

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

CRIMINAL APPLICATION NO. 884 OF 2022

1. Tarachand Dagadu Tivhade,
Age. 70 years, Occ. Nil,
2. Jijabai Tarachand Tivhade,
Age. 65 yrs, Occ. Nil,
Applicant Nos. 1 and 2 R/o. Buttewadgaon,
Post Sillegaon, Tq. Gangapur,
Dist. Aurangabad.
3. Yogesh Tarachand Tivhade,
Age. 55 years, Occ. Service,
4. Archana Yogesh Tivhade,
Age. 53 years, Occ. Service,

Applicant Nos. 3 and 4 R/o. Shivam Enclave,
Flat No. A-14, Sr. No. 74/1, Near Rajaram
Gas Agency, Katraj, Pune.
5. Surekha Ramhari Surase,
Age. 52 years, Occ. Household,
6. Ramhari Tukaram Surase,
Age. 48 years, Occ. Business,
Applicant Nos. 5, 6 R/o. J.N.E.C.
College, G 17/12, Sanbhaji Colony,
N-6 CIDCO, Aurangabad.

....Applicants
(Orig. Accused)

Versus

1. The State of Maharashtra,
Through Police Station,
M.I.D.C. Waluj Police,
Dist. Aurangabad.
2. Swati Santosh Tivhade,
Age. 38 years, Occ. Household,

R/o. Row House No. 17,
Morya Mitmita, Aurangabad,
Tq. And Dist. Aurangabad.

....Respondents
(Orig. Complainant)

Advocate for Applicants : Ms. S.G. Sonawane
APP for Respondent No.1 : Mr. S.D. Ghayal
Advocate for Respondent No.2 : Mr. A.S. Mantri

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

DATE : 27.09.2022.

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 bearing Crime No. 0076/2022 registered with MIDC Waluj Police Station, Aurangabad, for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

A. FACTS :

2.1. In the First Informant Report, which is registered as Crime No. 0076/2022, the Informant has stated that her marriage was solemnized with Santosh Tivhade on 07.04.2004 as per Hindu rituals and customs at Aurangabad. After marriage, the informant was treated well for four years. Thereafter, the husband of respondent No. 2 and applicant Nos. 1 and 2 started ill-treating her on small counts. Applicant Nos. 3 to 6 also used to abused her. They used to provoke the husband of respondent No. 2 and applicant Nos. 1

and 2 and due to that they used to abuse and humiliate her and many time beat her. Husband of respondent No. 2 was addicted to drink the alcohol and used to demand monies from her for purchasing new house. When she said that her parents' financial condition is not strong to give him monies , he aggravated the ill-treatment to her and applicant Nos. 1 and 2 used to ask her as to why she do not birth the child and ill-treated as well as beat her. On 10.09.2019, her husband and applicant Nos. 1 and 2 have beaten and driven her out of the matrimonial house. The parents and paternal relatives of informant went to give understanding to the husband and applicants for cohabiting with respondent No. 2 but they did not listen them and abused them in filthy language and drove them away.

2.2. It is stated that thereafter, the Informant approached to Dilasa Cell on 02.11.2021. Officers of Dilasa Cell gave understanding to the husband of respondent No. 2 for cohabitation. After treating well for some days, again the husband of respondent No. 2 and the applicants started ill-treating her and dropped her at her parental house. On 19.01.2022, before the Officers of Dilasa Cell, her husband denied to cohabit with her.

3. In the above circumstances, the applicants have approached to the Hon'ble Court under Section 482 of the Code of Criminal Procedure for the quashing of the FIR.

4. The applicants are the close relatives of husband of

respondent No. 2. Applicant Nos. 1 and 2 are the father-in-law and mother-in-law of respondent No. 2, respectively. Applicant No. 3 is the brother-in-law of respondent No. 2 and applicant No. 4 is the wife of applicant No. 3. Applicant No. 5 is the sister-in-law of respondent No. 2 and applicant No. 6 is the husband of applicant No. 5. The Informant and her husband were residing along with applicant Nos. 1 and 2, where as, applicant Nos. 3 to 6 reside separately from respondent No. 2 and her husband.

B. SUBMISSION OF PARTIES :

5. Heard Ms. S.G. Sonawane for the applicants, Mr. S.D. Ghayal, learned APP for the State and Mr. A.S. Mantri, for the respondent No. 2.

6. On hearing the parties for considerable time and after showing disinclination to entertain the Criminal Application in respect of applicant Nos. 1 and 2, learned Advocate for applicants sought leave to withdraw the Criminal Application to the extent of applicant Nos. 1 and 2, on instructions of his clients. Hence, the criminal Application so far as applicant Nos. 1 and 2 are concerned, stands disposed of as withdrawn. She, therefore, prayed for quashing the FIR and the proceedings arising therefrom to the extent of applicant Nos. 3 to 6.

