

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

CRIMINAL APPLICATION NO. 1431 OF 2021

1. Sandeep Lahu Sarkale (Husband)
Age. 35 years, Occu. Service,
R/o. Flat No. 101, First Floor, Wing-B,
Nilay Housing Society, Jadhavvadi,
Chikhali, Pune – 411 018.
 2. Minakshi wd/o. Lahu Sarkale (Mother-in-law)
Age. 55 years, Occu. Housewife,
R/o. Shivaji Chauk Sayaal Road,
Loha, Taluka Loha, District Nanded.
 3. Sushil S/o. Lahu Sakale (Brother-in-law)
Age. 38 years, Occu. Service,
R/o. Vrandavan Society, Dombivali,
Mumbai.
 4. Surendra S/o. Lahu Sarkale (Brother-in-law)
Age. 33 years, Occu. Teacher,
R/o. Shivaji Road, Sayal Road, At Loha,
District Nanded.
 5. Prashant S/o. Lahu Sarkale (Brother-in-law)
Age. 31 years, Occu. Business,
R/o. Vadwali, Ghodbandar Road, Thane.
 6. Sujata Bhagwan Masure (Sister-in-law)
Age. 37 years, Occu. Service,
R/o. Warma Nagar,
Taluka and Dist. Parbhani.
 7. Bhagwan S/o. Eknath Masure (Husband of sister-in-law)
Age. 38 years, Occu. Service,
R/o. Warma Nagar,
Taluka and District Parbhani.
-Applicants

Versus

1. The State of Maharashtra,
Through the Police Inspector,
Shivaji Nagar Police Station,
Nanded, Dist. Nanded

2. Sou. Pallavi Sandeep Sarkale
Age. 26 years, Occ. Nil,
R/o. Jai-Bhim Nagar Nanded,
At Nanded, Dist. Nanded.
(Mob No. 9284112133)

... Respondents

Advocate for Applicants : Mr. R. B. Dhakane

APP for Respondent No.1 : Mr. S. J. Salgare

Advocate for Respondent No.2 : Mr. Govind G. Suryawanshi

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

DATE : 08.09.2022.

JUDGMENT :

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 No. 47/2020 registered with Shivaji Nagar Police Station Nanded, District Nanded, for the offences punishable under Sections 498-A, 323, 328, 504, 506 read with Section 34 of the Indian Penal Code, and further for quashing the charge-sheet No. 149/2021 along with the proceeding bearing RCC No. 830/2021 pending before the Chief Judicial Magistrate at Nanded.

A. FACTS :

2. In the First Informant Report, which is registered

as Crime No. 47/2020, the Informant has stated that the marriage was solemnized in between the applicant No.1 with the (Informant) respondent No. 2, on 06.05.2017 as per Buddhist ritual and customs at Ashirwad-Nagar, Nanded. The complainant further states that she got married on the above date and her father has given Rs. 5 Lakhs, 2 tolas gold chain, 5 gram Ring at the marriage function. After marriage the Informant along with her husband (applicant No. 1) went to Pune, for residing. Where the husband i.e. applicant No.1 was working and residing at Pune. The applicants initially behaved well for six months and thereafter have continuously demanded from her 7 Lakhs rupees for purchasing Car/four wheeler and have threatened her on several occasion in abused language. It is further submitted that the applicant No.1 is the pharmacist and as such has knowledge of medicines/drugs. Once again in January 2019 applicant Nos. 1 to 6 demanded Rs. 7 Lakhs from the informant and when she refused to do so, she was thrashed by applicants. It is further stated that on 15.03.2019 the aunt of informant had been to the house of informant and at that time also applicants insulted the informant and her aunt. Therefore FIR was lodged at Kudalwadi Police Station by informant on 15.03.2019. From thereon the informant is residing at Jaibhim Nagar, Nanded.

3.1. The applicants being the husband and in-laws of Informant, have challenged the FIR for quashment by way of Criminal Application. In the Criminal Application, the

applicants have stated that they are from the rural area and have the great affinity of the education, the younger's have well highly qualified and residing separately from each other, from the family of the applicant No.1 and respondent No.2, as both were residing at Pune. The applicant No. 1, was having no service when the FIR had lodged by the Informant/respondent No.2, and after sometime had joined the Dr. D.Y. Patil Institute of Management and Research Pimpri, Pune, (as he was having good qualification) as an Assistant Professor. The service is the only source of income of the applicant No. 1 and for all his other brothers, who are working in different departments including the sister-in-law of the Informant/complainant.

3.2. It is further narrated in the Criminal Application that the brothers of the respondent No.2, and she herself are abused the applicant No. 1 in public, while attending the proceeding at Pune, and further threatened the applicant No.1 with abusive language. This situation compelled the applicant No.1 to proceed further and hence, he has filed a purshis in the Court, and NC as against the respondent No.2, Subhash Raibole, one Suryatal Raibole and her aunt with Shivajinagar Police Station, Pune.

3.3. Applicant No.4, is also highly educated having a job at Loha, District-Nanded at Global English School and residing with applicant No.2 is not interfering in the family

affairs of the applicant No.1 and respondent No.2. The date on which the incident has alleged, during the period the applicant No.4 was at Nanded.

