants, Mr. R.V. Dasalkar, learned APP for the State and Mr. Naseem R. Shaikh for the respondent No. 2.

5. Learned counsel Mr. Kazi submits that the applicant No. 1 was married with Informant/respondent No. 2 on 27.04.2016. After the marriage the respondent No. 2 resided with the applicant No. 1 at Vikhroli (E), Mumbai, the respondent No. 2 started to pickup quarrels on pity issues and therefore, the respondent No. 2 could not leave happy married life with the applicant No. 1. The respondent No.2 filed a false FIR against them only with a view to harass them.

6. He further submits that the perusal of the FIR would show that the general and baseless allegations have been levelled against the applicants. On the basis of the allegations made in the Report, no cognizable offence can be

said to have been made out.

7. The Applicants are innocent and have not involved in the present crime as is alleged by the complainant in the FIR. No offences as mentioned in the Complaint is made out against the applicants, the allegations are afterthoughts, concocted facts for keeping the law in motion and the same are liable to be quashed under Section 482 of the Code of Criminal Procedure by this Hon'ble Court.

8. Learned APP – Mr. R.V. Dasalkar and learned counsel Mr. N.R. Shaikh for respondent No. 2 submitted that there was a demand of monies as well as all the accused persons have tortured the respondent No. 2 physically and mentally. Due to their ill-treatment, she had to face the miscarriage. Specific allegations have been made against all accused persons in the Criminal Application, hence there is no question of quashing the FIR and the proceedings arising therefrom.

9. The informant has filed affidavit-in-reply dated 31.07.2022 to the Criminal Application. In the said affidavit the Informant has stated that on 29.11.2020, the applicants along with the 2nd wife of applicant No. 1, visited the parental house of Informant at Jalgaon and threatened her to sign on blank papers, to which she refused. Hence, the informant lodged police complaint on 30.11.2020.

10. After charge-sheet was filed, the case was

registered as RCC No. 310 of 2021 before the Chief Judicial Magistrate, Jalgaon, on 15.03.2021 and almost after one year the Criminal Application under Section 482 of Cr.p.c. is filed on 02.02.2022. The applicant could have filed discharge application before Chief Judicial Magistrate. The applicants are avoiding trial, hence the present application under Section 482 of Cr.p.c. is filed.

C. ANALYSIS :

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

12. Prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegation as made in the complaint, *prima facie*, establish the case. The Courts have to see whether continuation of the complaint amount to abuse of process of law and whether continuation of the criminal proceedings results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 of Cr.p.c. While exercising the power under the Provision, the Courts have to only look at the uncontroverted allegation in the complaint whether, *prima facie*, discloses an offence or not, but it should not convert

itself to that of a trial Court and dwell into the disputed questions of fact.

13. Perusal of the FIR would show that Informant has reported that there was ill-treatment meted out to her by her husband and in-laws. Husband of respondent No. 2 is of suspicious nature. Her parents-in-law and brother-in-law also used to surmise on her character and abuse her as well as provoke her husband also; who used to then torture and beat her only on the basis of mere suspicion of her character. She has lost her first pregnancy due to the ill-treatment meted out to her by the applicants. There was a demand of Rs. Ten Lakhs for purchasing a four wheeler. As the demand was not fulfilled, they have tortured her. They have given her stale food as well as many times they have not given her food to eat.

14. The Informant in affidavit-in-reply to the Criminal Application, has stated that on 29.11.2020, the applicants along with 2nd wife of applicant No. 1, visited the parental house of Informant and threatened her to sign on blank pages. A complaint to that effect is filed by the Informant. After charge-sheet was filed on 15.03.2021, the present Criminal Application is filed on 02.02.2022, after a gap of more than 10 months.

15. Therefore, taking into consideration the contents of FIR, in our view, this is not a fit case, wherein, we should

exercise our discretion under Section 482 of the Code of Criminal Procedure, to quash the FIR as against applicants. The applicants should face the trial. Hence, we pass the following order :

ORDER

- i. Criminal Application stands rejected.
- ii. The observations made herein above are, *prima facie*, in nature and it would have no bearing on the final adjudication of the proceedings.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)