7. Learned Advocate Ms. Sonawane submitted that the allegations are made in the complaint, even if are taken as it is, for the sake of argument, it is apparent on the face of

record that the entire events and / or cause of action there are no specific allegations against applicant Nos. 3 to 6. Applicant Nos. 3 and 4 are staying at Pune. Applicant Nos. 5 and 6 are staying at Aurangabad but at different place from the matrimonial house of respondent No. 2. Therefore, applicant Nos. 3 to 6 are not involved in the day to day affairs of the married life of respondent No. 2 with her husband. They are falsely implicated in the present crime. The allegations against the applicant Nos. 3 to 6 are only that they used to abuse the Informant and provoke the husband of Informant. Without there being any complicity of applicants, deliberately and with an ulterior motive of harassing to applicants, names of applicant Nos. 3 to 6 are involved by respondent No. 2.

8. Advocate Ms. Sonawane further submitted that the respondent No. 2 filed a complaint before the Women Grievance Cell in the year 2018, in which the husband appeared and he was ready for cohabitation but she has not joined the company of husband. The allegations made in the FIR are false and baseless. The criminal complaint is lodged only with an intention to pressurize the applicants. So also the Informant has filed Criminal M.A. No.232/2021, before the J.M.F.C. Kannad, District Aurangabad under Section 12, 18, to 23 of the Protection of Women From Domestic Violence Act, 2005. She, therefore, prayed for quashing the FIR to the extent of applicant Nos. 3 to 6.

9. Learned APP – Mr. S.D. Ghayal and learned counsel Mr. A.S. Mantri, for respondent No. 2 submitted that specific

allegations have been made against all accused persons in the Criminal Application, hence there is no question of quashing the FIR against them and the application may be rejected.

C. ANALYSIS :

10. 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.

11. Perusal of the FIR would show that there are general and vague allegations against applicant Nos. 3 to 6. Applicant No. 3 (brother-in-law of Informant) and Applicant No.4 (wife of Applicant no.3) are staying at Pune. A copy of leave & license agreement is enclosed with the Criminal Application. Applicant No. 5 (sister-in-law of Informant) and Applicant no.6 (husband of Applicant no.5) are staying at Aurangabad but at a different place from the matrimonial home of Informant/respondent No. 2. The Applicant no.5 and 6 got married much before the marriage of Informant/Respondent no.2. Therefore, applicant Nos. 3 to 6 are not involved in the day to day affairs of the married life of respondent No. 2 with her husband. There are no specific allegations are made against applicant Nos. 3 to 6 in the FIR. The Informant filed her complaint to the police pursuant to which the FIR was lodged on 1/2/2022. The allegations in the FIR against applicant Nos. 3 to 6 are that they used to abuse her and provoke her husband against her. It is not mentioned

that when applicant Nos. 3 to 6 came to the matrimonial house of respondent No. 2 and ill-treated her. Before lodging of the subject FIR on 1/2/2022, the Informant had also lodged Criminal M.A. No.232/2021, before the J.M.F.C. Kannad, District Aurangabad under Section 12, 18, to 23 of the Protection of Women From Domestic Violence Act, 2005. In the said Criminal M.A. nine members from the family of in-laws were made parties by the Informant. All the nine members have filed separate Criminal Application no.2473 of 2021, for quashing the proceedings. Notices are issued in the said criminal application. Therefore, in our considered view, only with a view to harass applicant Nos. 3 to 6, they have been arraigned as an accused in the complaint by respondent No. 2.

12. The Supreme Court in *Geeta Mehrotra Vs. State of U.P.*, reported in **AIR 2013 SC 181** stated that “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.”

13. Our High Court in *Shaikh Mushrraf Pasha and others Vs. State of Maharashtra and another*, reported in **2021(2) AVR (Cri.) 343**, has observed that continuance of prosecution against relative of husband is nothing but abuse of process of law.

14. Taking into consideration the ratio laid down in

the cases of *Shaikh Mushrraf Pasha* and *Geeta Mehrotra* (supra), we are of the considered view that so far as applicant Nos. 4 and 5 are concerned, there are no specific allegations against them and only with a view to harass them, they have been arrayed as an accused in the FIR.

15. Therefore, in our view, this is a fit case, wherein, we should exercise our discretionary powers under Section 482 of the Code of Criminal Procedure, to quash the FIR as against applicant Nos. 3 to 6. Hence, we pass the following order :

ORDER

- 1] Criminal Application insofar as applicant Nos. 1 and 2 are concerned, stands disposed of as withdrawn.
- 2] Criminal Application so far as applicant Nos. 3 to 6 are concerned, stands allowed in terms of prayer clause 'B'.
- 3] FIR vide Crime No. 0076/2022, dated 1/2/2022 registered at MIDC Waluj Police Station, Aurangabad, and Charge Sheet no.91/2022 dated 31/3/2022 for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of IPC is quashed and set aside as against the applicant Nos. 3 to 6 namely Yogesh Tarachand Tivhade, Archana

Yogesh Tivhade, Surekha Ramhari Surase and
Ramhari Tukaram Surase, respectively.

4] Criminal Application stands disposed of.

(RAJESH S. PATIL, J.) (SMT. VIBHA KANKANWADI, J.)

SPChauhan