

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

CRIMINAL WRIT PETITION NO. 1003 OF 2021

1. Ajay Vasant Solunke,
Age : 32 years, Occu. Agri.
2. Vasant Tulshiram Solunke,
Age : 64 years, Occu. Agri.,
3. Mangal Vasant Solunke,
Age : 48 years, Occu. Agri.,
4. Vijay Vasant Solunke,
Age : 33 years, Occu. Agri.,
5. Suvarna Vijay Solunke,
Age : 28 years, Occu. Agri.,
6. Uttam Dagdu Patil,
Age : 75 years, Occu. Agri.,

Petitioner nos. 1 to 5 R/o. Vidyanagar,
Nilanga, Tq. Nilanga, Dist. Latur.

Petitioner no. 6 R/o. Bhatagali,
Tq. Lohara, Dist. Osmanabad.

...Petitioners

Versus

1. The State of Maharashtra
Through Osmanabad City Police Station,
2. Amruta Ajay Solunke,
Age : 25 years, Occu. Household,
R/o. Munde Galli, Nehru Chowk,
Osmanabad, Tq. Osmanabad,
Dist. Osmanabad.

...Respondents

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Smt. M. B. Mhase, Advocate for the petitioners

Mr. R. V. Dasalkar, APP for respondent/State

Mr. U. L. Telgaonkar, Advocate for respondent no. 2 (appointed)

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

DATE : JULY 28, 2022

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

1. By order dated 16.03.2022, this Court felt that the element of settlement exists, hence, directed the Investigating Officer to keep respondent no. 2 (wife) present before this court on the next date of hearing.

2. Accordingly, the parties appeared before the Court. The matter was referred for mediation and advocate Mr. S. K. Kadam was appointed as Mediator. However, the learned Mediator after hearing the parties filed his report dated 08.06.2022, informing that the mediation has failed.

3. By the present petition filed under Section 482 of the Code of Criminal Procedure, the petitioner nos. 1 to 6 are praying for quashing and setting aside R.C.C. No. 359/2021, registered under Sections 498A, 323, 506 r/w 34 of the Indian Penal Code, which is pending before the learned Judicial Magistrate First Class, Osmanabad.

FACTS : -

4. Before going to the disputed facts which gave rise to filing of this Criminal Writ Petition, we are herewith referring to the undisputed facts. The respondent no. 2 and petitioner no. 1 got married on 15.06.2017. Out of the said wedlock, they were blessed with a daughter on 01.05.2018. After marriage, few months respondent no. 2 and petitioner no. 1 lived a happy married life.

5. The petitioners have stated in the present Criminal Writ Petition that as there were quarrels between respondent no. 2 and petitioner no. 1, on 11.07.2019, respondent no. 2 left the matrimonial home with gold ornaments and cash amount of Rs.77,000/-. It is further stated in the petition that, after making enquiry they found that respondent no. 2 has gone to her paternal home. It is further stated that petitioners tried to persuade respondent no. 2 to return back to her matrimonial home but respondent no. 2 refused. It is further stated that the petitioner no. 1 finally in the month of August-2019 filed a petition for divorce before the Court of Civil Judge Senior Division, Nilanga.

6. It is further stated that, thereafter on 15.09.2020, respondent no. 2 filed criminal complaint against all the petitioners with Osmanabad City Police Station. Police, immediately on the very day, registered FIR bearing No.0320/2020 for the offence punishable under Sections 498A, 323, 504 r/w 34 of the Indian Penal Code.

7. Respondent no. 2 in her complaint has stated that petitioner no. 1 was alcoholic and would beat respondent no. 2. It is further stated in the complaint by respondent no. 2 that on 10.08.2020, petitioner no. 1 had driven out respondent no. 2 with her daughter from her matrimonial house, and since then; she has been staying with her mother. It is further stated by respondent no. 2 that on 13.07.2019, she filed a complaint with Women's Grievance Redressal Cell. Pursuant to which, the petitioners appeared and made a statement that they will take back the complainant to her matrimonial home. However, since they did not comply with their assurance, the Women's Grievance Redressal Cell on 03.09.2020, addressed a letter to respondent no.2 thereby directing her to register an offence against the petitioners. Thereafter, respondent no. 2 filed criminal complaint which was registered on the same day i.e. 15.09.2020, as F.I.R. No. 0320/2020.

8. Subsequently, the charge-sheet bearing no. 73/2021, dt. 30.05.2021 was filed before the learned Judicial Magistrate First Class, Osmanabad; and on 14.06.2021, the same was culminated in R.C.C. No. 359/2021.

SUBMISSIONS: -

9. Heard Mrs. Madhaveshwari Mhase for the petitioners, Mr. R. V. Dasalkar, learned APP for the State and Mr. U. L. Telgaonkar for the respondent No.2.

10. Learned counsel Mrs. Mhase submitted that only after the petitioner no.1 filed divorce case before the Civil Judge (Senior Division) Nilanga, the Respondent No.2 lodged criminal complaint based on vague allegations against all the petitioners, which resulted into filing of FIR against all the petitioners. On the basis of the allegations made in the criminal complaint, no cognizable offence can be said to be made out.

