

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

CRIMINAL APPLICATION NO. 2468 OF 2021

1. Pankaj Motilal Baviskar,
Age : 34 years, Occu. Service (**Husband**)
2. Motilal Bhimrao Baviskar,
Age : 67 years, Occu. Retired (**Father-in-law**)
3. Alka Motilal Baviskar,
Age : 63 years, Occu. Household,
All R/o. Plot No. 32, Abhiyanta Nagar,
Wadibhokar Road, Deopur, Dhule,
Tal. & Dist. Dhule. (**Mother-in-law**)
4. Nitin Motilal Patil,
Age : 39 years, Occu. Service,
R/o. Flat No. 15, Yesh Co-op. Housing Society,
Yamuna Nagar, Nigdi, Pune,
Tal & Dist. Pune. (**Brother-in-law**)
5. Yogita Sharad Patil,
Age : 37 years, Occu. Household,
R/o. 201, Ram Nagar, (**Sister-in-law**)
Godadra Road, Udhana, Tal. Udhana &
Dist. Surat (Gujarat). **Petitioners..**

Versus

1. The State of Maharashtra
2. Sau. Pallavi w/o Pankaj Baviskar,
Age : 33 years, Occu. Household,
C/o. Diwan Mahadu Desale,
R/o. Plot No. 54, Shiv Pratap Colony,
Deopur, Tq. & District: Dhule. **...Respondents**

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Mr. A. D. Sonar, Advocate for the Applicants
Mr. S. D. Ghayal, APP for respondent/State
Mr. S. S. Deshmukh, Advocate for respondent no. 2

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

DATE : AUGUST 11, 2022

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

1. By order dated 16th February, 2022, learned Counsel for the applicants had, on instructions, sought leave to withdraw the application to the extent of applicant nos. 1 and 2. This Court had granted leave and disposed of the application as withdrawn to the extent of applicant nos. 1 and 2. Now, this application is considered to the extent of applicant nos. 3 to 5 only.

2. By the present application filed under Section 482 of the Code of Criminal Procedure, the applicant nos. 3 to 5 are praying for quashing and setting aside First Information Report bearing No. 0270/2021 dated 29.09.2021 registered with Deopur Police Station, Tq. & Dist. Dhule, for the offences punishable under Sections 498A, 406, 323, 354-A, 354-D, 504, 506 r/w 34 of the Indian Penal Code which culminated into R.C.C. No. 46 of 2022, which is pending before the Judicial Magistrate First Class, Dhule.

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FACTS : -

3. The marriage of respondent no. 2 was solemnized with applicant no. 1 on 19.06.2017 according to the Hindu rites and rituals. After the marriage, the couple were living happily and peacefully for a period of six months. Soon thereafter, quarrels started between the couple.

4. It is stated in the First Information Report filed by respondent no. 2 that after her marriage with applicant no. 1, she was treated well by the applicants. However, soon thereafter the in-laws started harassing her and demanded Rs. 5.00 lakhs. It is further alleged that the in-laws used to say that the family members of respondent no. 2 have not given proper treatment to the applicants in the marriage ceremony and so also she had not brought utensils from her maternal house. It is further alleged that the applicants would taunt her saying she can't cook food properly and insult her parents. It is also alleged that respondent no. 2 was beaten up on several occasions.

5. It is further stated in the complaint that in the month of January-2018, when respondent no. 2 was alone in the house, her father-in-law had tried to outrage her modesty. Thereafter, on the request of respondent no. 2, applicant no. 1 and respondent no. 2 started residing in a rented room at Amalner, where the applicant no. 1 was serving. Thereafter, in the month of March-2019, quarrel had taken place between the applicant no. 1 and respondent no. 2 and she was driven out of the house by applicant
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no. 1. When parents of respondent no. 2 went to the house of present applicants for settlement, at that time the parents of the respondent no. 2 were abused and driven out of the house and since then the respondent no. 2 has been staying with her parents at Dhule. When she realized that the applicants would not fetch her for cohabitation, she approached the Women's Grievance Redressal Cell, Dhule and filed a complaint. Even after filing a complaint with the said Cell, there was no improvement in the behaviour of the applicants and hence she was given a letter by the said Women's Grievance Redressal Cell to take further action. Accordingly, respondent no. 2 registered FIR against all the applicants with Deopur Police Station, Tq. & Dist. Dhule, for the offences punishable under Sections 498A, 406, 323, 354-A, 354-D, 504, 506 r/w 34 of the Indian Penal Code.

6. The applicants have stated in the Criminal Application that the complaint filed by the present respondent no. 2 is nothing but concoction of false incidents and only with a view to harass the applicants, she has lodged false complaint. They have further stated that, the contents of the complaint lacks the ingredients of the offences alleged against the applicants.

7. The applicants have further stated in the application that the applicant no. 2 is a retired Head Master of Pedkai Devi Madhyamik Vidhayala, Amrale and he has unblemished service record. The complainant has alleged in the complaint that in January-2018, the applicant no. 2 had tried to outrage her modesty

but in fact there is no any specific incident as alleged has been mentioned and further, there is no any day, date and time in regard to the said incident was mentioned and, therefore, Section 354A and 354D is not attracted.

8. The applicants have further stated in the Criminal Application that quarrel had taken place between applicant no. 1 and respondent no. 2 about three years prior to lodging of the present FIR and at the relevant time she was residing separately from her in-laws. The allegation in the complaint as regards respondent no. 2 being unable to cook food properly is levelled against applicant no. 1 and applicant nos. 2 and 3 have nothing to do with the same. They have further stated that the FIR lodged is in respect of the incidents of 2018 and no plausible explanation is given in respect of the delay of about three years caused in lodging the complaint.

9. The applicants have further stated in the Criminal Application that the complainant herself was not behaving properly as she was desirous of residing separately from her in-laws, and other family members were not ready for the same she has adopted the method of harassing the in-laws.

10. Subsequently, after filing of Criminal Application, the charge-sheet was filed before the learned Judicial Magistrate First Class, Dhule; and the same was culminated in R.C.C. No. 46/2022.

SUBMISSIONS: -

11. Heard Mr. A. D. Sonar learned advocate for the applicants, Mr. S. D. Ghayal, learned APP for the State, and Mr. S. S. Deshmukh for respondent No.2.

12. Learned counsel for the applicants submitted that the allegations levelled against the applicants are baseless. It is nothing but concocted story, as not a single incident stated in the complaint has ever taken place. He further submits that the applicant no. 3 is a mother-in-law of respondent no. 2 and she is a old lady. Applicant no. 4 resides at Pune and applicant no. 5 resides at Surat (Gujarat) and they are not at all concerned with the allegations made in the complaint. There are no specific allegations against the applicant nos. 3 to 5. The Criminal Complaint is lodged only with an intention to pressurize the applicant no. 1 and his relatives. On the basis of the allegations made in the criminal complaint, no cognizable offence can be said to have made out. He, therefore, prayed that the Criminal Application be allowed to the extent of applicant nos. 3 to 5.

13. After hearing the parties for sometime, when this Court showed disinclination to grant relief in favour of applicant no. 3 i.e. mother-in-law of respondent no. 2, the learned counsel for the applicants, on instructions, sought to withdraw the application to her extent. Leave was granted. The Application

stands disposed of as withdrawn so far as applicant no. 3 is concerned. Now, therefore, the application is considered only insofar as applicant nos. 4 and 5 are concerned.

14. Learned counsel for the applicants further stated that Applicant Nos. 4 and 5 are staying at Pune and Surat, respectively, whereas the matrimonial home of Respondent No. 2 was at Dhule. The only allegation specifically against Applicant No. 4 and 5, is that sometimes they used to come to Dhule and they also used to taunt the respondent no. 2. Hence, no case is made out by respondent no. 2, in her complaint against Applicant Nos. 4 and 5, therefore, the Criminal Application be allowed to the extent of Applicant Nos. 4 and 5.

15. Learned APP – Mr. S. D. Ghayal and learned counsel Mr. S. S. Deshmukh for respondent no. 2 submitted that specific allegations have been made against all the applicants, hence there is no question of quashing of FIR and R.C.C. against Applicant No. 4 and 5.

ANALYSIS : -

16. 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. 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.

17. The First Information Report has been lodged by the Investigating Officer. In the said report, respondent no. 2 has specifically stated that initially for a period of six months, she was treated with love and affection by the applicants including the husband. Soon thereafter, the applicants started ill-treating her and demanded Rs. 5.00 lakhs from her for the employment of her husband. Her husband used to beat her and ill-treat her at the instigation of other applicants.

18. The Application as far as Applicant Nos. 1 to 3 is concerned, is already withdrawn. Therefore, the Criminal Application is argued only to the extent of Applicant Nos. 4 and 5. The only allegation specifically against Applicant Nos. 4 and 5, is that, sometimes they used to come to Dhule, and even they used to taunt the Respondent no. 2.

19. Except this sentence, there is no other sentence alleged against the Applicants No. 4 to 5. The above sentence does not specifically name Applicants No. 4 to 5 personally and also does not clarify how Applicants No. 4 to 5 who are residing in different Districts, could ill-treat or taunt respondent No.2.

20. 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 judgments in paragraph nos. 22 to 27, held that continuation of prosecution against far off relatives would amount to abuse of process of law.

21. 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.

22. 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.

23. 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 5. Continuation of prosecution against Applicant Nos. 4 to 5, 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.

24. 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 applicant nos. 4 to 5 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 and RCC as against the applicant nos. 4 to 5.

ORDER

1. Criminal Application is partly allowed.
2. Criminal Application insofar as applicants no. 1 to 3 are concerned, stands disposed of as withdrawn.
3. Criminal Application so far as applicant nos. 4 to 5 are concerned, stands allowed in terms of prayer clause 'B' and 'B-1' of the application.
4. The Criminal Application stands disposed of accordingly.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE