

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2803 OF 2019

1. Suryabhan S/o. Namdev Salve,
Age. 36 years, Occ. Labour,
R/o. Apatgaon No. 1, Chikalthana,
Aurangabad.
2. Namdev S/o. Bhikaji Salve,
Age. 70 years, Occ. Laobur,
R/o. As above.
3. Asrabai W/o. Namdev Salve,
Age. 65 years, Occ. Labour,
R/o. As above.
4. Bhimrao S/o. Namdev Salve,
Age. 45 years, Occ. Labour,
R/o. As above.
5. Shoba W/o. Sunil Dehade,
Age. 40 years, Occ. Household,
R/o. Misarwadi, Tq. And Dist. Aurangabad.
6. Sunil S/o. Vishwanath Dehade,
Age. 45 years, Occ. Labour,
R/o. Misarwadi, Tq. and Dist. Aurangabad. Applicants

Versus

1. The State of Maharashtra,
Through Police Inspector Chikalthana,
Police Station, Aurangabad.
2. Savita W/o. Suiryabhan Salve,
Age. 35 yars, Occ. Household,
R/o. Apatgaon No. 1, Chikalthana,
Aurangabad.

Presently residing at Indira-Nagar,

near Ambedkar statue,
Garkheda Parisar, Aurangabad.

... Respondents

Advocate for Applicants : Mr. S.A. Gaikwad
APP for Respondent No. 1 / State : Mr. M.M. Nerlikar
Advocate for Respondent No. 2 : Mr. J.V. Deshpande
and Mr. S.N. Dudhate.

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

DATE : 07th 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 are praying for quashing and setting aside First Information Report vide Crime No. 198/2019, registered with Chikalthana Police Station, Aurangabad, for the offences punishable under Sections 498-A, 323, 504 read with Section 34 of the Indian Penal Code and for quashing of charge-sheet bearing No. 112/2019 which is culminated into RCC No. 2437/2019, which is pending before Judicial Magistrate First Class, Aurangabad.

A. FACTS :

2.1. The FIR is lodged by Savita Suryabhan Salve that her marriage was solemnized on 03.04.2005 with Suryabhan Salve. Initially, for six months she was treated well but thereafter the father-in-law mother-in-law, husband and brother-in-law used to harass and abuse her on one count or the other. After one year of her marriage with applicant No. 1, they were blessed with a son Satish and after two years she gave birth to another son namely Sangharsh and thereafter, third son was born – Sourabh. She was treated well for some days but thereafter again they

used to harass her and they kept her hungry by saying that she does not know how to cook. It is alleged that the sister-in-law Shobhabai and her husband used to come from Apatgaon and used to say that she does not know how to work. Thereafter, in January 2017 all of them asked her to bring Rs. 1 Lakh for constructing the house. Thereafter, her parents and brother came to Apatgaon and requested not to harass her. However, on 27.11.2018, she was driven out of the matrimonial house and since then, she is residing at her parental house.

2.2. The applicants by the present criminal application have sought quashing of FIR and further criminal proceedings. It is stated in the criminal application that applicant No. 1, has his own house. Therefore, there was no reason on the part of the applicants to harass the Informant to bring money for construction of house. The applicant No. 4 is married brother-in-law, applicant No. 5 is married sister-in-law and applicant No. 6 is husband of applicant No. 5. The applicant Nos. 4 to 6 are residing separately. The copy of I.D. proof are annexed to application. The alleged offence reported to have taken place in the month of November 2018 and the FIR has been filed on 10.06.2019, belatedly with ulterior motives to implicate all the family members. From the allegations of the FIR the offences under Sections 498-A, 323, 504 read with 34 of the Indian Penal Code, are not made out against the applicants.

B. SUBMISSION OF PARTIES :

3. Heard learned Advocate Mr. Gaikwad for the applicants and Mr. Nerlikar, learned APP for State as well as learned Advocate Mr. Deshpande and Mr. Dudhate, for Respondent No. 2. Perused the record.

4. At the outset, after hearing the arguments when disinclination was shown as against applicant Nos. 1 to 4 is concerned, learned Advocate for the applicants, on instructions, sought leave to withdraw the application as far as applicant Nos. 1 to 4. Leave granted. Criminal Application is permitted to withdraw as far as applicant Nos. 1 to 4. Thereafter, submissions were made only as far as applicant Nos. 5 and 6 are concerned.

5. Learned counsel for the applicant submits that so far as present applicant Nos. 5 and 6 are concerned, they are sister-in-law of respondent No. 2 and the husband of sister-in-law. Learned counsel submits that there are general and vague allegations are made in the FIR against the applicant Nos. 5 and 6. they are residing separately at Nisarwadi and therefore, there is no question of respondent No. 2 being harassed by them. Mere visit to their residence cannot establish harassment by the applicant Nos. 5 and 6. It is further submitted that the applicant Nos. 5 and 6 are arrayed in the present FIR only with a view to harass them. As such, the FIR deserves to be quashed and set aside as against applicant Nos. 5 and 6.

6. 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**.

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

C. ANALYSIS :

8. In the present matter so far as applicant Nos. 5 (sister-in-law of Informant) and Applicant No. 6 (Husband of applicant No. 5) are concerned there are vague and omnibus allegations against them. No specific role is attributed to them. As they are residing separately, it is illogical to hold that they in any way harassed the respondent No. 2. Therefore, we find substance in the submission of learned counsel for the applicant that they are arrayed as parties only to harass them. Nowadays, there is a growing tendency to rope in near and distant relatives of the husband with a view to harass them.

9. 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.”

10. 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.”

11. 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.”

12. 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. 5 and 6, 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.

34/2019 as against applicant Nos. 5 and 6 :

ORDER

- i. The Criminal Application in so far as applicant Nos. 1 to 4 are concerned, stands disposed of as withdrawn.
- ii. The Criminal Application in so far as applicant Nos. 5 and 6 is allowed in terms of prayer clauses (B) and (E).
- iii. The FIR No. 198/2019 registered with Chikalthana Police Station, Aurangabad, for the offences punishable under Sections 498-A, 323, 504 read with Section 34 of the Indian Penal Code, and charge-sheet No. 112/2019 along with the proceeding bearing RCC No. 2437/2019 pending before the learned Judicial Magistrate First Class, Aurangabad, as far as applicant Nos. 5 and 6 are concerned, are hereby quashed and set aside.
- iv. Criminal Application stands disposed of, accordingly.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)

grt/-