

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1546 OF 2021

1. Nirmalabai W/o. Sambappa Mahajan
Age. 60 years, Occ. Household,
R/o. Saraswati Colony, Thodga Road,
Ahmedpur, Tq. Ahmedpur,
Dist. Latur.
2. Rahul S/o. Sambappa Mahajan,
Age. 33 years, Occ. Business,
R/o. As above.
3. Sambappa S/o. Trimbakappa Mahajan,
Age. 68 years, Occ. Agri.,
R/o. As above.
4. Vikas S/o. Sambappa Mahajan
Age. 40 years, Occ. Agri.,
R/o. As above.
5. Ramappa S/o. Trimbakappa Mahajan
Age. 72 years, Occ. Agri.,
R/o. As above.
6. Sow. Sumanbai W/o. Ramappa Mahajan
Age. 68 years, Occ. Household,
R/o. As above.
7. Baswaraj S/o. Ramappa Mahajan
Age. 45 years, Occ. Agri.,
R/o. As above.
8. Sow. Kavita W/o. Baswaraj Mahajan
Age. 43 years, Occ. Household,
R/o. As above.
9. Ravishankar S/o. Ramappa Mahajan
Age. 44 years, Occ. Agri.,
R/o. As above.

10. Sow. Shila W/o. Ravishankar Mahajan,
Age. 37 years, Occ. Household,
R/o. As above.

.... Applicants

Versus

1. The State of Maharashtra,
Through, Police Inspector,
Police Station Murum,
Tq. Omerga, Dist. Osmanabad.
2. Sow. Priya W/o. Vikas Mahajan,
Age. 28 years, Occ. Household,
R/o. C/o. Vishwanath Zampanappa Mukadanna
Muukdanna Galli, Murum,
Tq. Omerga, Dist. Osmanabad.

... Respondents

Advocate for Petitioners : Mr. Jayant R. Patil
APP for State : Mr. S.J. Salgare
Advocate for Respondent No. 2 : Mr. P.V. Barde

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

DATE : 06th SEPTEMBER, 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 No. 101/2021 registered with Police Station Murum, Taluka Omerga, District Osmanabad, for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code, and further for quashing the charge-sheet No. 69/2021 along with the proceeding bearing RCC No. 155/2021 pending before the learned Judicial Magistrate First Class, Omerga, District Osmanabad.

A. FACTS :

2. The respondent No. 2 has lodged FIR. It is the case of the respondent No. 2 in FIR that the applicant No. 4 and respondent No. 2 got married on 13.12.2009 as per Hindu rites and customs by following all rituals and by giving articles at Ahmedpur. Out of the said wedlock, the respondent No. 2 has begotten two daughters namely Purva and Shrayu. Purva is studying in 4th standard, whereas Shrayu is studying in Nursery. After marriage, respondent No. 2 was treated well for the period of two to three years. From the year 2013 onwards, all the accused started demanding monies and ill-treated her. They demanded amount of Rs. 2 Lakhs for purchasing Television and Cot (Diwan). They used to insult her by saying that she is a woman having bad omen, she cannot give birth to a male child and she does not have good looks. She was not provided food and she was ill-treated physically and mentally by the applicants. Applicant No. 1 – mother-in-law and applicant No. 4 – husband have also beaten her and driven her out of matrimonial house along with her two children and as such she is residing at her parents house since last one month.

3. It is further stated that on 09.05.2021 at about 7 a.m., applicant Nos. 2 to 5, 7 and 9 came to her parent's house and demanded custody of daughters, however, on refusal; the above said applicants had beaten her by kicks and blows, so also she was threatened of life by the above said applicants. Hence, she filed complaint with the Police, which was registered as FIR.

B. SUBMISSION OF PARTIES :

4. Heard learned Advocate Mr. Jayant Patil, for the applicants,

Learned APP Mr. Salgare for State and learned Advocate Mr. Barde, for respondent No. 2.

5. At the outset, after hearing the arguments when disinclination was shown as against applicant Nos. 1, 3 and 4 is concerned, learned Advocate for the applicants, on instructions, sought leave to withdraw the application as far as applicant Nos. 1, 3 and 4. Leave granted. Criminal Application is permitted to withdraw as far as applicant Nos. 1, 3 and 4. Thereafter, submissions were made only as far as applicant Nos. 2 and 5 to 10 are concerned.

