

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

WRIT PETITION NO.510 OF 2021

1. Ganagaram s/o Namdeo Wayal,
Age :65 years, Occu : Pensioner,
 2. Vimalbai w/o. Ganagaram Wayal,
Age : 60 years, Occu : Household,
- Both R/o. House No.546, Jawale, Nirgoodsar,
Pune Tal & Dist. Pune.
3. Sandip s/o. Ganagaram Wayal,
Age: 36 years, Occu: Private Service,
R/o. Walunj Mala, Jawale, Pune
Tal & Dist. Pune
 4. Seema w/o. Chandrakant Gaikwad,
Age: 41 years, Occu: Household,
R/o. Wadgeon Patole Tal. Khed
Dist. Pune
 5. Ashok s/o. Kisan Lokhande,
Age: 49 years, Occu: Agril,
R/o. Valti, Pune,
Tal & Dist. Pune.

... PETITIONERS

VERSUS

1. The State of Maharashtra,
through the Police Inspector,
Paithan Police Station, Paithan
(Aurangabad Rural) Tq. Paithan
Dist. Aurangabad.
2. Surekha w/o. Satish Wayal,
Age: 31 years, Occu: Household,
R/o. Iswarwadi, Tal. Paithan
Dist. Aurangabad.

... RESPONDENTS

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Mr. K.N. Shermale, Advocate for the petitioners
Mr. S.B. Yawalkar, AGP Respondent No.1/State
Mr. Vishwajeet R. Jain, Advocate for the respondent No.2

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

Reserved on : 30.08.2022

Pronounced on : 06.09.2022

ORDER (MANGESH S. PATIL, J.) :

By invoking the powers of this Court under Section 482 of the Code of Criminal Procedure, the petitioners are seeking quashment of Regular Criminal Case No.238/2021 pending before the learned Judicial Magistrate, First Class, Paithan, District Aurangabad, registered pursuant to a charge sheet submitted under Section 173 of the Code of Criminal Procedure in a crime registered pursuant to an FIR No.296/2020 filed by the respondent No.2 herein, for the offence punishable under Section 498 A, 326, 325, 324, 323, 504, 506 and 201 read with Section 34 of the Indian Penal Code.

2. The sum and substance of the allegations in the FIR are to the effect that the respondent was married to the son of the petitioner Nos.1 and 2 herein. Petitioner No.3 is her brother-in-law, Petitioner No.4 is sister-in-law and petitioner No.5 is the maternal uncle of the husband. The marriage was solemnized in the year 2014. The couple has two children. The petitioners and husband started insisting her to bring money from her parents for purchasing a tractor and a car. She could not fulfill the demand. They subjected her to cruelty. She was assaulted and mentally tortured. On 30.09.2019 she was even assaulted by her husband with a wooden log. The petitioners also assaulted and abused her. Her children were snatched away from her custody and she was driven out.

3. The learned advocate Mr. Shermale would submit that there was delay in lodging the FIR. The allegations against the petitioners are vague and omnibus. No specific role is attributed to any of them. The husband is not before this Court. The FIR has been lodged with vengeance merely because they are husband's relations. No specific and concrete role has been attributed to any of them. It would be sheer abuse of the process of law if they are made to face the trial with such vague allegations. In similar set of facts, the Supreme Court in the matter of **Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors.(Criminal Appeal No.195/2022 decided on 08.02.2022)** has quashed and set aside the FIR as against the relatives of the husband where the allegations were similarly vague and omnibus. He would submit that all the earlier important case law on the point has been referred to and relied upon by the Supreme Court and the same may be followed.

4. The learned APP and the learned advocate for the respondent No.2 would vehemently submit that the allegations in the FIR have been turned out to be true during the course of the investigation and that has resulted in filing of the charge sheet. At this juncture no threadbare scrutiny can be undertaken to ascertain veracity of allegations which can happen only during trial. The respondent No.2 needs to be given a fair opportunity to establish the allegations during the trial. They would further submit that the injury certificate is on the record showing that during the alleged incident the respondent No.2 had sustained a fracture to the left arm which

is a grievous injury. At this stage this is a strong circumstance to reveal involvement of each of the petitioners. The incident could not have occurred except with their active participation. Even the wooden log has been subsequently destroyed. At this juncture, there is substance in the allegations and the petition be dismissed.

5. We have carefully gone through the charge sheet and the decision cited at the bar. At the outset, it is necessary to note that the husband is not before this Court and is not claiming quashment. In fact he has not been arrested and the charge sheet has been filed against him by resorting to Section 299 of the Code of Criminal Procedure.

6. True it is that this is not the right stage to decipher the material collected by the Investigating Officer during the course of the investigation. However, some facts, which according to us are relevant, need to be referred to. The FIR and the statements of the parents and brother of the respondent No.2 would clearly demonstrate that the marriage was solemnized in December 2014 and even till 2018 there was no dispute and she was happily cohabiting in the matrimonial home. Even the couple begot two children and the only incident which has been referred to in the FIR and their statements recorded under Section 161 is of 30.09.2019 wherein she is stated to have been assaulted by the husband and having sustained a fracture to the left arm. Conspicuously, though the petitioners' names appear in the FIR the allegations against them are vague and omnibus. By naming them in collective noun it has been alleged that they all had

subjected her to cruelty. Allegations regarding demand of money for purchasing a tractor have been attributed primarily to the husband. Pertinently, even there is manipulation in the statements recorded under Section 161 of the Code of Criminal Procedure wherein while referring to the petitioners collectively, as accused Nos.1 to 4, the number '4' is replaced by number '5' in hand. If including the husband there are six accused one cannot comprehend as to how these statements would make reference to only accused Nos.1 to 5.

7. Be that as it may, the allegations as against the petitioners are clearly vague and omnibus. No specific role is attributed to any of them exclusively. The assault is attributed to the husband which had resulted in fracture but even in that respect it has not been alleged that the petitioners had abated such assault and even the charge sheet is silent about such abatement.

8. In similar set of facts, in the matter of **Kahkashan Kausar** (supra) by taking stock of various off quoted judgments of the Supreme Court, referring to the facts in that matter following observations have been made in paragraph No.19:

“Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, 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.”

There is a startling similarity in as much as even in the matter before the Supreme Court the allegations were equally vague as are obtaining in the matter in hand.

9. True it is that the husband has been absconding since day one. However, we are only concerned with the petitioners. The allegations are clearly vague and omnibus and it would be sheer abuse of the process of law if the petitioners are made to face the trial with such allegations. The case is squarely covered by the principles laid down in paragraph No.105 of the decision in the matter of ***State of Haryana and Ors. V/s Ch. Bhajan Lal and Ors.; (1992) SCC (Cri) 426.***

10. The Writ Petition is allowed. The Regular Criminal Case No.238/2021 pending on the file of the learned Judicial Magistrate First Class, Paithan, District Aurangabad, is quashed and set aside *qua* the petitioners.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)