

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

CRIMINAL WRIT PETITION NO. 1084 OF 2021

1. Sugriv s/o Annasaheb Phad (Father-in-law)
Age : 55 years, Occu. Agri.
2. Sulabai w/o Sugriv Phad (Mother-in-law)
Age : 50 years, Occu. H. H.
3. Umakant s/o Sugriv Phad (Brother-in-law)
Age : 32 years, Occu. Business
4. Ashwini s/o Umakant Phad (Co-sister)
Age : 23 years, Occu. Household,
Petitioner nos. 1 to 4 are
R/o. Adarsh Colony, Shankar Parvati Nagar,
Parali, Tq. Parali, Dist. Beed.
5. Mandar s/o Bandu Sonavane (Nephew of Husband)
Age : 20 years, Occu. Education,
R/o. Talegaon, Tq. Parali, Dist. Beed.
6. Dattatray s/o Dhondiba Munde (Maternal uncle of husband)
Age : 53 years, Occu. Agri,
R/o. Indapwadi, Tq. Parali, Dist. Beed.**Applicants**

Versus

1. The State of Maharashtra
2. Sita w/o Shrikant Phad,
Age : 25 years, Occu. H. H.
R/o. Kanherwadi, Tq. Parali, Dist. Beed. ...**Respondents**

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Mr. Avinash A. Phad, Advocate for the petitioners
Mr. R. V. Dasalkar, APP for respondent/State
Mr. G. D. Kale h/f Mr. M. V. Nagargoje for respondent no. 2

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

DATE : SEPTEMBER 16, 2022

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

1. This Petition has been filed under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure for quashing the FIR vide C.R. No. 0176/2021 dated 14.08.2021 registered at the instance of respondent no. 2 with Parali Rural Police Station, Dist. Beed, for the offences punishable under Sections 498A, 323, 504, 506 r/w 34 of the Indian Penal Code.

FACTS :-

2.1] The Informant/respondent no. 2 got married with the son of petitioner nos. 1 and 2, namely, Shrikant Sugriv Phad, as per Hindu rites and rituals. They have one son and one daughter from the said wedlock.

2.2] It is the case of Informant/respondent no. 2 that her father had given household articles and golden ornaments in the marriage ceremony. It is further alleged that after the marriage, respondent no. 2 was treated well initially for eight months. Thereafter, the petitioners used to beat and abuse her and further she used to be kept hungry. Respondent no. 2 would inform about the said harassment to her

parents and brother. Her parents also used to convince the petitioners including her husband to treat respondent no. 2 with dignity. After such talk, the petitioners used to treat respondent no. 2 with love for few days.

2.3] It is further reported in the FIR that, thereafter, the respondent no. 2 gave birth to two children. Even thereafter the harassment at the hands of petitioners was going on and, therefore, the relatives of respondent no. 2, namely, her father, uncle and brother convinced the petitioners so as to facilitate cohabitation of respondent no. 2. Even after intervention, the petitioners made a demand of Rs.7.00 lakhs from respondent no. 2 for purchase of plot. Thereupon, father and uncle of respondent no. 2 visited her matrimonial house in order to fulfill the part demand of money and gave cash of Rs. 1.5 lakhs to the petitioners.

2.4] It is further alleged in the FIR that, in spite of fulfilling the part demand of money, the petitioners continued to harass and ill-treat the respondent no. 2 for the remaining amount. Thereafter, being fed up with the harassment at the hands of petitioners, she left the matrimonial house and started residing at her parental home in Kanherwadi and, thereafter, lodged complaint against all the petitioners including her husband with the Parali Rural Police Station for the offences referred to herein above.

3.1] The petitioners have stated in the Criminal Writ Petition that the respondent no. 2 has implicated the petitioners in the criminal prosecution with an oblique motive and in order to settle the personal
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score. The respondent no. 2 and her husband, namely, Shrikant were residing separately from the petitioners as the respondent no. 2 could not adjust with them. Petitioner nos. 1 and 3 run hotel under the name and style as 'Someshwar Sweet Home' whereas; the petitioner nos. 2 and 4 are the housewives. It is further stated that, after the marriage, the respondent no. 2 started raising quarrels on trivial issues and her behaviour was changed from bad to worst and further the life of her husband became miserable on account of her activities.

3.2] The petitioners have further stated that, they had tried to make respondent no. 2 understand so also her behavioural change was also brought to the notice of her parents, however, there was no change in her behaviour. The petitioners have further stated that, on 27.04.2021, the husband of respondent no. 2 had caught her in adultery, and the respondent no. 2 had confessed about the same. The petitioners had tried to convince respondent no. 2 so as to resume cohabitation happily but the efforts made yielded no fruits. The husband of respondent no. 2, therefore, filed Hindu Marriage Petition No. 119/2021 under Sections 13(1)(1-a)(i-a) of the Hindu Marriage Act before the learned Civil Judge Senior Division, Ambajogai, on 01.07.2021.

