

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

CRIMINAL APPLICATION NO.480 OF 2021

**KAILASH SUDAM KHARAT AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicants : Mr. Prakash G. Gunale (consent obtained)
APP for Respondent No.1 - State : Mr. R. D. Sanap
None for Respondent No.2

. . .

**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

DATED : 17 NOVEMBER 2022

PER COURT :

. By invoking powers under section 482 of the Code of Criminal Procedure, the husband of respondent No.2, his mother and rest of the applicants stated to be related to him are seeking quashment of crime No.13 of 2021, registered at the instance of respondent No.2 for the offences punishable under sections 498(A), 323, 504, 506 read with 34 of Indian Penal Code.

2. Learned advocate for the applicants submits that the marriage between applicant no.1 and respondent no.2 was solemnized in the year 2014. The couple had begotten couple of children. In spite of that leaving the children behind, she left the matrimonial house on her own accord and has

been residing with her parents. The FIR has been lodged belatedly after three years of such desertion. The allegations in the complaint are false and vague. In fact, applicant no.2 had to lodge a police complaint when respondent no.2 along with her father had been to their house and had threatened and abused her in filthy language. Even respondent no.2 had approached the grievance cell with a complaint as is mentioned in the FIR, but has subsequently withdrawn it. These specific allegations have not been controverted by respondent no.2 in her affidavit-in-reply.

3. Learned advocate would submit that the applicants cannot be made to face the trial with such vague and concocted allegations. It would be an exercise in futility. The case is squarely covered by the principles laid down in the matter of *State of Haryana and Ors. Vs. Ch. Bhajan Lal; AIR 1992 SC 604*. The application may be allowed.

4. Learned APP opposes the application and submits that pursuant to the investigation some evidence has been collected by the Investigating Officer and it is better for the trial court to ponder upon and take a decision depending upon the evidence to be led by the prosecution.

5. Learned advocate for respondent no.2 was absent on the last date and is absent even today, albeit an affidavit-in-reply has been filed by respondent no.2.

6. We have carefully considered the rival submissions and perused the papers.

7. So far as applicant Nos.1 and 2 are concerned, when we express our disinclination to grant any relief, their learned advocate, on instructions, seeks leave to withdraw the application to their extent.

8. Suffice for the purpose to refer to the latest decision of the Supreme Court in the matter of ***Kahkashan Kausar alias Sonam and others v. State of Bihar and others*** ; (2022) 6 SCC 599. By reproducing the allegations in the FIR in that matter, the Supreme Court has held those allegations to be vague and omnibus. Para No.18 reads as under :-

“18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that “all accused harassed her mentally and threatened her of terminating her pregnancy”. Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.”

9. Pertinently, all the earlier decisions of the Supreme Court were referred to and the principles were culled down to reach a conclusion that the allegations were vague and omnibus and the crime deserved to be quashed.

10. We are of the considered view that even the matter in hand is squarely covered by the observations of the Supreme Court in the matter of ***Kahkashan Kausar alias Sonam (Supra)***. The FIR in substance reads about the applicants having maintained respondent no.2 properly for initial period of six months from the date of marriage i.e. 28 December 2014 and thereafter, there was a demand of money and that she was subjected to physical and mental torture. She has alleged that she had narrated the incident to her parents and they and other relatives tried to convince the applicants but in vain. Since then she has been residing with her parents for last three years from the date of FIR. Even the statements of the parents of respondent no.2 are similarly vague, in verbatim and nothing but reproduction of the allegations in the FIR. Precisely for this reason, according to us, the case is squarely covered by the decision in the matter of ***Kahkashan Kausar alias Sonam (Supra)***.

11. In the result, we are of firm view that the decision in the matter of ***Bhajan Lal (supra)*** is applicable in the matter in hand and covered by the guidelines No.1, 3, 5 and 7.

12. The application is allowed partly. The application to the extent of applicant Nos.1 and 2 is dismissed as withdrawn. The application to the extent of applicant nos.3 to 5 is allowed. The crime no.13 of 2021 to their extent is quashed and set aside.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)

Tandale/-