

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

CRIMINAL APPLICATION NO.638 OF 2021

1. Ketan S/o Eknath Sable, (Husband)
Age- 28 Years, Occu- Service,
R/o Dahigaon (ne) Shevgaon,
Taluka- Shevgaon,
District – Ahmednagar and
Sai Nagar Shevgaon,
Taluka- Shevgaon,
District - Ahmednagar.
2. Eknath S/o Bhanudas Sable, (Father-in-law)
Age-65 years, Occu- Nil,
R/o Khandoba Nagar,
Shevgaon, Taluka - Shevgaon,
District – Ahmednagar.
3. Panchpula @ Pankaja W/o Eknath Sable, (Mother-in-law)
Age – 60 Years, Occu – Nil,
R/o – Khandoba Nagar,
Shevgaon, Taluka- Shevgaon,
District – Ahmednagar.
4. Rahul S/o Eknath Sable, (Brother-in-law)
Age - 28 Years, Occu- Nil,
R/o At Present Govt. Medical
College and Hospital, Miraj,
Taluka – Miraj, District – Sangali
5. Yogini w/o Sachin Jadhav, (Sister-in-law)
Age- 35 Years, Occu- Doctor,
R/o Ambika Nagar, Bale
Taluka- North Solapur,
District – Solapur.
6. Rohini W/o Rushikesh Rao, (Sister-in-law)
Age – 34 Years, Occu- Teacher,
R/o 202, Uma Place,
Sec- 16, Kalamboli,
Taluka – Panvel, District – Raigad

7. Jagannath S/o Bhanudas Sable, (Brother of father-in-law)
Age – 39 Years, Occu – Nil,
R/o Village Vihamandwa,
Taluka – Paithan, District – Aurangabad.
 8. Bhausahab @ Suresh S/o Jagannath Sable, (Brother-in-law)
Age – 31 Years, Occu – Labour,
R/o Village Vihamandwa,
Taluka – Paithan, District- Aurangabad.
 9. Shankar S/o Bhaguji Gaikwad (Brother of applicant no.3)
Age – 63, Occu - nil (retired from service)
R/o. Village Sasht Pimpalgaon,
Taluka Ambad, District – Jalna.
- ... Applicants.**

Versus

1. The State of Maharashtra,
through Police Officer,
Talwada Police Station,
District – Beed.
 2. Shila W/o Ketan Sable,
Age – 26 years, Occu- Household,
R/o C/o Dattatray Baburao Misal,
Address – at post Irrigation Colony,
Jategaon, Taluka – Georai,
District – Beed.
- ... Respondents.**

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Mr. Sandip R. Andhale, Advocate for the Applicants.

Mr. S. J. Salgare, APP for Respondent No.1-State.

Mr. Mahesh S. Taur, Advocate for Respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 19.12.2022

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. In the backdrop of the FIR at the instance of respondent no.2, Talwada Police Station, District Beed registered crime no. 258 of 2020 for the offences punishable under Sections 498-A, 323, 504 r/w 34 of the Indian Penal Code (IPC). After investigation, charge-sheet was filed. Both, the above crime as well as charge-sheet, are now sought to be quashed and set aside by the applicants herein by invoking Section 482 of the Code of Criminal Procedure (Cr.P.C.).

2. Facts leading to registration of present crime are as under :

Respondent no.2 herein gave information that she was married to applicant no.1 on 09.05.2018. After marriage, she went to reside with her husband and in-laws and was properly treated for a period of two to three months. She has alleged that since 05.11.2019, her husband started commenting on her manners and that he has been cheated by getting married with her. She was insulted and husband even said that he married her only because of the pressure of his parents and also put up a demand of Rs.3,00,000/- for purchase of car and on failure to meet it, he threatened to divorce her and thereby subjected her to cruelty. In the above backdrop, she alleged physical and mental cruelty to husband as well as her in-laws.

On the strength of the above allegations, the police registered the above crime for above offences.

3. By invoking Section 482 of Cr.P.C., the applicants herein are seeking quashment of crime and charge-sheet. Before advertng to the fact of the case and entitlement for relief, it would be appropriate to discuss in brief the settled position as to when the inherent powers under Section 482 of Cr.P.C. can be exercised.

4. In catena of judgments, including *State of Haryana and others v. Ch. Bhajan Lal* ; AIR 1992 SC 604, *Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.* ; (2007) 12 SCC 1, *Priya Vrat Singh Vs. Shyam Singh Sahai* ; (2009) SCC Suppl. 709 and *Vineet Kumar v. State of U.P.* ; (2017) 13 SCC 369, the Hon'ble Apex Court has time and again reiterated that inherent powers under section 482 of Cr.P.C. can be exercised by the High Court; *firstly*, to give effect to an order under Cr.P.C., *secondly*, to prevent abuse of process of court and *thirdly*, to secure ends of justice.

