

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1655 OF 2020

1. Shaikh Waseem S/o. Qalandar Patel,
Age. 38 years, Occ. Agri.,
R/o. Shaan Manzil,
Kolthanwadi Road, Harsool,
Aurangabad.
2. Kalandar S/o. Magan Patel,
Age. 72 years, Occ. Nil,
R/o. H.No. 15-2-181, Patel Nagar,
Jalgaon Road, Harsool,
Aurangabad.
3. Shareefabi S/o. Kalandar Patel,
Age. 68 years, Occ. Nil,
R/o. As above.
4. Shaikh Shameem W/o. Ayyub,
(Shameembi Ayyub Qureshi)
Age. 44 years, Occ. Household,
R/o. Plot No. 01, Near Maruti Mandir,
Chetnanagar, Harsool,
Aurangabad.
5. Shaikh Ayyub S/o. Abdul Raheman,
(Ayyub Qureshi Raheman Qureshi),
Age. 47 years, Occ. Agri.,
R/o. As above.
6. Rabiya Bano W/o. Shaikh Waseem
(Saba Anjum D/o. Razzak Patel)
Age. 27 years, Occ. Household,
R/o. Shaan Manzil,
Kolthanwadi Road, Harsool,
Aurangabad.
7. Shaikh Razzak S/o. Manik,
(Razzak Patel Manik Patel)

Age. 64 years, Occ. Household,
R/o. Plot No. J-16,
Beri Bagh, Harsool,
Aurangabad.

8. Naseemabi W/o. Razzak Shaikh,
(Ameena Razzak Patel)
Age. 64 years, Occ. Labour,
R/o. As above.

.... Applicants

Versus

1. The State of Maharashtra,
Through, Police Inspector,
Sillod City Police Station,
Sillod, Dist. Aurangabad.
2. Nuzhat Jaha W/o. Shaikh Waseem Patel,
Age. 26 years, Occ. Private Job,
R/o. Near Aayesha Masjid, Mirza Colony,
Sillod, Dist. Aurangabad.
Cont. 9561401727

... Respondents

Advocate for Petitioners : Mr. Saeed S. Shaikh
APP for State : Mr. A.M. Phule
Advocate for Respondent No. 2 : Mr. S.B. Kadu

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

DATE : 24th AUGUST, 2022.

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

1. By the present Writ Petition filed under Article 226 of the Constitution of India, the petitioners who are original accused are praying for quashing FIR No. 0095/2019 registered with Sillod City Police Station, Sillod, District Aurangabad, 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. 30/2019 along with the proceeding bearing RCC No. 121/2019 pending before the learned Judicial Magistrate First Class, Sillod, Dist. Aurangabad.

A. FACTS :

2. It is the case of the prosecution that the petitioner No. 1 and respondent No. 2 got married in the year 2014. Out of the said wedlock, they have two children. After marriage, respondent No. 2 was treated well for the period of one year. After one year, all the accused started demanding monies and ill-treated her. They demanded amount of Rs. 5 Lakhs for purchasing sand's truck. As the demand was not fulfilled, the petitioners have physically and mentally tortured her. They kept her hungry and driven out of the matrimonial house. Her parents requested them to not to ill-treat her, even though they were torturing her by saying that she is not of their standard or worthy. Due to such behaviour of accused persons, she had given complaint in Women's Grievance Redressal Cell, Sillod. But the accused persons have not mark their presence before the Women's Grievance Redressal Cell. Hence, she filed complaint with the Police, which was registered as FIR.

3. The petitioners have filed present Criminal Writ Petition for quashing the FIR. It is petitioners' case in the Criminal Writ Petition that petitioner No. 1 was earlier married with petitioner No. 6. However, the married life of petitioner No. 1, with petitioner No. 6, ended with divorce on 27.06.2014. Thereafter, petitioner No. 1 married respondent No. 2. From the said wedlock, the petitioner no. 1 and respondent No. 2, have

two children. However, after sometime of marriage the respondent No. 2 demanded that the petitioner No. 1 with her should shift to her parent's house at Sillod. As the petitioner No. 1 refused the request of respondent No. 2, quarrels started between them. Ultimately, the respondent No. 2 left her matrimonial house and started residing at her parent's house at Sillod. Thereafter, the parents of respondent No. 2, invited petitioner No. 1, to give Talaq and pay Rs. 10 Lakhs to respondent No. 2 and a house at Sillod in the name of respondent No. 2. However, due to love and affection towards his children and also considering their future, the petitioner No. 1 rejected the demand of Talaq.

B. SUBMISSION OF PARTIES :

4. Heard learned Advocate Mr. Saeed S. Shaikh, for the petitioners, Learned APP Mr. A.M. Phule for State and learned Advocate Mr. Kadu for respondent No. 2.

5. At the outset, after hearing the arguments when disinclination was shown as against petitioner Nos. 1 to 3 is concerned, learned Advocate for the petitioners, on instructions, sought leave to withdraw the petition as far as petitioner Nos. 1 to 3. Leave granted. Writ Petition is permitted to withdraw as far as petitioner Nos. 1 to 3. Thereafter, submissions were made only as far as applicant Nos. 4 to 8 are concerned.

6. According to the learned Advocate Mr. Shaikh for the applicants, so far as applicant Nos. 4 to 8 are concerned, they have not committed any offence as alleged by the respondent No. 2 and only with a view to harass the petitioners, she has lodged the present complaint. He

further submitted that after some time of the marriage, the respondent No.2 was insisting the petitioner No. 1 to shift at her parent's house situated at Sillod and visit Aurangabad from there. The petitioner No. 1 refused the insistence of the respondent No. 2 and, therefore, the respondent No. 2 and her family started quarrels with the petitioners. After continues refusal by the petitioner No. 1 for shifting at Sillod, the respondent No.2 and her family members were forcing the petitioner No.1 to give Talaq to the respondent No. 2 by providing one time settlement amount of Rs. 10 Lakhs and a house at Sillod in the name of the respondent No. 2.