3.3] The petitioners further stated in the petition that, only in order to counter-blast the proceedings filed by husband of respondent no. 2, she has lodged the complaint against all the petitioners with the Parli Rural Police Station, Parli Vaijnath, on 14.08.2021. Hence, the petitioners have prayed for quashing of FIR.

4] Subsequently, the charge-sheet bearing no. 126/2021 was filed; and the same was culminated into R.C.C. No. 238/2021, which is pending before the learned Judicial Magistrate First Class, Court No. 2, Parli Vaijnath.

SUBMISSIONS: -

5] Heard learned advocate Mr. Avinash A. Phad for the petitioners, Mr. R. V. Dasalkar, learned APP for the State, and Mr. G. D. Kale holding for Mr. M. V. Nagargoje for respondent No. 2.

6] Learned counsel for the petitioners submitted that the FIR filed against the petitioners is a counter-blast to the Divorce proceedings and hence it is illegal, arbitrary and lodged with *mala fide* intention to settle the personal score. There are vague and bald allegations against the petitioners. On the basis of the allegations made in the criminal complaint, no cognizable offence can be said to have made out. The criminal prosecution cannot be used as a tool of operation to cause undue harassment to the petitioners. The impugned FIR is nothing but misuse and abuse of process of law and further, counterblast to the proceedings filed by the husband of respondent no. 2. No specific role has been attributed against each of the petitioners. The impugned prosecution has caused serious hardship to them. The respondent no. 2 has been residing separately from 2019 and therefore there is inordinate delay in filing the complaint. He, therefore, prayed that the Criminal Writ Petition be allowed.

7] After hearing the counsel for the petitioners for considerable time, when this Court showed disinclination to grant

relief in favour of petitioner nos. 1 to 4, the learned counsel for the petitioners sought, on instructions, leave to withdraw the Criminal Writ Petition to their extent. Leave granted. The Criminal Writ Petition stands disposed of as withdrawn to the extent of petitioner nos. 1 to 4. Now, therefore, the Criminal Writ Petition is considered only to the extent of petitioner nos. 5 and 6.

8] Learned counsel for the petitioners further submitted that the petitioner nos. 5 and 6 are the nephew and maternal uncle respectively of the husband of respondent no. 2 and both of them reside at different places (Talegaon and Indapwadi respectively) than the place where the offences in question have taken place. Complaint is instituted with an ulterior motive for wreaking vengeance on the petitioners. The delay caused in registering the FIR is unexplained. No specific allegations are attributed against the petitioners no. 5 and 6. He, therefore, prays for allowing the petition to the extent of petitioner nos. 5 and 6.

9] Learned APP – Mr. R. V. Dasalkar, learned APP for the State, and Mr. G. D. Kale holding for Mr. M. V. Nagargoje for respondent No.2 submitted that specific allegations have been made against all the petitioners and prayed for disallowing the Criminal Writ Petition.

ANALYSIS :-

10] 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 alleged.

11] On perusal of the FIR, it is clear that petitioner no. 5 is a student and pursuing education whereas; petitioner no. 6 is the maternal uncle of husband of respondent no. 2. Further, both of them reside at different places (Talegaon and Indapwadi respectively) than the place where the offence in question has taken place. The husband (son of petitioner nos. 1 and 2) filed Hindu Marriage Petition for divorce on the ground of Adultery on 01.07.2021. The Informant/respondent no. 2, has thereafter filed FIR on 14.08.2021. *Prima facie*, it appears that the petitioner nos. 5 and 6 played no role in causing harassment to the respondent no. 2.

12] 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.

13] This 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.

14] The Hon’ble Apex Court in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others** reported in [1992 Supp (1) SCC 335], wherein the Supreme Court has held that the High Court can quash the FIR to protect the accused from malicious prosecution.

When a criminal proceeding is instituted with *mala fide* intention to harass the person, the court can quash the entire proceeding for the ends of justice. The Supreme Court has issued seven guidelines which should be followed by the Court in the exercise of its inherent power vested by Section 482 of the Code of Criminal Procedure.

15] Thus, we are of the considered view that the respondent No.2 only with an intention to harass the petitioner nos. 5 and 6 has filed complaint against them. Continuation of prosecution against petitioner nos. 5 and 6, who are far away relatives and stay separately in their own houses, in our opinion, would amount to abuse of process of law.

16] Taking into consideration the ratio laid down in the cases of **Geeta Mehrotra, Shaikh Pasha and Bhajan Lal** (supra), we are of the considered view that so far as petitioner nos. 5 and 6 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 against the petitioner nos. 5 and 6.

ORDER

[i] Criminal Writ Petition is partly allowed.

[ii] Criminal Writ Petition stands disposed of as withdrawn to the extent of petitioner nos. 1 to 4.

- [iii] So far as petitioner nos. 5 and 6 are concerned, Criminal Writ Petition stands allowed in terms of prayer clause 'B' of the petition.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE