

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

CRIMINAL APPLICATION NO. 1031 OF 2021

1. Sajid Shabbir Khatik,
Age. 36 years, Occ. Labour,
2. Inusabai Shabbir Khatik,
Age. 58 years, Occ. Household,

Both R/o. At Post Fagne,
Tal and Dist. Dhule.
3. Iliyas Shabbir Khatik,
Age. 34 years, Occ. Labour,
R/o. At Post Thalner, Tal. Shirpur,
Dist. Dhule.
4. Latif Chhotu Khatik,
Age. 68 years, Occ. Labour,
R/o. At Post Thalner, Tal. Shirpur,
Dist. Dhule.
5. Sonam Raju Khatik,
Age. 30 years, Occ. Household,
R/o. Near Ganpati Maharaj Mandir,
Gadge Maharaj So., Shastri Chowk, Bhosri,
Tal. & Dist. Pune.
6. Raju Sattar Khatik,
Age. 49 years, Occ. Labour,
R/o. Near Ganpati Maharaj Mandir,
Gadge Maharaj So., Shastri Chowk, Bhosri,
Tal. & Dist. Pune.
7. Taslim Arif Khatik (Kureshi),
Age. 45 years, Occ. Household,
R/o. 118, Noor ilahi Nagar, Mithikhandi,

Limbayat, Surat City, Udhana, Surat,
Tal. & Dist. Surat. (Gujrat)

8. Arif Habib Khatik (Kureshi),
Age. 52 years, Occ. Labour,
R/o. 118, Noor ilahi Nagar, Mithikhandi,
Limbayat, Surat City, Udhana, Surat,
Tal. & Dist. Surat. (Gujrat)
9. Raju Munir Khatik,
Age. 53 years, Occ. Labour,
R/o. At Post Balapur, Fagne,
Tal. & Dist. Dhule.
10. Munnibee @ Bilkish Aktar Khatik (Kureshi),
Age. 54 years, Occ. Household,
R/o. At Post Manjroad, Tal Shirpur
Dist. Dhule.Applicants

Versus

1. The State of Maharashtra.
2. Sau, Anjum W/o. Sajid Khatik,
Age. 30 years, Occ. Household,
R/o. C/o. Mehemud Manwar Khatik,
At post - Chimthane,
Tq. Shindkheda, Dist. Dhule.Respondents
(Resp. No. 2 Orig. Complainant)

Advocate for Applicants : Mr. A.D. Sonar
APP for Resp./State No.1 : Mr. S.J. Salgare
Advocate for Resp. No.2: Mr. M.M. Jadhav h/f. Mr. S.P. Shah

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

DATE : 03.10.2022.

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

1. By the present Application filed under Section 482 of the Code of Criminal Procedure, the applicants who are original accused are praying for quashing of FIR bearing Crime No. 14/2010 registered with Shindkheda Police Station, Taluka and District Dhule, for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code and the proceedings in RCC No. 21/2022 pending before the Judicial Magistrate First Class, Shindkheda, District Dhule.

A. FACTS :

2. In the First Informant Report, which is registered as Crime No. 14/2010, the Informant has stated that her marriage was solemnized with applicant No. 1 – Sajid Shabbir Khatik on 21.04.2009 as per Muslim religion. After marriage, she started residing at her matrimonial house at Fagne. They have treated her well for a period of one year. Thereafter, the applicants used to taunt her by saying that her father has given less dowry in the marriage and did not given respect to them. By taking doubt on her character, applicants have physically and mentally harassed the Informant. They started demanding Rs. 2 Lakhs for the business of Mutton shop. When she expressed that her parents are unable to pay rupees, applicants used to abuse and beat her. When she used to visit her parental home, her parents-in-laws used to pick her at her parental home and demand monies from her parents. Prior to

one year of filing of this FIR, when respondent No. 2's parents and parental uncle came to give understanding about not to ill-treat the respondent No. 2, to the husband and in-laws of respondent No. 2 that time the applicants have beaten her parents and paternal uncle and driven her out of the matrimonial house. Since the applicants were not taking her back to the matrimonial house for cohabitation, she approached to Women Grievance Redressal Forum, Dhule, on 16.11.2019. Applicants attended the proceeding before Forum but denied for cohabitation. Hence, she lodged the present FIR.

3. Being aggrieved by the FIR, the applicants have approached to the Hon'ble Court under Section 482 of the Code of Criminal Procedure for the quashing of the FIR and proceedings arising therefrom.

4. The applicant No. 1 is husband, applicant No. 2 is mother-in-law, applicant No. 3 is brother-in-law of respondent No. 2. Whereas, the applicant No. 4 is Uncle of applicant No. 1, the applicant No. 5 is the married sister of applicant No. 1 and the applicant No. 6 is the husband of applicant No. 5. Applicant Nos. 7 and 8 are aunty and uncle of the applicant No. 1, whereas, the applicant No. 9 is the maternal uncle of the applicant No. 1 and the applicant No. 10 is aunty of the applicant No. 1.

4.1. The respondent No. 2/Informant got married on

21.04.2009, and FIR is lodged on 20.01.2021 after newly 11 years of marriage, against husband and even far off relatives. The Informant/respondent No. 2, did not desire to reside with her mother-in-law, hence the FIR was lodged even against far off relatives.

4.2. The Hon'ble Apex Court as well as High Court has time and again held that the complaints which do not constitute any *prima facie* case of commission of any offence, should be quashed by exercising the jurisdiction under Section 482 of Cr.p.c.

4.3. The informant has filed affidavit-in-reply dated 14.09.2021 to the Criminal Application. In the said affidavit the Informant has stated that as per the allegations stated in the FIR, there was demand of monies and due to non fulfillment of demand, there was physical and mental ill-treatment meted out to her by the applicants. There was persistence cruelty for 11 long years to respondent No. 2 and applicants driven her out of matrimonial house. Respondent No. 2 prayed to permit the investigation to proceed in the offence registered as FIR No. 22/2021 against applicants and the instant application filed by applicants may be rejected in limine.

B. SUBMISSION OF PARTIES :

5. Heard Mr. A.D. Sonar for the applicants, Mr. S.J.

Salgare, learned APP for the State and learned Advocate Mr. M.M. Jadhav holding for learned Advocate Mr. S.P. Shah, for the respondent No. 2.

5.1. Learned Advocate for applicants argued that the report is filed to harass the present applicants. There is no any single ingredients which can spell out the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code.

5.2. It was further argued that the allegations were made that the applicants demanded Rs. 2 Lakhs, from the Informant for the business of mutton shop, but no any specific date is mentioned as to when such demand was made. Hence, it should be held that the complaint is nothing but concoction of alleged false incidents merely to harass the applicants. Therefore, the FIR and criminal proceedings are required to be quashed and set aside.

6. On hearing the parties for considerable time and after showing disinclination to entertain the Criminal Application in respect of applicant Nos. 1 to 4 and 9, learned Advocate for applicants sought leave to withdraw the Criminal Application to the extent of applicant Nos. 1 to 4 and 9, on instructions of his clients. Hence, the criminal application so far as applicant Nos. 1 to 4 and 9 are concerned, stands disposed of as withdrawn. He, therefore, prayed for quashing the FIR and the proceedings arising therefrom to the extent of

applicant Nos. 5 to 8 and 10.

7. Learned Advocate Mr. Sonar submitted that the allegations are made in the complaint, even if are taken as it is, for the sake of argument, it is apparent on the face of record that the entire events and / or cause of action there are no specific allegations against applicant Nos. 5 to 8 and 10. Applicant Nos. 5 and 6 are staying at Pune. Whereas, applicant Nos. 7 and 8 are staying at Surat (Gujrat) and applicant No. 10 resides at Dhule but at different place from the matrimonial house of respondent No. 2. Therefore, applicant Nos. 5 to 8 and 10 are not involved in the day to day affairs of the married life of respondent No. 2 with her husband. The allegations made in the report are not only false and incorrect but are so absurd that, one does not supplement other. The material particulars relating to the alleged ill-treatment and harassment are also lacking. The respondent No. 2 has lodged the report only with an ulterior motive to cause harassment of the applicants. The respondent No. 2 has exaggerated the domestic dispute so as to rope maximum number of accused in the case. In view of this, the prosecution is not *bona fide* and, therefore, the FIR deserves to be quashed and set-aside.

8. Learned APP – Mr. S.J. Salgare and learned Advocate Mr. Jadhav holding for learned Advocate Mr. Shah for respondent No. 2 submitted that cruelty was done to

respondent No. 2 on account of non-fulfillment of amount and specific allegations have been made against all accused persons in the Report, hence there is no question of quashing the FIR against them and the application may be rejected.

C. ANALYSIS :

9. For quashing the criminal proceedings under Section 482 of the Cr.P.C. we have to see, whether the allegations in the FIR, *prima facie*, establish the ingredients of the offence alleged.

10. Perusal of the FIR would show that there are general and vague allegations against applicant Nos. 5 to 8 and 10. Applicant Nos. 5 and 6 are married sister of applicant No. 1 and her husband, respectively, are staying at Pune. Applicant Nos. 7 and 8 are cousin aunty and uncle of applicant No. 1, respectively, are staying at Surat (Gujrat). Therefore, applicant Nos. 5 to 8 are not involved in the day to day affairs of the married life of respondent No.2 with her husband. Applicant No. 10 resides at Dhule but at distant place and there are no specific allegations are made against her also. It is not mentioned that when applicant Nos.5 to 8 and 10 came to the matrimonial house of respondent No.2 and ill-treated her in last 11 years. Therefore, in our considered view, only with a view to harass applicant Nos.5 to 8 and 10, they have been arraigned as accused in the complaint by respondent No.2.

11. The Supreme Court in *Geeta Mehrotra Vs. State of U.P.*, reported in **AIR 2013 SC 181** stated that “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.”

12. Our High 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.

13. Taking into consideration the ratio laid down in the cases of *Shaikh Mushrraf Pasha* and *Geeta Mehrotra* (supra), we are of the considered view that so far as applicant Nos. 4 and 5 are concerned, there are no specific allegations against them and only with a view to harass them, they have been arrayed as an accused in the FIR.

14. Therefore, in our view, this is a fit case, wherein, we should exercise our discretionary powers under Section 482 of the Code of Criminal Procedure, to quash the FIR and the proceedings arising therefrom as against applicant Nos. 5 to 8 and 10. Hence, we pass the following order :

ORDER

1. Criminal Application insofar as applicant Nos.

1 to 4 and 9 are concerned, stands disposed of as withdrawn.

2. Criminal Application so far as applicant Nos. 5 to 8 and 10 are concerned, stands allowed in terms of prayer clause 'B' and 'B-1'.

3. FIR vide Crime No. 14/2021 registered with Shindkheda Police Station, District Dhule, for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of IPC and proceedings in RCC No. 21/2022 pending before the Judicial Magistrate First Class, Shindkheda, District Dhule, are quashed and set aside as against the applicant Nos. 5 to 8 and 10 namely Sonam Raju Khatik, Raju Sattar Khatik Taslim Arif Khatik (Kureshi), Arif Habib Khatik (Kureshi), Munnibee @ Bilkish Aktar Khatik (Kureshi), respectively.

4. Criminal Application stands disposed of.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)