11. Learned APP – Mr. R. V. Dasalkar and learned counsel Mr. U. L. Telgaonkar for respondent no. 2 submitted that specific allegations have been made against all the petitioners, hence there is no question of quashing R.C.C. No. 359/2021.

12. After hearing the parties for quite some time and after showing disinclination to entertain the petition in respect of petitioners No.1 to 5; Mrs. Mhase, the petitioners' advocate sought leave to withdraw the petition as far as petitioner Nos. 1 to 5 are concerned, who are husband, father-in-law, mother-in-law, brother-in-law and sister-in-law respectively, of the respondent No.2. Hence, the criminal writ petition so far as petitioner Nos. 1 to 5 are concerned, stands disposed of, as withdrawn.

13. Petition is considered now only as regards petitioner no. 6, who is maternal uncle of petitioner no. 1, who is 75 years old and resides in Osmanabad.

14. Mrs. Mhase, the learned counsel for the petitioners submitted that the petitioner no. 6 is distant relative of petitioner no.1 and he does not reside with the petitioner nos. 1 to 5 and who, not even have access to the house of the petitioner no. 1. He is 75 years old and resides in Osmanabad. The Counsel for the Petitioners pointed out that perusal of the Criminal Complaint filed by the respondent No. 2 (wife) which is converted into R.C.C. No. 359/2021, there is no specific allegations against the Petitioner No. 6. The Criminal Complaint is lodged only with an intention to pressurize the Petitioner No. 1 and his relatives.

15. Mrs. Mhase prayed that so far as petitioner no. 6 is concerned, the Criminal Writ Petition be allowed to his extent.

ANALYSIS :-

16. Learned counsel for the petitioners submits that insofar as petitioner no. 6 is concerned, he is the maternal uncle of petitioner no. 1 - husband. The only allegation is that when the in-laws of respondent no. 2 have ill-treated her and her husband started beating her after taking alcohol, she went to her paternal home. In the meanwhile, she delivered a girl child on 01.05.2018 but nobody from her matrimonial home turned up to see her. Thereafter, when her mother contacted petitioner no. 6, who is the middleman, petitioner no. 6 told her mother that all of them desire that Amruta should sell out the land which has come to her share and handover the sale proceeds to her in-laws. Thus, there are no specific allegations against petitioner no. 6. Admittedly, petitioner

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no. 6 lives in a different city than the one where the incident in question has occurred. Therefore, in our considered view, only with a view to harass petitioner no. 6, he has been arraigned as an accused in the complaint by respondent no. 2.

17. 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 judgment in paragraph nos. 22 to 27 held that continuation of prosecution against far off relatives would amount to abuse of process of law. The said paragraphs reads thus :

“22] It is important to consider the relevant Provision of Section 482 of the Cr.P.C. which reads thus :-

“482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

23] In the matter of **Gian Singh Vs. State Punjab**, reported in (2012) 10 SCC 303, the Supreme Court observed that it depends on facts and circumstances of each case as to when the High Court can use the powers of quashing criminal proceeding under Section 482 of Cr.P.C.

24] After taking into consideration judgments of the Apex court referred to above, for quashing the criminal proceedings under Section 482 of the Cr.P.C. we have to see, whether the allegations in the complaint and F.I.R. prima facie establish the ingredients of the offence allege. We are of the view that under Section 482 of the Cr.P.C., we have inherent powers to make such orders as may be necessary to

prevent abuse of the process of any law to secure the ends of justice. It is also necessary to consider Section 498-A of the IPC, which reads thus :-

“[498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

Therefore, the section contemplates that there has to be “cruelty” committed to a woman by her husband or the relatives of the husband, only then the offence stands proved. In the present case, there is one general sentence in paragraph No.12 of the FIR; translated English version of which is reproduced as under :-

“... After some days, my husband and persons from my in-laws side, repeatedly asked me to bring Rs. 5 Lakhs from my mother, and used bad words, beat me and did not give me food.”

Except this sentence, there is no other sentence alleged against the Applicants No. 4 to 15. The above sentence does not specifically name Applicants No. 4 to 15 personally and also does not clarify how Applicants No. 4 to 15 who are residing in different District, could ill-treat or not give food to respondent No.2.

25] The Apex 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.”

26] 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.

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.”

18. Taking into consideration the ratio laid down in the cases of Gian Singh and Geeta Mehrotra (supra), we are of the considered view that so far as petitioner no. 6 is concerned, there are no specific allegations against him and only with a view to harass him he has 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 petitioner no. 6.

ORDER

1. Criminal Writ Petition insofar as petitioner nos. 1 to 5 are concerned, stands disposed of as withdrawn.

2. Criminal Writ Petition so far as petitioner no. 6 is concerned, stands allowed in terms of prayer clause ‘B’ of the petition.

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3. The Criminal Writ Petition stands disposed of accordingly.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE