

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

CRIMINAL APPLICATION NO. 888 OF 2021

1. Mahadev s/o Maruti Pawar
Age: 67 years, Occu.: Retired,
2. Kavita w/o Mahadev Pawar
Age: 59 years, Occu.: Household,

Applicant No.1 and 2
R/o Shahu Nagar, Kedgaon,
Tq. & Dist.Ahmednagar.
3. Yogesh s/o Mahadev Pawar
Age: 34 years, Occ.: Service,
R/o. B-102, RK Villa, Plot No.18-19,
Vardayani Society, Opp. Abhinav College,
Pashan-Sus Road, Pashan (Kh),
Pune.
4. Shailesh s/o Mahadev Pawar
Age: 38 years, Occu.: Service,
R/o. Shahu Nagar, Kedgaon,
Tq. & Dist.Ahmednagar,
At present R/o 11 Jurong Lake Link,
Lakeville Block 11, Unit # 14-44,
Singapore.

... Applicants

Versus

- 1] The State of Maharashtra
Through Police Inspector,
Shevgaon Police Station
Ta. Shevgaon, Dist. Ahmednagar.
- 2] Sumati w/o Shailesh Pawar
Age: 31 years, Occu.: Household,
R/o. C/o. Namdev Damuji Supare,
Khandoba Nagar, Shevgaon,
Tq. Shevgaon, Dist.Ahmednagar.

... Respondents

(Resp. No.2 Orig. Complainant)

. . .
Mr.R.R.Karpe, Advocate for Applicants.
Mr.R.D.Sanap, APP for Respondent No.1-State.
Mr.Sunil P Koli, Advocate for Respondent No.2

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

DATE : 14th December, 2022

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

. Husband, parents-in-law and brother-in-law are seeking relief of quashment of FIR lodged by respondent No.2 – informant.

2. Brief facts of the case :

Respondent No.2 set law in motion alleging that after her marriage in 2011, everything was smooth until 2013. Subsequently, husband and in-laws commented and taunted her for not preparing good food, for not cleaning clothes properly, and on such count, she was beaten and kept starved. That, in 2016, her parents-in- laws permitted her to stay separately with her husband, but on a condition that she should arrange Rs.5,00,000/- for purchasing a Flat. Her husband also merely assured to take her to Singapore where he works. He did not cohabit with her. Therefore, she lodged above FIR bearing No.0089 of 2021 with Shevgaon Police Station, District Ahmednagar, for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the IPC.

Submissions

3. Learned Advocate for the applicants would take us through the FIR and various documents annexed with the application. It is his submission that general allegations are raised in the FIR and entire family members are tried to be roped in. There was no taunting or ill treatment meted out to her by beating her or keeping her starved. He invited our attention to statement of husband recorded on 02-10-2018 i.e. Exhibit-B and emphasized that informant picked up quarrels with applicant No.4 husband's mother and repeatedly used to leave house. That applicant No.4 husband also came across a message received on informant's mobile and on being questioned on that count, she informed that the message was from her classmate and so there was quarrel between applicant No.4 husband and informant on this count and she refused to accompany him. It is pointed out that, in fact husband wanted to take her to Singapore where he was working but she flatly refused.

He next submitted that because informant did not come to Singapore to cohabit with applicant No.4 husband, by mutual consent, application for mutual divorce was made under Section 13-B of Hindu Marriage Act. Informant herself withdrew the consent. Getting annoyed on account of taking steps for mutual divorce, shortly thereafter, FIR has been lodged on false allegations. In the light of above submissions, learned Advocate for the applicants prays for grant of relief as prayed.

4. On behalf of respondent No.1-State, learned APP opposed the application submitting that after marriage, initially for two years, informant was treated well but subsequently applicant No.4 husband and other applicants started taunting, commenting and subjected her to mental cruelty. That there are allegations of beating and keeping her starved and even she was not permitted to stay and directed to leave the house. There are allegations of demand of Rs.5,00,000/- for purchasing a Flat. Therefore, with such allegations, investigation has been undertaken. According to the learned APP, prosecution deserves opportunity to proceed against the applicants for offences committed by them.