5. The Hon'ble Apex Court in the very recent case of *Kahkashan Kausar alias Sonam and others v. State of Bihar and others* ; (2022) 6 SCC 599, after dealing with the observations in the cases of *Geeta Mehrotra Vs. State of U.P.*;

(2012) 10 SCC 741, **Preeti Gupta v. State of Jharkhand** ; AIR 2010 SC 3362 and **K. Subba Rao v. The State of Telangana** ; (2018) 14 SCC 452, has succinctly culled out proposition and the same is appearing in para no. 18 which 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.”

Submissions

6. In support of relief, learned Advocate for the applicants would point out that sweeping allegations are levelled for roping in the entire family even when most of the applicants are not concerned, i.e. more particularly applicant

nos. 2 to 9. That, *prima facie* allegations are directed against only husband. However, surprisingly even distant relatives i.e. the applicants herein, who have no concern with the alleged treatment meted out to respondent no.2, are also involved with oblique motive. Learned Advocate further submitted that in fact, behaviour of respondent no.2 was not proper and she went to reside with her parents and therefore, steps were taken by way of legal notice seeking cohabitation, however she did not respond. The informant herself used to abuse husband as well as in-laws and therefore, complaint to that extent was required to be filed by husband. That, even husband had initiated proceedings for divorce because of the adamant behaviour of respondent no.2. Copies of both such proceedings and actions are placed on record. Learned Advocate pointed out that applicant nos.3 to 7 are residing at distinct places and had no concern with the allegations, but still, with ulterior motive, they too are named. Lastly he submits that this is sheer abuse of process of law and therefore his submission that prayers made deserve to be granted.

7. While opposing the application, learned APP submitted that applicants are named specifically. There was mental cruelty by all applicants coupled with demand of Rs.3,00,000/- and on failure to meet said demand, there was continuous harassment. Investigation also revealed involvement of above applicants. Therefore learned APP prays for dismissal of the application.

8. On behalf of respondent no.2, learned Advocate Mr. Taur also pointed out that all applicants had together maltreated respondent no.2. Husband was joined by present applicants in regularly taunting and subjecting her to mental cruelty. They had also joined husband in putting up demand for vehicle and therefore, there being specific allegations against them, he too prays that application deserves to be dismissed.

9. It is pertinent to note that after hearing respective sides, when this Court expressed its disinclination to consider relief as regards applicant nos.1 to 3 i.e. husband and parents-in-law, on instructions learned Advocate for the applicants sought withdrawal of the instant application as against them. Now it is to be seen as to whether FIR and criminal proceedings are liable to be continued as against respondent nos. 4 to 9.

10. Bearing in mind the above discussed settled legal position, if we examine the FIR, it is seen that marriage is of 09.05.2018. So far as the allegations about ill-treatment made out to her after one and half year i.e. since 05.11.2019, though all are named, however main allegations are attributed against husband. Parents-in-law are also named for subjecting her to continuous ill-treatment. Demand of Rs.3,00,000/- is also attributed to husband and in-laws. She claims that all this continued till lodgement of FIR.

On minute scrutiny of FIR, it is revealed that husband and parents-in-laws are residents of Dahigaon (Ne) Shevgaon and Khandoba Nagar, Shevgaon respectively, whereas applicant no.4 seems to be a student of medical college and. He is shown to be resident of Miraj. Applicant no.5 herein is also a medical practitioner residing at Solapur since her marriage. Applicant no.6, who is said to be a teacher, her residence is shown as Raigad District. Applicant nos. 7 and 8 are shown to be residents of village Vihamandwa, Taluka Paithan and applicant no.9 is shown to be resident of Sasht Pimpalgaon, Taluka Ambad, District Jalna. In the light of such distinct places of residence of applicant nos. 4 to 9, it was necessary for the informant herein to specify as to when these applicants, who are relatives, had come to her and indulged in taunting, commenting and subjecting her to mental cruelty or putting up demand. Absolutely no material to that extent is given in the FIR. Even the statements of witnesses recorded under Section 161 of Cr.PC. are of similar nature. The Investigating Officer seems to have examined near and dear ones. They are all giving monotonous version about taunting, mental cruelty and demand. Therefore, apparently there are omnibus and general allegations against present applicant nos. 4 to 9. *Prima facie* it appears that they are named along with husband and parents-in-law with sole intention of involving entire family. Therefore, in the light of such material on record, we are convinced that *prima facie* impleadment of applicant nos. 4 to 9 is misdirected. There are no specific allegations against them regarding their

involvement. Therefore, continuation of prosecution as against applicant nos. 4 to 9 would amount to abuse of process of law. Consequently, we proceed to pass the following order:

ORDER

- I. The application is partly allowed, to the extent of applicant nos. 4 to 9, in terms of prayer clauses [B] and [D-1].
- II. The application of applicant nos.1 to 3 is disposed of as withdrawn.
- II. The application is accordingly disposed off.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)