6. According to the learned Advocate Mr. Jayant Patil for the applicants, so far as applicant Nos. 2 and 5 to 10 are concerned, they have not committed any offence as alleged by the respondent No. 2 and only with a view to harass the applicants, she has lodged the present complaint. He further submitted that after the marriage of applicant No. 4, the couple started residing separately from other applicants along with their two daughters since March, 2010, in the house at first floor. Applicant No.2 Rahul is also residing separately from other applicants since December, 2010 along with his wife and one daughter. Though, the applicants are residing in same building but they have separate residence and hence, there is no question to ill-treating the respondent No. 2.

7. He further stated that there are no specific allegations against the applicant Nos. 2 and 5 to 10 and only with a view to harass the applicants, the respondent No. 2 has filed a false FIR against the petitioners. Hence, the same needs to be quashed and set aside.

8. Learned Advocate for the applicants relied upon the judgments in the matter of *Gian Singh Vs. State Punjab*, reported in **(2012) 10 SCC 303** and *Geeta Mehrotra Vs. State of U.P.*, reported in **AIR 2013 SC 181**.

9. Per contra, the learned APP supported the case of the prosecution and submitted that there are specific allegations against all the applicants in FIR and charge-sheet. Hence, the application be dismissed.

C. ANALYSIS :

10. Admittedly, though all the applicant Nos. 2 and 5 to 10 reside in the same building, they have separate blocks / apartments in the building. Applicant No. 2 is residing separately from the family of respondent No.2 since December, 2010 along with his wife and one daughter.

11. Perusal of the FIR would show that these are general and vague allegations against applicant No. 2 (brother-in-law) and applicant Nos. 5 to 10 (uncle of husband, aunt of husband, cousin brother-in-law, cousin sister-in-law, cousin brother-in-law and cousin sister-in-law, respectively. Applicant Nos. 5 and 6, are senior citizens aged 72 years and 68 years respectively. There are no specific allegations against applicant No. 2 and applicant Nos. 5 to 10. The allegations in the report are mainly against applicant No. 4 (husband) and applicant No. 1 (mother-in-law), applicant No. 3 (father-in-law).

12. Therefore, we find substance in the submission of learned

counsel for the applicant that they are arrayed as parties only to harass them.

13. In the matter of *Geeta Mehrotra* (supra), the Supreme Court in paragraph No. 19 has observed thus :-

“19.... When the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.”

14. The Supreme Court in the matter of *Gian Singh* (supra), has laid down the guideline as to when the High Court should exercise power under Section 482 of the Code of the Criminal Procedure to prevent the abuse of process of law in Court or to secure ends of justice. So far as present matter is concerned, the relevant guideline laid down in para No. 48 of the judgment in the matter of *Gian Singh* (Supra) reads thus :

“48.

“21.....(a) Cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.”

15. We have in our recently decided Criminal Application No. 2230/2020 [*Narayan S/o. Eknath Devkar and others Versus*

State of Maharashtra and others, decided on 25th July, 2022], after considering the various judgment in paragraph No. 27, held that continuation of prosecution against far off relatives would amount to abuse of process of law. The paragraph No. 27 reads thus :

“27. Thus, we are of the considered view that the respondent No. 2 only with an intention to harass the applicant No. 1, with ulterior motive, has filed the complaint also against far off relatives i.e. respondent Nos. 4 to 15. Continuation of prosecution against Applicant Nos. 4 to 15, who are far off relatives of husband and who stay separately in their own house, in our opinion, would amount to abuse of process of law.”

16. Considering the ratio laid down in the matters of *Geeta Mehrotra* (supra), *Gian Singh* (supra) and *Narayan Devkar* (supra), we are of the considered view that the ratio in the said decisions is squarely applicable to the facts in the present case. Also taking into consideration that only general allegations were made in First Information Report against applicant Nos. 2 and 5 to 10, we are of the opinion that this is a fit case wherein we should exercise our discretion under Section 482 of the Code of the Criminal Procedure, to quash the First Information Report No. 101/2021 as against applicant Nos. 2 and 5 to 10 :

ORDER

- i. The Criminal Application in so far as applicant Nos. 1, 3 and 4 are concerned, stands disposed of as withdrawn.
- ii. The Criminal Application in so far as applicant Nos. 2, 5 to 10, is allowed in terms of prayer clauses (C), (D) and (E).

iii. The FIR No. 101/2021 registered with Police Station Murum, Taluka Omerga, District Osmanabad, for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code, and charge-sheet No. 69/2021 along with the proceedings bearing RCC No. 155/2021 pending before the learned Judicial Magistrate First Class, Omerga, Dist. Osmanabad, as far as applicant Nos. 2, 5 to 10 are concerned, are hereby quashed and set aside.

iv. Criminal Application stands disposed of, accordingly.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)