

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2230 OF 2020

1. Narayan S/o. Eknath Devkar,
Age. 30 years, Occ. ---
R/o. Savarkarnagar,
Satpur, Tq. & Dist. Nashik.
2. Laxmibai W/o. Eknath Devkar,
Age. 53 years, Occ. Household,
R/o. Bhausaheb Nagar,
Tq. Nifad, Dist. Nashik.
3. Eknath S/o. Ramkisan Devkar,
Age. 61 years, Occ. Agri.,
R/o. Bhausaheb Nagar,
Tq. Niphad, Dist. Nashik.
4. Ramkisan S/o. Dina Devkar,
Age. 90 years, Occ. Agri.,
R/o. Dimakhwadi,
Tq. Georai, Dist. Beed.
5. Jadubai W/o. Ramkisan Devkar,
Age. 85 years, Occ. Agri.,
R/o. Dimakhwadi,
Tq. Georai, Dist. Beed.
6. Pralhad S/o. Ramkisan Devkar,
Age. 40 years, Occ. Agri.,
R/o. Dimakhwadi,
Tq. Georai, Dist. Beed.
7. Daivshala @ Chabubai W/o. Pralhad Devkar,
Age. 35 years, Occ. Agri.,
R/o. Dimakhwadi,
Tq. Georai, Dist. Beed.
8. Ankush S/o. Pralhad Pawar,
Age. 40 years, Occ. Agri.,

R/o. Wanjarwadi, Post. Madalmohi,
Tq. Georai, Dist. Beed.

9. Lankabai W/o. Ankush Pawar,
Age. 37 years, Occ. Agri.,
R/o. Wanjarwadi, Post. Madalmohi,
Tq. Georai, Dist. Beed.
10. Satyashila @ Yogita W/o. Ram Bhilgude,
Age. 30 years, Occ. Agri.,
R/o. At Post Bangali Pimpala,
Tq. Georai, Dist. Beed.
11. Ram S/o. Lahu Bhilgude,
Age. 35 years, Occ. Agri.,
R/o. At Post Bangali Pimpala,
Tq. Georai, Dist. Beed.
12. Kalpana W/o. Namdev Kadam,
Age. 30 years, Occ. Agri.,
R/o. Dimakhwadi,
Tq. Georai, Dist. Beed.
13. Namdev S/o. Pandurang Kadam,
Age. 33 years, Occ. Agri.,
R/o. Dimakhwadi,
Tq. Georai, Dist. Beed.
14. Sapna W/o. Sachin Borwale,
Age. 26 years, Occ. Agri.,
R/o. Kasar Galli, Faijpur,
Tq. Yaval, Dist. Jalgaon.
At present :- Ranjangao M.I.D.C.
Pune, Dist. Pune.
15. Sachin S/o. Vasant Borwale,
Age. 33 years, Occ. Agri.,
R/o. Kasar Galli, Faijpur,
Tq. Yaval, Dist. Jalgaon.
At present :- Ranjangao M.I.D.C.
Pune, Dist. Pune.

.... Petitioners
[Ori. Accused]

Versus

1. State of Maharashtra,
Through Police Station Georai,
Tq. Georai, Dist. Beed.
2. Anjali W/o. Narayan Devkar,
@ Anjali D/o. Ram Mane,
Age. 23 years, Occ. Nil,
R/o. Sidhi Kunj, Savarkar Nagar, Satpur,
Tq. & Dist. Nashik,
At present :-
C/o. Ram S/o. Piraji Mane,
R/o. Talewadi, Tq. Georai,
Dist. Beed.

.... Respondents
[Res. No. 2 Ori. Complainant]

Advocate for Applicants : Mr. K.R. Doke and Mr. S.K. Doke
APP for Respondent No. 1 : Mr. S.D. Ghayal
Advocate for Respondent No. 2 : Mr. S.R. Patil

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

DATE : 25th JULY, 2022.

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

1] By order dated 15.12.2020, notice was issued to Respondents for final disposal of the Criminal Application. After service, the Respondent No.2 (wife) appeared through her counsel. Matter was accordingly heard finally on 25.7.2022, when oral submissions were made by all the parties.