3.4. The applicant No.5 is having his medical shop at Badlapur, and has settled there. He is an employee of Healthcare Division, Division in IT Company, and he was residing at Ghodbandar Road, Thane.

3.5. The applicant No. 6 has married with applicant No. 7, on 02.06.2011 and since then, is residing with her husband at the place of work at Warma Nagar, Taluka and District Parbhani. The applicant Nos. 6 and 7 have never ever lived together with the family of the applicant No.1 and respondent No.2; as has alleged by the respondent No.2 in the FIR.

3.6. In the above circumstances, 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 further Criminal proceedings.

B. SUBMISSION OF PARTIES :

4. Heard Mr. R.B. Dhakane for the applicants, Mr. S.J. Salgare, learned APP for the State and Mr. G.G. Suryawanshi for the respondent No. 2.

5.1. Learned counsel Mr. Dhakane submits that perusal of the FIR would show that the general and baseless

allegations have been levelled against the applicants. On the basis of the allegations have been levelled against the applicants. On the basis of the allegations made in the criminal complaint, no cognizable offence can be said to have been made out.

5.2. The Applicants are innocent and has not involved in the present crime as is alleged by the complainant in the FIR. No offences as mentioned in the Complaint is made out against the applicants, the allegations are afterthoughts, concocted facts for keeping the law in motion and the same are liable to be quashed under Section 482 of the Code of Criminal Procedure by this Hon'ble Court. The applicant No.1 has filed a Divorce Petition before the learned Senior Division at Pune, which is lying, being pending for the adjudication, where the respondent No. 2 has filed her written statement. The respondent No.2 has also filed an application under section 24 of the Hindu Marriage Act which is pending before the same Court at Pune.

6. Learned APP – Mr. S.J. Salgare and learned counsel Mr. G.G. Suryawanshi for respondent No. 2 submitted that specific allegations have been made against all in the Criminal Application, hence there is no question of quashing the FIR and the proceedings arising therefrom.

7. On hearing the parties for considerable time and after showing disinclination to entertain the Criminal

Application in respect of applicant Nos. 1 to 3. Mr. Dhakane, the applicants' Advocate sought leave to withdraw the Criminal Application to the extent of applicant Nos. 1 to 3 on instructions of his clients. Hence, the criminal Application so far as applicant Nos. 1 to 3 are concerned, stands disposed of as withdrawn.

8. Criminal Application is considered now only to the extent of applicant Nos. 4 to 7, who are brother-in-laws, and married sister-in-law, and husband of sister-in-law of informant. Mr. Salgare, counsel for the applicants submitted that applicant No. 4 is working at Loha, Dist. Nanded, in Global English School. Applicant No. 5 is running medical shop at Badlapur, District Thane, and is residing at Ghodbandar Road, Thane. Applicant No. 6 is married to applicant No. 7 in the year 2011, and since then they are residing at Warma Nagar, Taluka and District Parbhani. The applicant Nos. 4 to 7 are residing far away from the place where the incident in question has taken place. They have nothing to do with the marital life of respondent No.2. The criminal complaint is lodged only with an intention to pressurize the applicants. He, therefore, prayed for quashing the FIR and the proceedings arising therefrom to the extent of petitioner Nos. 4 to 7.

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. 4 to 7. Applicant Nos. 4 and 5 are the brother-in-laws whereas applicant No. 6 is the married sister-in-law respectively of respondent No. 2. There are no specific allegations against applicant Nos. 4 to 7. The allegations levelled are mainly against the applicant Nos. 1 to 3, who are husband, mother-in-law and elder brother-in-law of respondent No. 2. Admittedly, applicant Nos. 4 to 7 lives in a different towns than the one where the incident in question has occurred. Therefore, in our considered view, only with a view to harass applicant Nos. 4 to 7, they have been arraigned as an 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 “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. Thus, we are of the considered view that the Informant/respondent No.2 only with an intention to harass and with an ulterior motive, has filed the complaint against the applicant Nos. 4 to 7. Continuation of prosecution against the applicant Nos. 4 to 7, who are the relatives of the husband, in our opinion, would amount to abuse of process of law.

14. 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 to 7 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. 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 the FIR as against applicant Nos. 4 to 7. Hence, we pass the following order :

ORDER

1. Criminal Application insofar as applicant Nos. 1 to 3 are concerned, stands disposed of as withdrawn.

2. Criminal Application so far as applicant Nos. 4 to 7 are concerned, stands allowed in terms of prayer clause 'A' and 'C-1'.

3. FIR vide Crime No. 47/2020 registered at Shivaji Nagar Police Station, Nanded, District Nanded, and the charge-sheet filed before the Chief Judicial Magistrate at Nanded, stands quashed and set aside as against the applicant Nos. 4 to 7 namely, Surendra Lahu Sarkale, Prashant Lahu Sarkale, Sujata Bhagwan Masure and Bhagwan Eknath Masure.

4. Criminal Application stands disposed of.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)