5. Learned Advocate for informant - respondent No.2 also opposed the application pointing out that applicants are named. According to him, small roles played by them are also defined in complaint. Allegations are not general in nature. There are allegations of beating informant and keeping her starved. There are allegations of physical and mental harassment coupled with demand of Rs.5,00,000/- for purchasing a Flat. For illegal demand, ill treatment and harassment given to her, FIR has been lodged. Therefore, applicants do not deserve the relief as prayed for.

6. Here applicants are seeking relief of quashing of FIR by exercising inherent powers under Section 482 of Cr.PC..

As to when powers under Section 482 of Cr.P.C. can be exercised is fairly settled by slew of judgments including *Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.*; (2007) 12 SCC 1 and *Mahendra K.C. Vs. State of Karnataka and Another*, (2022) 2 Supreme Court Cases 129.

7. Bearing in mind legal requirements on the point of exercise of inherent powers under Section 482 of Cr.P.C., we proceed to examine whether the applicants herein have at all made out a *prima facie* case for grant of relief and whether prosecution launched against them is indeed abuse of process of law or not.

It is emerging from the FIR that marriage of informant was performed with applicant No.4 in 2011. Informant claims that till 2013, she was treated properly but subsequently, applicant No.4 - husband, applicant Nos.1 and 2 – parents-in-law and applicant No.3 - brother-in-law started taunting her for not preparing good food, for not cleaning clothes properly. She has alleged abuses, beating and being asked to leave the house. It is pertinent to note that such allegations, apart from being general in nature, are not indicating as to when said instances have occurred and who amongst four applicants said what, is also not clarified. Rather allegations are levelled against all above applicants for commenting her on such count. Then one finds allegation against husband of not talking to her on telephone regularly. She alleged that in laws assured her that they would arrange separate residence for her and her husband but

only on condition that she arranges Rs.5,00,000/-. She alleged that her husband assured to take her to Singapore where he works but he did not take her with him.

8. On minute scrutiny of material in the FIR, it is clear that husband is working abroad. Our attention is invited by learned Advocate for the applicants to Exhibit-B, which is statement of applicant No.4 – husband, which is purported to be recorded by Police on 02-10-2018, . The sum and substance of such statement is that informant picked up quarrel with applicant No.4 husband's mother. He has claimed that she refused to stay with him after quarrel on being asked as to from whom she had received a message on her mobile. Learned Advocate for applicants also invited our attention to the air travel ticket of present informant for her journey from Mumbai to Singapore. Steps also seems to be taken by him for applying for her visa. Such material renders the allegation by informant against husband, about not taking her alongwith him to Singapore, doubtful. Applicant No.4 husband has also placed copy of petition filed under Section 13-B of Hindu Marriage Act on record, which is a petition for mutual divorce applied by both applicant No.4 husband and informant wife. There is no denial of or questioning on such documentary evidence by learned Advocate representing respondent No.2 herein. Further, we have come across statement on behalf of informant in the joint petition for mutual divorce regarding the informant residing in her

parents house since 2012. This further strengthens the submission of applicant No.4 husband that informant was herself not interested in cohabiting with him. It is also revealed that specific instances which allegedly occurred during 2015 and 2016 are missing from the FIR and apparently sweeping allegations seem to be made against not only husband but entire family.

9. Very recently, the Hon'ble Apex Court in 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.”

10. Here, admittedly applicant No.4 husband is residing abroad for work. As discussed above, the copy of petition for divorce by mutual consent clearly shows that informant is staying with her parents since 2012 and therefore, allegations about mal-treatment at the hands of all the applicants in the year 2013 onwards i.e. in the years 2014 and 2015 seem to be false and after thought.

Hence, we are convinced that present FIR is an attempt to abuse of process of law with mere intention to harass not only husband but even other in-laws. From the documents on record, it is gathered that parents-in-law are residing at Shahu Nagar, Kedgaon, District Ahmednagar, whereas applicant No.3 – brother-in-law is resident of Pune. Admittedly, as stated above, husband is said to be working in Singapore. Resultantly, with such quality of material on record, we find it a fit case for exercising powers under Section 482 of Cr.P.C and accordingly, we pass following order :-

ORDER

- (I) Application is allowed in terms of prayer clauses-[B].
- (II) Application is accordingly disposed of.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)