2] By the present application, the applicants are praying for quashing and setting aside the FIR bearing No. 0496 of 2020 registered at Georai Police Station, District Beed, registered under Sections 498-A,

323, 504, 506 r/w. 34 of IPC.

A. FACTS :

3] Before mentioning the disputed facts, which gave rise to filing the present Criminal Application; few undisputed facts are that the respondent No.2(wife)and Applicant No. 1 (husband) got married on 25th January, 2019, at Gadhi, Tq, Georai, Dist. Beed. After marriage, the respondent No. 2 and applicant No. 1 were residing at native place, i.e. Dimakhwadi, Tq. Georai, Dist. Beed, for about 10 to 12 months. After the post marriage ceremonies were over, applicant No. 1 and respondent No. 2 started residing at Bhausahab Nagar, Niphad Sugar Factory. The applicant No. 3 (father of applicant No. 1) had purchased one flat at Siddhkunj, Sawarkar Nagar, Satpur, Tq. and Dist. Nashik. The applicant No. 1 alongwith his wife shifted to that flat, and started residing separately.

4] It is stated in the Criminal Application that the initial period of marriage was happy period. But, after a period of around 3 months, there were differences in the married life. The senior members of the family tried to defuse the tension in the marital life of the applicant No.1 and respondent No.2.

5] It is further stated in the Criminal Application that as there was again fights and quarrel between applicant No.1 and respondent No.2, the applicant No.1, left the matrimonial house of applicant No.1 on 18.5.2020. It is further stated by applicant No. 1 that, thereafter, she started residing at a new address and threatened the applicant No.1 and his family members that she will implicate them in false complaint.

6] The Criminal Application further states that the applicant No.1 thereafter sent a legal notice on 22.7.2020 through his Advocate seeking divorce therein. The respondent No.2 replied to the said notice through her Advocate denying the contents of the notice of applicant No.1's notice. So also, respondent No.2 (wife) sent a notice dated 20.8.2020 to the applicant No.1 demanding restitution of conjugal rights under Section 9 of the Hindu Marriage Act. The applicant No.1 replied to the said notice denying its contents and thereafter on 03.11.2020, filed Divorce Petition before the learned Civil Judge (Senior Division), Niphad, Dist. Nasik, on the ground of adulterous behaviour of the respondent No.2 (wife) being Petition bearing HMP No. 425 of 2020.

7] Soon thereafter, respondent No.2 (wife) lodged complaint on 7.11.2020 with the police against all the 15 applicants. The police thereafter filed an FIR bearing No. 0496 of 2020 under Sections 498-A, 323, 504, 506 r/w. 34 of IPC. All the applicants were shown as accused person. The said FIR No. 0496/2020 is challenged by all the applicants / accused, by filing the present Criminal Application No. 2230/2022, under Section 482 of the Code of Criminal Procedure. During the pendency of the present Criminal Application No. 2230/2022, charge sheet No. 1 of 2022 was filed on 30.3.2020 which is culminated in R.C.C. No. 130/2022, before the JMFC, Georai.

B. Submission of parties :-

8] Heard Mr. K.R. Doke for the applicants. Mr. S.D. Ghayal, learned APP for the State and Mr. S.R. Patil for the respondent No.2.

9] Learned counsel Mr. K.R. Doke submitted that only after the applicant No.1 filed divorce case before the Civil Judge (Senior Division)

Niphad, the Respondent No.2 lodged criminal complaint based on vague allegations against all the Applicants, which resulted into filing of FIR against all the Applicants. On the basis of the allegations made in the criminal complaint, no cognizable offence can be said to be made out.

10] Learned APP – Mr. Ghayal and learned counsel Mr. Patil submitted that specific allegations have been made against all the applicants, hence there is no question of quashing of FIR and criminal proceedings.

11] After hearing the parties for quite some time and after showing disinclination to entertain the application in respect of applicants No.1 to 3; Mr. K.R. Doke, the applicants' Advocate sought leave to withdraw the application as far as Applicant Nos. 1 to 3 are concerned, who are husband, mother-in-law, and father-in-law, respectively, of the respondent No.2. Hence, the criminal application, so far as applicant Nos. 1 to 3 are concerned, stands disposed of, as withdrawn.

12] Mr. K.R. Doke, the learned counsel for the applicants submitted thereafter that the applicant Nos. 4 to 15 are distant relatives of applicant no.1 and they do not reside with the applicant Nos. 1 to 3 and who, not even have access to the house of the applicant No.1. The applicant Nos. 4 and 5 are the senior citizen aged 90 years and 85 years, respectively. For better understanding of the accused/applicant's name and relations, a chart is drawn as follows :-

Applicant Number	Name of the applicant	Relation with respondent No.2
1	Narayan S/o. Eknath Devkar	Husband
2	Laxmibai W/o. Eknath Devkar	Mother-in-law

3	Eknath S/o. Ramkisan Devkar	Father-in-law
4	Ramkisan S/o. Dina Devkar	Grandfather-in-law (Aged 90 years)
5	Jadubai W/o. Ramkisan Devkar	Grandmother-in-law (Aged 85 years)
6	Pralhad Ramkisan Devkar	Cousin father-in-law
7	Daivshala @ Chabubai W/o. Pralhad Devkar	Cousin mother-in-law
8	Ankush Pralhad Pawar	Husband of Sister-in-law No. 1
9	Lankabai W/o. Ankush Pawar	Sister-in-law No. 1 (Married on 22.05.2003)
10	Satyashila @ Yogita W/o. Ram Bhilgude	Sister-in-law No. 2 (Married on 15/04/2008)
11	Ram S/o. Lahu Bhilgude	Husband of Sister-in-law No. 2
12	Kalpana W/o. Namdev Kadam	Sister-in-law No. 3
13	Namdev Pandurang Kadam	Husband of Sister-in-law No. 3
14	Sapna W/o. Sachin Borwale	Sister-in-law No. 4
15	Sachin S/o. Vasant Borwale	Husband of Sister-in-law No. 4

The applicant Nos. 4 to 13 are residing in District Beed, and applicant Nos. 14 and 15 are residing at District Pune.

13] It is the case of the applicants that perusal of the criminal complaint filed by respondent No.2 (wife) which is converted into FIR No. 0496 of 2020, there is no specific allegation against accused/applicant Nos. 4 to 15. The impugned FIR is lodged only with an intention to pressurize/harass the applicant No.1 and his family members and his relatives.

14] The counsel for the applicants relied upon the judgments in the matter of *Gian Singh Vs. State Punjab*, reported in **(2012) 10 SCC 303**, *Geeta Mehrotra Vs. State of U.P.*, reported in **AIR 2013 SC 181**, and *Shaikh Mushrraf Pasha and others Vs. State of Maharashtra and another*, reported in **2021(2) AVR (Cri.) 343**.

15] The learned counsel for applicants argued that in the matter of Geeta Mehrotra (supra), the Supreme Court in para. 19 has observed thus :-

“... 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.”

16] The Apex Court in *Gian Singh Vs. State of Punjab* in para. No. 48 observed thus :-

“48. A five-Judge Bench of the Punjab and Haryana High Court in [Kulwinder Singh and others v. State of Punjab and another](#) was called upon to determine, inter alia, the question whether the High Court has the power under [Section 482](#) of the Code to quash the criminal proceedings or allow the compounding of the offences in the cases which have been specified as non-compoundable offences under the provisions of [Section 320](#) of the Code. The five-Judge Bench referred to quite a few decisions of this Court including the decisions in *Madhu Limaye*, *Bhajan Lal*, *L. Muniswamy*, *Simrikhia*, *B.S. Joshi* and *Ram Lal* and framed the following guidelines:

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

(b) Cases pertaining to property disputes between close relations, which are predominantly civil in nature and they have a genuine or belaboured dimension of criminal liability. Notwithstanding a touch of criminal liability, the settlement would bring lasting peace and harmony to larger number of people.

(c) Cases of dispute between old partners or business concerns with dealings over a long period which are predominantly civil and are given or acquire a criminal dimension but the parties are essentially seeking a redressal of their financial or commercial claim.

(d) Minor offences as under [Section 279 IPC](#) may be permitted to be compounded on the basis of legitimate settlement between the parties. Yet another offence which remains non-compoundable is Section 506 (II), [IPC](#), which is punishable with 7 years imprisonment. It is the judicial experience that an offence under [Section 506 IPC](#) in most cases is based on the oral declaration with different shades of intention. Another set of offences, which ought to be liberally compounded, are [Sections 147 and 148, IPC](#), more particularly where other offences are compoundable. It may be added here that the State of Madhya Pradesh vide [M.P. Act No. 17 of 1999 \(Section 3\)](#) has made [Sections 506\(II\) IPC, 147 IPC and 148, IPC](#) compoundable offences by amending the schedule under [Section 320, Cr.P.C.](#)

e. The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by Public Servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-compoundable.

f. That as a broad guideline the offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary and fair.

While parting with this part, it appears necessary to add that the settlement or compromise must satisfy the conscience of the court. The settlement must be just and fair besides being free from the undue pressure, the court must examine the cases of weaker and vulnerable victims with necessary caution."

To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power under [Section 482](#) of the Cr.P.C. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., "to prevent abuse of the process of any Court" or "to secure the ends of justice".

17] In the matter of *Shaikh Mushraf Pasha (supra)*, the Division Bench of our High Court in para No. 10 observed thus :

"10. Therefore, continuation of prosecution would be nothing but an abuse of process of law. Moreover, tendency is growing to implicate all the near and dear relatives of the husband. The Hon'ble Supreme Court has deprecated this tendency in the case of *Kans Raj v. State of Punjab*; 2000 (5) SCC 207 : (AIR 2000 SC 2324)."

18] The applicants' counsel prayed that the above authorities squarely apply to the present matter, hence the Criminal Application be allowed.

19] Learned APP and learned counsel for respondent No.2, opposed the application for quashing the criminal proceeding against Applicant Nos. 4 to 15. According to them, the ratio in the authorities submitted by the counsel for applicants does not apply to the present Criminal Application and further stated that criminal proceedings can't be quashed in past against few accused/Applicants.

C. Analysis :-

20] After hearing the parties and carefully going through the copies of documents produced viz. F.I.R., Charge Sheet, Hindu Marriage Petition, notices, replies, and submissions made in the Criminal Application; it appears that the Applicant Nos. 4 and 5, are senior citizens aged 90 years and 85 years respectively, and are Grand parents of Applicant No. 1. So also Applicant Nos. 6 and 7, are senior citizens, and are cousin father-in-law. Applicant Nos. 9, 10, 13 and 14, and the sisters of Applicant No. 1, and rest of the Applicants are the husbands of sisters of Applicant No. 1. The sisters of Applicant No. 1, have got married much before the marriage of Applicant No. 1 with Respondent No. 2. And all of them are staying separately in their matrimonial houses. Hence it can be seen that though Applicants No. 4 to 15 are relatives of the Applicant No. 1, they were not having any role to play in day-to-day affairs of the Applicant No. 1 and respondent No. 2. It is also pertinent to note that Applicants No. 4 to 15 are residing at different address than that of the Applicant Nos. 1 to 3. The applicant Nos. 4 to 13 are residing in district Beed, and Applicant No. 14 to 15, are residing in District Pune; whereas the Applicant Nos. 1 to 3, reside in District Nasik.

21] On 3/11/2020 the Applicant No. 1, filed Divorce Petition before the Ld. C.J.S.D. Niphad. Few days thereafter on 7/11/2020, the Respondent No.2. (wife) lodged Criminal Complaint with the police, and on the same day an F.I.R. was lodged by the police bearing no. 0496/2020, against the husband, and all the relatives of husband (14 relatives).

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 (supra) 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 (supra) 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 Musarraaf Pasha (supra) 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.

28] Hence, we partly allow the application by quashing and setting aside the FIR bearing No. 0496 of 2020 and further proceedings in RCC No. 130 of 2022 as far as applicant Nos. 4 to 15 are concerned, who are arraigned as accused Nos. 4 to 15 in RCC No. 130 of 2022.

29] In the result, we pass the following order :

ORDER

- i. The application of applicants No. 1 to 3 is disposed of as withdrawn.
- ii. The application of applicants No. 4 to 15 is allowed in terms of prayer clauses (B) and (C-1).
- iii. Criminal Application stands disposed of, accordingly.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]