

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

CRIMINAL APPLICATION NO. 1665 OF 2022

1. Chetan s/o Ganpat Waghare,
(Husband),
Age : 33, Occup. Private Job,
2. Maya w/o Ganpatrao Waghare,
(Mother-in-law)
Age : 60, Occup. Household
3. Ganpatrao s/o Nivrutti Waghare,
(Father-in-law)
Age : 68, Occup. Pensioner,
All R/o. CL-7-53-01, 12th Scheme, CIDCO,
Near Morya Mangal Karyalaya,
Shivaji Nagar, Aurangabad.
4. Kiran s/o Ganpatrao Waghare,
(Brother-in-law),
Age : 35, Occup. Private Job,
R/o. CL-7-53-01, 12th Scheme, CIDCO,
Near Morya Mangal Karyalaya,
Shivaji Nagar, Aurangabad.
At present R/o. - Green Square, B Wing,
Flat No. 704, Moshi, PCMC, Pune.
5. Sarika w/o Kiran Waghare,
(Wife of brother of husband)
Age : 28 years, Occup. Household,
R/o. - Same as above.

...Petitioners

Versus

1. The State of Maharashtra
2. Manjusha w/o Chetan Waghare,
(Manjusha d/o Devanand Sahare),
Age : 26 years, Occup. Private Job,
R/o. C/o. Devanand Anand Sahare,
Jai Bhawani Nagar, Lane No. 1,
Behind Ambedkar Statute,
Aurangabad.

...Respondents

.....
Mr. Nitin U. Telgaonkar, Advocate for the applicants
Mr. S. J. Salgare, APP for respondent/State
Mr. V. B. Kale & J. S. Jadhav, Advocate for respondent no. 2
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**CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.**

ARGUMENTS CONCLUDED ON : SEPTEMBER 08, 2022
JUDGMENT PRONOUNCED ON : SEPTEMBER 14, 2022

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

1] This application is filed under Section 482 of the Code of Criminal Procedure for quashing First Information Report vide C.R. No.19/2022 dated 19.01.2022 registered at Pundlik Nagar Police Station, Aurangabad for the offence punishable under Sections 315, 323, 498A, 504 r/w 34 of the Indian Penal Code with a further prayer to direct the concerned police to not to file charge-sheet in this matter.

FACTS : -

2.1] The marriage of respondent no. 2 with applicant no. 1 was solemnized on 07.03.2021 as per Buddhist rites and customs at Regal Lawns, Beed Bypass, Aurangabad. They have no issue from the said wedlock.

2.2] It is the case of respondent no. 2 in the FIR that, the engagement ceremony of respondent no. 2 with applicant no. 1 was taken place at her residence in Aurangabad, on 25.01.2021. The said ceremony was organized on the terrace of the house of respondent
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no. 2. For taking photographs, respondent no. 2 and the applicant no. 1 had come down-stair. After taking photographs, the photographer had again gone on the terrace and the respondent no. 2 and the applicant no. 1 remained in the room at the ground floor. Thereafter, applicant no. 1 took informant in his arms and tried to establish physical relations with her. Though respondent no. 2 resisted for the same, applicant no. 1 had sexual intercourse with her on the pretext that he would handle all the things, and by impressing that their marriage would take place within few days.

2.3] Respondent no. 2 has further stated in the FIR that, the father of respondent no. 2 had given in the marriage ceremony Rs.5.00 lakhs, golden and silver ornaments and the household articles. After the marriage, when respondent no. 2 went to her matrimonial home at Shivaji Nagar, Aurangabad, she lived with the applicants for three to four days and thereafter went to Pune along with applicant nos. 1, 4 and 5 for cohabitation. It is further stated that when she started her marital life with applicant no. 1 in Pune, the in-laws of respondent no. 2 used to abuse her over phone on trivial things. The applicants used to make unlawful demand of Rs.5.00 lakhs from respondent no. 2. When respondent no. 2 had informed about the said unlawful demand to her parents, they had tried to convince the applicants and further requested to treat respondent no. 2 with love.

2.4] It is further the case of respondent no.2 in the FIR that the respondent no. 2 had undergone pregnancy test by means of pregnancy test kit on 25.03.2021 and the result thereof was positive. She and her husband i.e. applicant no. 1 then learnt that respondent no. 2 has conceived and thereafter they decided to conduct sonography test of respondent no. 2. After conducting sonography sgp

test, she was informed that she was 3½ months pregnant. The medical papers in respect of sonography test are in the custody of applicant no. 1.

2.5] Respondent no. 2 has further stated in the FIR that on 04.05.2021, respondent no. 2 along with applicant no. 1, 4 and 5 came to Aurangabad at her matrimonial home. Thereafter, applicant no. 1 started abusing respondent no. 2 suspecting her character. She had then called her father at her matrimonial home. When her parents reached her matrimonial home, the in-laws of respondent no.2 abused them and threatened if the demand of Rs. 5.00 lakhs is not fulfilled, they would not allow respondent no. 2 to cohabit. Thereafter, applicant no. 1 beat respondent no. 2 with leg fist in her abdomen and drove her out of the house and since then respondent no. 2 has been staying with her parents at her maternal home. When respondent no. 2 had got menstruation period after 2 – 3 after reaching her parental home, she realized that the foetus in her womb got aborted due to the leg blows inflicted on her womb by applicant no. 1. It is further stated that, the mental condition of respondent no. 2 was not stable and, therefore, she did not undergo medical treatment.

2.6] Respondent no. 2 has further stated in the FIR that, after filing the complaint with the Women's Grievance Redressal Forum, the respondent no. 2 and applicant no. 1 were called by the said Forum but the mediation had been unsuccessful. Respondent no. 2 therefore registered FIR against all the applicants at the police station.

3] The applicants have stated in the Criminal Application that on plain reading of the FIR, the alleged offence does not disclose
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against the applicants. There is delay in lodging the FIR, which is unexplained. They have further stated that the marriage between respondent no. 2 and applicant no. 1 is arranged marriage and both of them were unknown with each other. They were introduced with each other through Marriage Bureau. The respondent no. 2 was well aware that she was pregnant prior to the marriage from somebody else other than the applicant no. 1 but she had suppressed the said fact from the applicants and committed fraud with the applicants. The applicant no.1 had given a complaint to the police about illegal termination of pregnancy by respondent no. 2 and her family members. They have further stated that the applicant no. 1 has filed Marriage Petition No. A-250/2021 before the Family Court for annulment of marriage by a decree of nullity u/s 12(1)(c)(d) of Hindu Marriage Act, 1955, which is *sub judice*.

4] The applicants have further stated in the application that the applicant no. 1 had filed private complaint before the Court at Aurangabad and in the meanwhile, the respondent no. 2 in collusion with her paternal family members had illegally destroyed the evidence thereby terminating the pregnancy. Considering the same, the Court had directed registration of crime against the family members of respondent no. 2 and accordingly Crime No. 418/2021 was registered against the respondent no. 2 and paternal family members for the offences punishable u/s 420, 506, 318, 201 r/w 34 of the Indian Penal Code. Applicant no. 1 has initiated all the above proceedings against the respondent no. 2 and her family members and, therefore, the respondent no. 2 has filed false case against the applicants only with an intention to harass and pressurize the applicants.

5] The applicants have further stated in the application that
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the applicant no. 1 was suffering from SCITICA and was under treatment from April 2021. He was advised bed rest from time to time till September – 2021 and, therefore, he was unable to make physical assault on the stomach of respondent no. 2, as alleged. Hence, it is prayed that the application be allowed and the FIR be quashed against them.

SUBMISSIONS : -

6] Heard Mr. Nitin U. Telgaonkar, learned counsel for the applicants, Mr. S. J. Salgare, learned APP for respondent no. 1 / State and Mr. V. B. Kale and J. S. Jadhav for respondent no. 2.

7] Learned advocate for the applicants submit that the allegations made against the applicants are vague, baseless and general in nature. The contents of the complaint lacks the ingredients of the offences alleged. He submits that, the allegation in respect of sexual intercourse on the day of engagement ceremony is false and improbable since there were number of guests who had gathered for the engagement ceremony of respondent no. 2 and applicant no. 1. He further submits that, perusal of the sonography test would clearly show that the respondent no. 2 had conceived even before the engagement ceremony of respondent no. 2 with applicant no. 1 and, therefore, applicant no. 1 was not the biological father of foetus in the womb of respondent no. 2. The respondent no. 2 in collusion with her family members terminated the pregnancy illegally and destroyed the evidence. Due to termination of pregnancy, the DNA test could not be conducted which was the only conclusive proof of paternity. There is no document on record which shows the foetus in the womb of respondent no. 2 was aborted due to the kicks inflicted by applicant no. 1. The foetus is terminated with the aid of medical
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practitioner. He further submitted that, applicant nos. 2 and 3, who are father-in-law and mother-in-law respectively of respondent no. 2, are old aged parents and respondent no. 2 had stayed along with them only for two days i.e. 07th and 9th March, 2021 and thereafter she had gone to Pune along with applicant no.1. Therefore, applicant nos. 2 and 3 had nothing to do with the marital life of respondent no. 2 and they have been falsely implicated in the offence in question. There are no specific allegations against applicant nos. 4 and 5, who are brother-in-law and sister-in-law respectively of respondent no.2.

