

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 983 OF 2020

Komal D/o. Asaram Taur,
Age. 23 years, Household,
R/o. Mote Galli, Georai,
Tq. Georai and District Beed.

.... Applicant
[Ori. Accused]

Versus

1. The State of Maharashtra,
Through Investigation Officer,
Ashti Police Station,
Tq. Partur, Dist. Jalna.

2. Urmila W/o. Dattatray Taur,
Age. 22 years, Occ. Household,
R/o. At Present – At Post – Bramhanwadi,
Tq. Partur, Dist. Jalna.

.... Respondents
[Res. No. 2 Ori. Complainant]

Advocate for Applicant : Mr. Vaibhav U. Pawar

APP for Respondent : Mr. S.D. Ghayal

Advocate for Respondent No. 2 : Mr. S.J. Salunke

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

DATE : 14th SEPTEMBER, 2022.

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

1] By the present application, the applicant (original accused No.8 – Cousin sister in law of the informant) is praying for quashing and setting aside the FIR bearing No. 0029 of 2020 registered at Ashti Police Station, Jalgaon under Sections 498-A, 323, 504, 506 r/w. 34 of IPC and resultant Criminal proceeding bearing RCC No. 54 of 2020.

A. FACTS :

2] The informant/respondent No. 2 has filed FIR. It states that the informant got married to accused No.1, namely, Dattatray Narayan Taur on 17.05.2017. In the said marriage, the parents of the informant had given Rs. 2,50,000/- as dowry and also 5 grams of Gold ring alongwith household articles. After marriage, the informant alongwith accused No.1 (husband) resided alongwith her husband's family at Nasik. Initially, for six months, the in-laws treated the informant well. However, thereafter started taunting her on the ground that her parents had not given sufficient dowry in marriage and that she was doing household work as per the requirement. The in-laws expected the husband of the informant to beat her so also, the mother-in-law of informant told her that if she wants to cohabit, then she has to bring some more gold ornaments from her parents and also further threatened to drive her out of the house if the demands are not fulfilled and she will be treated like a servant. Since the in-laws were physically beating the informant, she could not bear the mental agony. The accused persons further demanded Rs. 6 Lakhs for purchasing four wheeler from the father of the informant. As the demands were not fulfilled, the in-laws threatened the informant of her life. Therefore, the informant had to leave her matrimonial house for safety and she went to her parents house. The informant thereafter filed an application before the Women Security Center/Grievance Redressal Committee, directing the informant to lodge complaint against the in-laws. On the basis of the same, the informant filed the FIR which was registered as FIR No. 0029 of 2020 on 3.9.2020.

3] The applicant has stated in the Criminal Application that amongst 8 accused, the present applicant is accused No.8 and is residing

at Georai, District Beed. At the relevant time, of alleged offence, the applicant was residing in the home of aunt i.e. father's sister, since childhood for the purpose of education. The applicant has also annexed to the present criminal application, photo copy of Aadhar Card and of School Leaving Certificate. The said two documents. The said two documents bear the address of Georai, Dist. Beed. Around three years back, the present applicant is married with one Rahul Asaram Badgane and since her marriage, she is staying at her matrimonial house at Saste Pimpalgaon, Taluka Georai. The applicant being cousin sister of the husband of the informant, has no role with the marital life of the informant/respondent No.2.

4] Therefore, the present application is filed for quashing of FIR and charge sheet which is filed and numbered as RCC No. 54 of 2020 pending before the learned J.M.F.C., Partur.

B. SUBMISSION OF PARTIES :

5] Heard Vaibhav Pawar, Advocate for the applicant and Mr. S.D. Ghayal, learned APP for the State and Mr. Sudarshan Salunke Advocate for the respondent No.2.

6] Learned counsel Mr. Pawar submitted that the applicant is a far off relative of the husband of the informant and has no role to play in the married life of the informant with her husband/accused No.1. The applicant had always resided at Georai, Dist. Beed for the purpose of education at her relative's home, whereas, the informant, after her marriage in the year 2017 was residing at Nasik. The applicant has produced on record two documents, namely, copy of Aadhar Card and

School leaving certificates to show that she was always residing at Georai. The learned counsel for applicant, therefore, submitted that there being no specific allegations against the applicant, the application needs to be allowed and the impugned FIR and criminal proceeding needs to be quashed and set aside.

7] The counsel for the applicants relied upon the judgments in the matter of *Gian Singh Vs. State Punjab*, reported in **(2012) 10 SCC 303**, *Geeta Mehrotra Vs. State of U.P.*, reported in **AIR 2013 SC 181**, and *Shaikh Mushrraf Pasha and others Vs. State of Maharashtra and another*, reported in **2021(2) AVR (Cri.) 343**.

8] Learned APP – Mr. Ghayal and learned counsel Mr. Sudarshan Salunke submitted that specific allegations have been made against all the applicant, hence there is no question of quashing of FIR and criminal proceedings.

C. ANALYSIS :

9] In the present case, the main allegations in the FIR are against the husband, father in law and mother in law of Informant. So far as the present applicant is concerned, she is cousin sister-in-law. As such, she is a far off relative. Secondly, the applicant has produced on record two documents, namely, copy of Aadhar Card and School leaving certificates to show that she was always residing at Georai and hence, it is illogical to be believe that she could have interfered with the marital life of the Informant/respondent No.2 and accused No.1.

10] To the present application, the informant has filed affidavit in reply dated 24.12.2020. In the said affidavit in reply, in para. No.6,

the informant has stated that the applicant since 2016 to August, 2017 was residing with answering respondent and her husband. The marriage of informant with accused No.1 was performed on 17th May, 2017. Hence, if the submissions of the informant is believed, even then, at the most, the applicant has stayed for 3 months in the informant's matrimonial home. The contention of the learned counsel for the applicant that there is no question of the applicant harassing the respondent No. 2, therefore, deserves to be accepted.

11] We have in our recently decided Criminal Application No.2230/2020 [Narayan s/o Eknath Devkar and others Vs. State of Maharashtra and others, decided on 25.07.2022], after considering the various judgment in paragraph nos. 22 to 24 held that continuation of prosecution against far off relatives would amount to abuse of process of law. The said paragraphs reads thus :

“22] It is important to consider the relevant Provision of Section 482 of the Cr.P.C. which reads thus :-

“482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

23] In the matter of **Gian Singh Vs. State Punjab**, reported in (2012) 10 SCC 303, the Supreme Court observed that it depends on facts and circumstances of each case as to when the High Court can use the powers of quashing criminal proceeding under Section 482 of Cr.P.C.

24] After taking into consideration judgments of the Apex court referred to above, 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 allege. We are of the view that under Section 482 of the Cr.P.C., we have inherent powers to make such orders as may be necessary to prevent abuse of the process of any law to secure the ends of justice. It is also necessary to consider Section 498-A of the IPC, which reads thus :-

“[498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

Therefore, the section contemplates that there has to be “cruelty” committed to a woman by her husband or the relatives of the husband, only then the offence stands proved.”

12] In the matter of Geeta Mehrotra (supra), the Supreme Court in para. 19 has observed thus :-

“... When the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to

involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.”

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] In the matter of *Shaikh Mushraf Pasha (supra)*, the Division Bench of our High Court in para No. 10 observed thus :

“10. Therefore, continuation of prosecution would be nothing but an abuse of process of law. Moreover, tendency is growing to implicate all the near and dear relatives of the husband. The Hon’ble Supreme Court has deprecated this tendency in the case of *Kans Raj v. State of Punjab*; 2000 (5) SCC 207 : (AIR 2000 SC 2324).”

Thus, the High Court observed that continuance of prosecution against relative of husband is nothing abuse of process of law.

14] We are of the considered view that the Informant/respondent No.2 only with an intention to harass the applicant, with ulterior motive, has filed the complaint also against husband’s relatives i.e. applicant who is cousin sister-in-law of respondent No.2. Continuation of prosecution against present applicant, who is the cousin sister-in-law of Informant, living separately, in our opinion, would amount to abuse of process of law. Hence, we allow the application by quashing and setting aside the FIR bearing No. 0029 of 2020 and further proceedings in RCC No. 54 of 2020 as far as applicant is concerned, who is arrayed as accused No.8.

15] In the result, we pass the following order :

ORDER

i. The application is allowed in terms of prayer clauses (B) and (B-1).

ii. Criminal Application stands disposed of, accordingly.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

grt/-