7. It is further stated that in order to pressurize the petitioner No. 1 with ulterior motives the respondent No. 2 on 29.01.2019 filed a complaint against petitioner No. 1 under Section 376-B, 323, 504 and 506 of IPC, which was registered as FIR No. 0030/2019. The said FIR was challenged by the petitioner No. 1 by way of Criminal Writ Petition No. 1670/2022.

8. It is further stated that the respondent No. 2 did not stop there and immediately thereafter, filed two Criminal Miscellaneous Applications, viz. Criminal MA No. 173/2019 under Section 125 of Cr.p.c. on 14.03.2019 against the petitioner No. 1, and Criminal MA No. 170/2019 against eight accused i.e. all the present petitioners under the provisions of the Protection of Women from Domestic Violence Act, 2005. The respondent No. 2, thereafter, filed a police complaint under Section 498-A, 323, 504, 506 and 34 of the Indian Penal Code against all the present petitioners. The said complaint was entertained by the police and FIR No. 95/2019 was filed on 14.05.2019. The said FIR is being

challenged by way of the present Criminal Writ Petition.

9. Thereafter, the relatives of respondent No. 2 physically attacked the petitioner No. 1. Hence, petitioner No. 1 lodged a police complaint under Section 323, 324, 504 of IPC, which was lodged as FIR No. 106/2016 on 25.07.2019.

10. Learned Advocate further submitted that the petitioner No. 4 is a married sister-in-law and residing with her husband i.e. petitioner No. 5 at a distant place, hence there is no question of ill-treatment by them to respondent No. 2. The petitioner No. 6 is ex-wife, who is divorced by petitioner No. 1 earlier and petitioner Nos. 7 and 8 are the parents of petitioner No. 6, hence there is no concern to petitioner Nos. 6 to 8 to ill-treat or demand monies from respondent No. 2. He further stated that there are no specific allegations against the petitioner Nos. 4 to 8 and only with a view to harass the petitioners, the respondent No. 2 has filed a false FIR against the petitioners. Hence, the same needs to be quashed and set aside.

11. 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**.

12. Per contra, the learned APP supported the case of the prosecution and submitted that there are specific allegations against all the petitioners. Hence, the petition may be dismissed.

C. ANALYSIS :

13. It is to be noted that the petitioner No. 1 has filed another Writ Petition No. 1670/2020 for quashing of FIR No. 30/2019 filed under Sections 376-B, 323, 504, 506 read with 34 of IPC, which is also registered by respondent No. 2. That Writ Petition is withdrawn by him.

14. It appears from the record that as the relation between the petitioner No. 1 and respondent No. 2 turn sour, the respondent No. 2 left the matrimonial house and started residing with her parents at Sillod. Thereafter, the respondent No. 2 on 29.01.2019, filed a complaint against the petitioner No. 1 under Sections 376-B, 323, 504, 506 read with 34 of IPC. Thereafter, immediately in the month of March, the respondent No. 2 filed two Criminal Miscellaneous Applications on 14.03.2019 under Section 125 of Cr.PC. and another under the Protection of Women from Domestic Violence Act, 2005. Immediately, thereafter, the respondent No. 2 filed the complaint under Sections 498-A, 323, 504, 506 read with 34 of IPC, which was registered as FIR No. 95/2019. The said FIR is under challenge in the present Writ Petition.

15. Considering the facts and circumstances, it is revealed that the petitioner No. 1 is husband of respondent No. 2. Petitioner Nos. 2 and 3 are father-in-law and mother-in-law, respectively. Petitioner Nos. 4 and 5 are sister-in-law and husband of sister-in-law, respectively. Petitioner No. 6 is ex-wife of petitioner No. 1 and petitioner Nos. 7 and 8 are father and mother of petitioner No. 6. As petitioner Nos. 4 and 5, the married sister-in-law and her husband, respectively, is concerned, they were residing at distant place from petitioner No. 1 and informant, it is not possible for them to ill-treat and torture the informant. Petitioner

No. 6 being the ex-wife of petitioner No. 1, as they are already separated, there is no concern for her and her parents i.e. petitioner Nos. 7 and 8, to interfere with petitioner No. 1 and his family.

16. If the allegations in the present FIR are considered, in our view only general and omnibus allegations are leveled against respondent Nos. 4 to 8.

17. The learned counsel for applicants argued that 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.”

18. The Apex 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.”

19. 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.”

20. 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 respondent Nos. 4 to 8, 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. 95/2019 as against applicant Nos. 4 to 8 :

ORDER

- i. The Criminal Writ Petition in so far as petitioner Nos. 1 to 3 are concerned, stands disposed of as withdrawn.
- ii. The Criminal Writ Petition in so far as petitioner Nos. 4 to 8, is allowed in terms of prayer clause (B) and (C).
- iii. The FIR No. 0095/2019 registered with Sillod City Police Station, Sillod, District Aurangabad, for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code, and charge-sheet No. 30/2019 along with the proceeding bearing RCC No. 121/2019 pending before the learned Judicial Magistrate First Class, Sillod, Dist. Aurangabad, as far as petitioner Nos. 4 to 8 are concerned, are hereby quashed and set aside.
- iv. Criminal Writ Petition stands disposed of, accordingly.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)