8] Learned counsel for the applicants further submitted that the applicants are innocent persons having no concern with the alleged offences. The FIR is lodged against the applicants only to counter the FIR, marriage petition and the legal notice issued by applicant no. 1. Hence, he prayed that the application be allowed and the FIR in question be quashed against the applicants.

9] After hearing the parties at length, when this Court showed disinclination to grant relief in favour of applicant no. 1 i.e. husband of respondent no. 2, the learned counsel for the applicants, on instructions, seeks leave to withdraw the application to his extent. Leave granted. The Application stands disposed of as withdrawn to the extent of applicant no. 1. Now, therefore, the application is considered only insofar as applicant nos. 2 to 5 are concerned.

10] Learned counsel for the applicants further stated that Applicant Nos. 2 to 5 have been arrayed as an accused only with an intention to wreak vengeance on them. They had nothing to do with the marital life of respondent no. 2. Perusal of the FIR would show that no specific allegations have been levelled against them and

hence he prays for allowing the application to the extent of applicant nos. 2 to 5.

11] Learned APP Mr. Salgare for respondent no.1/State and the learned advocate Mr. V. B. Kale and J. S. Jadhav appearing for respondent no. 2 submitted that there are specific allegations against the applicants and hence opposed for grant of relief in favour of the applicants.

ANALYSIS : -

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

13] Perusal of the FIR would show that the allegations levelled are mainly against applicant no. 1 - husband. So far as applicant nos. 2 and 3 are concerned, who are father-in-law and mother-in-law, the respondent no. 2 had hardly stayed together with the said applicants for two or three days and the allegation made against them is that they had made an unlawful demand of Rs. 5.00 lakhs. Insofar as applicant nos. 4 and 5 are concerned, who are brother-in-law and the wife of brother-in-law, there are no specific allegations against them. Further, the applicants no. 2 to 5 seems to have been implicated only to give counterblast to the proceedings initiated by applicant no. 1. There are no allegations that alleged demand of money was followed by acts of 'cruelty' of specific nature.

14] 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 judgments in paragraph nos. 22 to 27, held that continuation of prosecution against far off relatives would amount to abuse of process of law.

15] The Hon'ble Supreme Court in **Geeta Mehrotra Vs. State of U.P.**, reported in AIR 2013 SC 181 stated "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.

16] The Bombay High Court in **Shaikh Mushrraf Pasha s/o Shaikh Mushtakh 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.

17] Thus, we are of the considered view that the respondent No.2 only with an intention to harass and with an ulterior motive, has filed the complaint against the near and dear relatives of the husband i.e. applicant no. 1. Continuation of prosecution against them, in our opinion, would amount to abuse of process of law.

18] Taking into consideration the ratio laid down in the cases of **Geeta Mehrotra** and **Shaikh Mushrraf Pasha** (supra), we are of the considered view that there are no specific allegations against the applicant nos. 2 to 5 and only with a view to harass them they have been arrayed as an accused in the FIR. Therefore, in our view, this is a fit case wherein we should exercise our discretion under Section 482 of the Code of Criminal Procedure to quash and set aside the the
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FIR against the applicant nos. 2 to 5.

ORDER

- [i] Criminal Application is partly allowed.
- [ii] Insofar as applicant no. 1 is concerned, Criminal Application stands disposed of as withdrawn.
- [iii] Criminal Application is allowed in respect of applicant nos. 2 to 5.
- [iv] First Information Report vide C.R. No.19/2022 dated 19.01.2022 registered at Pundlik Nagar Police Station, Aurangabad for the offence punishable under Sections 315, 323, 498A, 504 r/w 34 of the Indian Penal Code stands quashed and set aside as against the applicant nos. 2 to 5, namely, Maya Ganpatrao Waghare, Ganpatrao Nivrutti Waghare, Kiran Ganpatrao Waghare and Sarika Kiran Waghare.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE