

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

CRIMINAL APPLICATION NO. 1505 OF 2019

1. Bhagwat S/o Vinayak Kewadkar,
Age: 34 years, Occu: Agri.,
R/o Borwati, Tq. and Dist Latur.
 2. Vimabai wd/o Vinayak Kewadkar
Age: 65 years, Occu: Household,
R/o As above.
 3. Shridhar S/o Vinayak Kewadkar,
Age: 38 years, Occu: Service,
R/o As above.
 4. Sandhya w/o Shridhar Kewadkar,
Age: 32 years, Occu: Service,
R/o As above.
 5. Damayanti @ Maya w/o Sanjay Yadav
Age: 42 years, Occu: Household,
R/o Khadka, Tq. Sonpeth,
Dist. Parbhani.
- ... Applicants.

Versus

1. The State of Maharashtra
Through Police Station Officer,
Police Station, Renapur,
Tq. Renapur, Dist. Latur.
 2. Sow. Sonali @ Kalpana w/o Bhagwat Kewadkar,
Age: 29 years, Occu: Household,
R/o C/o Balasaheb Sadashiv Ingale,
Dighol Deshmukh, Tq. Renapur,
Dist. Latur.
- ... Respondents.

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Mr. Shrikishan S. Shinde, Advocate for the Applicants.
Mr. R. D. Sanap, APP for Respondent No.1-State.
Mr. V. B. Dhage, Advocate for Respondent No.2
Advocate Mr. Sharad S. Shinde, Appointed for Respondent No.2 is absent.

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

DATE : 14.12.2022

JUDGMENT (ABHAY S. WAGHWASE, J.) :

1. Husband and in-laws of respondent no.2 have preferred the instant application praying to quash the FIR and charge-sheet arising out of the same by invoking provisions under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.")

Brief background of the case

2. Respondent no.2 approached Renapur Police Station alleging that she was married to applicant no.1 husband on 19.12.2011. After narrating about the amount expended and articles given in marriage, she has alleged that, for a period of two months she was treated properly. Subsequently, husband put up a demand of Rs.10,00,000/- for setting up a grocery shop. For such demand, her in-laws subjected her to mental and physical cruelty. She was even beaten for not meeting such demand. When she came for delivery, her husband did not come to take her back. According to her, on 05.03.2015, her in-laws alleged that she had affair with a boy in the village. Therefore, above FIR came to be lodged on the strength of which, Renapur Police Station registered crime bearing No.74 of 2015 for the offence punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code (for short,

“IPC”).

Investigating machinery carried out investigation by recording statements and by gathering documentary evidence and after its completion, charge-sheet came to be filed.

It is the above crime and charge-sheet which are now sought to be nullified by applicants herein by exercising powers under Section 482 of Cr.P.C.

3. Learned counsel for the applicants would submit that the FIR is patently false. There was no demand either by husband or any other in-law of respondent no.2. It is pointed out that on the contrary, respondent no.2 was caught red-handed in compromising position with another person. That there are statements of independent persons to that extent. Therefore, getting annoyed, after a couple of days, she lodged the above FIR levelling false allegations. That it is an attempt to harass and rope in entire family. That there was no demand or physical and mental cruelty as alleged and therefore, according to him, continuation of proceedings on such allegations would render injustice to the applicants herein. As it is a clear attempt of abuse of process of law, it is submitted that, prayers raised herein are required to be granted.

4. Learned APP for the State would oppose the application pointing out that there are allegations of demand of Rs.10,00,000/-. Allegations are

levelled against husband and all in-laws. They are named in the FIR and therefore, investigation was carried out and the same reveals involvement of all applicants. Therefore, for the said act all the applicants deserve to face trial.

5. Advocate for respondent no.2 also opposed the application by making arguments on similar lines and by submitting that applicants are named in the FIR. There was demand of Rs.10,00,000/- and on failure to meet said demand, there are allegations about physical and mental harassment. According to him, investigation has also revealed involvement and complicity of all accused persons and as such, they should face legal action and finally he also prayed to dismiss the application.

6. We have heard all parties to their satisfaction. We have carefully examined the FIR and the statements recorded under Section 161 of Cr.PC. It seems that respondent no.2 was married to applicant-husband on 19.12.2011. According to the informant, after two months of marriage, there was demand of Rs.10,00,000/- for setting up a shop and on such count, she claimed that she was subjected to physical and mental cruelty. It is pertinent to note that said demand is attributed only to the husband and not to the rest of the applicants. General allegations are levelled that in-laws subjected her to mental and physical cruelty. What was the mode and nature of ill-treatment has not been clarified in the FIR.

7. Learned Advocate for the applicants has invited our attention to the statement of one Vishal Pachange recorded before the learned Judicial Magistrate, First Class, Renapur in Criminal M.A. No. 64 of 2015. It seems to be an affidavit. The deponent therein seems to have stated in para 4 that on 01.03.2015 and 02.03.2015, one Hemant Deshmukh visited the house of respondent no.2 in absence of her husband and had talks with her for hours together and such fact was made known to all the residents of the building. He further claimed that on 03.03.2015, respondent no.2 was seen in a compromising position in the company of said Hemant i.e. in the bedroom of flat no.7. Therefore, with such affidavit before the court, *prima facie* we find substance in the contention raised before us by learned counsel for the applicants that respondent no.2 was found in compromising position on 03.03.2015. The FIR at the instance of present respondent no.2 seems to be subsequent to that i.e. on 01.06.2015. The contents of the FIR are already discussed by us. It is reiterated that allegations are confined only to the husband for raising demand and rest of the allegations of physical and mental cruelty, which are general in nature and non-specific, are attributed to other applicants.

8. Learned counsel for the applicants, at the admission stage itself, on realizing that this Court was not inclined to grant any relief to applicant no.1-husband, on instructions sought permission to withdraw the application to his

extent. Therefore, in the instant proceedings, matter was left for consideration of only applicant nos. 2 to 5.

9. For the above discussed reasons and the available record, we agree with the submissions made before us that the FIR is motivated one i.e. to rope in entire family. It is apparently after respondent no.2 was caught red-handed. In absence of any concrete material or firm allegations against the in-laws, it would be abuse of process of law to allow them to face trial. The case of applicant nos. 2 to 5 squarely falls under the guidelines laid down by the Hon'ble Apex Court in *State of Haryana and others v. Ch. Bhajan Lal and others* ; AIR 1992 SC 604, particularly clause (7) of para 108 of the judgment. Therefore, application to their extent deserves to be allowed. Hence, we proceed to pass the following order:

ORDER

- I. The application is partly allowed.
- II. Application of applicant no.1 - Bhagwat S/o Vinayak Kewadkar is dismissed as withdrawn.
- III. The application, to the extent of applicant nos. 2 to 5, is allowed in terms of prayer clause [C].
- IV. The application is accordingly disposed off.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)