

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

CRIMINAL APPLICATION NO. 705 OF 2020

1. Laxmi w/o Ramchandra Gaikwad,
Age : 66 years, Occu. Household,
R/o. Plot No. 23/6/850/67/1,
APHB Bela Colony, Shali Banda,
Hyderabad, Andhra Pradesh.
2. Ramchandra s/o Dhrupatrao Gaikwad,
Age : 70 years, Occu. Nil,
R/o. As above.
3. Smita w/o Ashish Teje,
Age : 36 years, Occu. Household,
R/o. C/o. Ashish Teje Suroday Nagar,
New Narsala Road, Nagpur, Plot No. 101,
Behind Panchamukhi Hanuman Mandir,
Hudkeshwar Khurd, Mhalginagar,
Nagpur, Maharashtra.

...Applicants

Versus

1. The State of Maharashtra
2. Suwarna w/o Sachin Gaikwad,
Age : 26 years, Occu. Household,
R/o. Plot No. 31, Near Potdar School Medical
Housing Society, Jawahar Nagar,
Aurangabad.

...Respondents

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Mrs. Sharda P. Chate, Advocate for the Applicants
Mr. S. J. Salgare, APP for respondent/State
Mr. N. R. Thorat, Advocate for respondent no. 2

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

DATE : SEPTEMBER 19, 2022

ORAL 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 of the First Information Report bearing No. 0338/2019 dated 05.11.2019 registered with Jawahar Nagar Police Station, Aurangabad, for the offences punishable under Sections 498A, 323, 504, 506 r/w 34 of the Indian Penal Code and the Charge-sheet which culminated into R.C.C. No. 514 of 2020 pending before the Judicial Magistrate First Class, Aurangabad.

FACTS : -

2.1] The respondent no. 2 got married with the son of applicant no. 1, namely, Sachin Gaikwad on 28.11.2010. The couple were blessed with two issues from the said wedlock.

2.2] It is the case of respondent no. 2 in the F.I.R. that in the marriage ceremony, her father, as per the demand of applicants and her husband, had given Rs. 1.00 lakh in cash, outfits for the bride and groom, ornaments and the household articles. After the marriage, respondent no. 2 had gone to Hyderabad for cohabitation. She has two issues from the said wedlock, namely, Tanish and Priyansh. Husband of respondent no. 2 serves in a bank.

2.3] It is the further case of respondent no. 2 that, the applicants and the husband of respondent no. 2 treated her with love initially for a period of six months. Thereafter, respondent no. 2 had brought to the notice of applicants about the love affair between applicant no. 3 and one Maruti Jadhav and ever since the applicants

including her husband and one Maruti Jadhav had been harassing and ill-treating her on vexatious grounds. The applicants used to poison the ears of husband of respondent no. 2 so as to beat respondent no. 2. The applicants used to say respondent no. 2 that her father had not given them proper respect in the marriage ceremony. The applicants used to raise suspicion on her character. They would keep respondent no. 2 without food. The applicants would torture respondent no. 2 mentally as well as physically. The applicants used to force her to get her share from the ancestral property of her father and further she was driven out of the house from time to time. The father of informant, keeping in mind his own financial condition and the responsibility of two sons on the informant, had dropped respondent no. 2 at her matrimonial home and convinced the applicants to allow her to cohabit. Even thereafter, the applicants turned a deaf ear to the request of father of respondent no. 2 and continued to harass the respondent no. 2.

2.4] It is further alleged by respondent no. 2 that, on 13.06.2019, when the brother-in-law of respondent no. 2 had come to Hyderabad from America, the applicants had abused respondent no. 2 and driven out of the house. Thereafter, respondent no. 2 spent whole night within the periphery of her matrimonial house. On the following day, she was allowed to enter into the house only on the request of her brother-in-law. When brother-in-law of respondent no. 2 went back to America on 18.06.2019, the applicants again started ill-treating and harassing respondent no. 2 by suspecting her character.

2.5] The respondent no. 2 further alleged that, the applicants also got some blank papers signed from respondent no. 2 and made a video thereof. Further, the applicants dropped respondent no. 2

along with her younger son Priyansh at Railway Station to go to Aurangabad and kept her son Tanish in their custody. The applicants further threatened her if she wanted to cohabit with her husband, she should get her share from the ancestral property of her father, else she would be divorced. Respondent no. 2 then approached her uncle's home in Aurangabad and made a complaint to the Women's Grievance Redressal Forum, Aurangabad. Even after sending notice to the applicants, they remained absent and hence the said Forum issued a letter to respondent no. 2 thereby asking her to lodge complaint against the applicants including her husband and one Maruti Jadhav. She, accordingly, lodged complaint with Jawahar Nagar Police Station.

3.1] The applicants have stated in the present application that the allegations made in the FIR are totally false and imaginary because applicants have never demanded share from the ancestral property of father of respondent no. 2. They further stated that they have never ill-treated respondent no. 2. The applicant no. 2 is an old aged person and suffers from many ailments. He is bed-ridden and is unable to move from one place to another and hence he has no role to play in ill-treating or harassing the respondent no. 2.

3.2] The applicants have further stated that the applicant no. 3 got married in 2007 and since then she has been staying at Nagpur. The distance between Hyderabad and Nagpur is approximately 507 kilometers and further applicant no. 3 has never shared shelter with respondent no. 2 and her husband. Respondent no. 2 has implicated applicant no. 3 with an ulterior motive and to harass her. The allegations made against applicant no. 3 are false, imaginary and baseless.

3.3] The applicants have further stated that they are innocent persons and have been falsely implicated in the present offence. The FIR has been intentionally registered at Aurangabad so as to harass the applicants and malign their reputation in the society. On perusal of the FIR, no ingredients of the alleged offences are disclosed. Hence, they have approached this Court seeking quashment of the FIR and the proceedings arising therefrom.

4] Subsequently, during the pendency of this application, the charge-sheet has been filed before the learned Judicial Magistrate First Class, Aurangabad; and the same was culminated into R.C.C. No. 514/2020. The Applicants amended the Criminal Application and prayed for quashing of Charge Sheet and R.C.C. No. 99 of 2022 also.

SUBMISSIONS: -

5] Heard Mrs. Sharda P. Chate, learned advocate for the applicants, Mr. S. J. Salgare, learned APP for the State, and learned advocate Mr. N. R. Thorat for respondent No.2.

6] Learned counsel for the applicants submitted that the applicants are innocent and haven't committed any offence as alleged in the FIR. They have been falsely implicated in the crime. The allegations made against them are false, illogical, vague and general in nature. The respondent no. 2 has been residing at her parental home in Sillod for last one year and complaint came to be lodged at Aurangabad. Further, the applicant no. 3 resides at a different place than the one where the offence in question has taken place. The distance between the matrimonial home of applicant no. 3 and the respondent no. 2 is approximately 507 kilometers and hence she is

nowhere concerned with the marital life of respondent no. 2. The applicants have a good reputation in the society. They have no criminal antecedents.

7] Learned counsel for the applicants further submitted that the applicant no. 3 at no point of time shared the shelter with respondent no. 2. Applicant no. 3 admittedly resides at difference place and has nothing to do with the matrimonial life of respondent no. 2. Applicant no. 2 is admittedly old aged person. He is not in a position to harass respondent no. 2. The allegations made even if are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the applicants. Complaint is instituted with an ulterior motive for wreaking vengeance on the applicants and with a view to spite them due to private and personal grudge. He further submitted that, applicants certainly do not deserve to have their most fundamental and precious right jeopardized on such flimsy case and hence he seeks quashing of the FIR and the subsequent proceedings against the applicants.

8] On hearing the counsel for the applicants for considerable time, when this Court showed disinclination to grant relief in favour of applicant nos. 1 and 2 i.e. father-in-law and mother-in-law of respondent no. 2, the learned counsel for the applicants seeks, on instructions, leave to withdraw the application to their extent. Leave granted. The Application stands disposed of as withdrawn to the extent of applicant nos. 1 and 2. Now, therefore, the application is considered only to the extent of applicant no. 3.

9] Learned counsel for the applicants further stated that applicant no. 3 got married in the year 2007 and since then she has been residing at Nagpur. To support this contention, the copy of

Aadhaar card of applicant no. 3 is annexed with this application. The allegations made against applicant no. 3 are vague and general in nature. No specific overt act is attributed against her. Hence, no case is made out by respondent no. 2, in her complaint against applicant no. 3 and, therefore, the criminal application be allowed to the extent of applicant no. 3.

10] Learned APP – Mr. S. D. Ghayal and learned counsel Mr. N. R. Thorat for respondent no. 2 submitted that there are specific allegations against the applicants and opposed for grant of application.

ANALYSIS : -

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

12] Perusal of the FIR would show that no specific allegation is attributed against applicant no. 3, who is sister-in-law of Respondent no. 2, married in the year 2007. The allegations made against applicant no. 3 are omnibus and general in nature. Further, applicant no. 3 is admittedly residing separately at Nagpur. The respondent no. 2 and her husband were at the relevant time staying at Hyderabad. The distance between Nagpur and Hyderabad is 507 Kms. *Prima facie*, it appears that the applicant no. 3 has been implicated in the offence in question only with a view to harass her.

13] The Hon'ble Apex Court in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others** reported in [1992 Supp (1) SCC 335], has held that the High Court can quash the FIR to protect

the accused from malicious prosecution. When a criminal proceeding is instituted with *mala fide* intention to harass the person, the court can quash the entire proceeding for the ends of justice. The Supreme Court has issued seven guidelines which should be followed by the Court in the exercise of its inherent power vested by Section 482 of the Code of Criminal Procedure.

14] The Apex Court in **Geeta Mehrotra Vs. State of U.P.**, reported in AIR 2013 SC 181 stated “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.

15] This 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.

16] Thus, we are of the considered view that the respondent No.2 only with an intention to harass the applicant No.3, has filed the complaint with an ulterior motive. Continuation of prosecution against applicant no. 3, who stays separately in her own house at a far place, in our opinion, would amount to abuse of process of law.

17] Taking into consideration the ratio laid down in the cases of **Bhajan Lal, Geeta Mehrotra and Shaikh Pasha** (supra), we are of the considered view that so far as applicant no. 3 is concerned, there are no specific allegations against her and only with a view to harass her, she has been arrayed as an accused in the FIR. Therefore, in our view, this is a fit case wherein we should exercise our discretion

under Section 482 of the Code of Criminal Procedure to quash the FIR, Charge-sheet and R.C.C. as against the applicant no. 3.

ORDER

- [i] Criminal Application is partly allowed.
- [ii] Criminal Application insofar as applicants no. 1 and 2 are concerned, stands disposed of as withdrawn.
- [iii] So far as applicant no. 3 is concerned, criminal application stands allowed in terms of prayer clauses B and B-1 of the application.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE