

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2742 OF 2021

1. Mahendra S/o. Birbal Gokule
Age. 34 years, Occ. Private Service,
2. Sharda W/o. Birbal Gokule
Age. 55 years, Occ. Household,
3. Birbal S/o. Kalu Gokule
Age. 67 years, Occ. Nil,
4. Avinash S/o. Birbal Gokule
Age. 35 years, Occ. Labour,
5. Ravina W/o. Avinash Gokule
Age. 27 years, Occ. Household,

Applicant Nos. 1 to 5 are resident of
Vishnu Nagar, Tq. & Dist. Nanded.

6. Ashwini W/o. Ravindra Lalpalwale
Age. 33 years, Occ. Household,
R/o. Gawali Galli, Mukhed,
Tq. Mukhed, Dist. Nanded.
7. Vaishali W/o. Premlal Yadav @ Kapsiwale
@ Vaishali D/o. Birbal Gokule
Age. 28 years, Occ. Household,
R/o. Gokul Nagar, Nanded,
Tq. & Dist. Nanded.
8. Naresh W/o. Gangadhar Mandlewal
Age. 43 years, Occ. Household,
R/o. Gokul Nagar, Nanded,
Tq. & Dist. Nanded.

.... Applicants

Versus

1. The State of Maharashtra,

Through Shivaji Nagar Police Station,
Tq. & Dist. Nanded.

2. Sandhya W/o. Mahendra Gokule,
Age. 23 years, Occ. Household,
C/o. Radheshyam Devilala Pariwale
Near by Yadav Tea house,
Gorakshan Hanuman Mandir,
Road No. 26, Gokul Nagar,
Vishnu Nagar, Nanded
Tq. & Dist. Nanded.

.... Respondents

Advocate for Applicants : Mr. D.M. Shinde
AGP for Respondent No. 1 : Mr. R.V. Dasalkar
Advocate for Respondent No. 2 : Mr. B.G. Londhe

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

DATE : 11th AUGUST, 2022.

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

1] Criminal Application No. 2742 of 2021 is filed on 15th November 2021, under section 482 of the Code of Criminal procedure for quashing F.I.R. No. 406 of 2021 registered at Shivaji Nagar Police Station, Nanded.

2] By order dated 2nd February 2022, notices were issued for final disposal of the Criminal Application.

A. FACTS :

3] On 25th October 2021, F.I.R. no.406 of 2021 was registered by Deopur Police Station, Dhule, under Section 498A, 323, 504, 506 r/w 34 of I.P.C. against eight Applicants (Accused) being the Husband, father-

in-law, mother-in-law, brother-in-law, wife of brother-in-law, sister-in-law's, and relative of husband of the Respondent no.2. The Respondent No.2 has lodged compliant, on basis of which F.I.R. is filed by the police, wherein the statement of Respondent no.2, records that on 19th March 2020, she was married to Applicant no.1. All the expenses of marriage were borne by the parents of the Respondent no.2. So also the parents paid a sum of Rs.2,50,000/- as dowry. Few days after marriage everything was good. However, soon the Applicant nos.1 to 7, started torturing the respondent no.2, mentally and physically. So also started physically abusing the Respondent no.2. Therefore, the parents of Respondent no.2, narrated the situation to Applicant no.8. However, the situation did not improve. The applicants ill-treated the Respondent no.2, and kept her without any food. The applicant no.1, thereafter consumed alcohol and started demanded Rs.10 Lakhs from Respondent no.2's parents. This fact was informed by Respondent no.2 to Applicant no.8. However, Applicant no.8, did not try to specify the Applicants, but instead threaten the Respondent no.2, with dire consequences. The said harassment continued for three months. Thereafter, the Applicants took away all the gold and silver ornaments of It is stated in the F.I.R. that the Applicants demanded Rs.5 Lakhs and as the demand was not fulfilled, they started ill-treating the Respondent no.2. Hence, the Respondent no.2, lodged police complaint at Shivaji Nagar Police station, Nanded, which was registered as F.I.R. No. 406 of 2021 on 25th October 2021.

The Applicants, who are the husband and relatives of husband of Respondent no.2 (wife), have challenged the F.I.R. and the charge sheet filed therein, by way of Criminal Application. It is the case of Applicants that all the applicants have been falsely and maliciously implicated in the present crime.

4] After hearing the Applicants counsel for some time, when disinclination was shown as far as Applicant no.1 is concerned. The Applicants' counsel sought leave to withdraw application for Applicant No.1. Leave was granted and thereafter submissions were made only as far as Applicant no.2 to 8 are concerned.

5] It is the case of Applicants that the applicant nos.2 to 8 who are relatives of Applicant no.1 (husband) have been falsely and maliciously implicated in the present crime. The Applicants have further stated that there are no specific allegations against the applicants and only with a view to harass the applicants, the respondent No.2 has filed a false FIR against the applicants and hence, the same needs to be quashed and set aside.

B. SUBMISSIONS :

6] The learned counsel for applicants submits that the Applicant no.2 is the father-in-law who is a senior citizen and Applicant no.3 is the mother-in-law of Respondent no.2 and she has undergone bypass surgery. Applicant no.4 is the brother in law and Applicant no.5 who is his wife, though are residing under one roof, they have nothing to do with day to day affairs of applicant No. 1 and respondent No.2. There are no specific allegations against them in the FIR. Applicant nos.6 to 8 are married sisters-in-law of Respondent no.2, who are residing separately and except festival occasions, never resided with respondent No.2 hence, there is no question of ill treatment by them to respondent No.2. Applicant no.8 is the relative of Respondent no.2 and only with an intention to harass them, vague and general allegations are made in the FIR. The only allegation against the applicant Nos. 2 to 8 is that after some days of her marriage with applicant No.1, they started harassing

the respondent No.2 by raising illegal demand of Rs. 10 Lakhs. It is further submitted that the Respondent no.2, is qualified Engineer and she was not happy with the marriage and because of that she left the matrimonial house, and to extract monies from the Applicants has filed false case against the Applicants.

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**.

7] Per contra, the learned APP supported the case of the prosecution and submitted that there are specific allegations against the applicants that they have harassed and ill-treated the respondent No.2 mentally and physically and therefore, the application may be dismissed.

C. ANALYSIS :

8] On perusal of the FIR, it is clear that the Applicant no.2 is the father-in-law of Respondent no.2, and Applicant no.3 is the mother-in-law of Respondent no.2. So also working at Pune. The Applicant no.4, is the brother-in-law of Respondent no.2, and Applicant no.5 is the wife of Applicant no.4. The Applicant Nos. 6 and 7, are married sister-in-law of Respondent no.2, who are staying at their respective matrimonial homes. The Applicant no.8 is a distant relative, who had introduced the families of Applicant No.1 and Respondent No. 2, for the purpose of marriage of Applicant No.1 and Respondent No. 2. The Applicant no.8 is not staying with the Applicant No.1. It is thus clear that all the applicant Nos. 2 to 7 are relatives of the husband and applicant No.8 is distant relative.

9] Now, in this factual background the question is, whether we should exercise our discretion under Section 482 of Cr.P.C. Hence, 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.”

10] 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.

11] The Apex Court in *Geeta Mehrotra* (supra) in para.19 observed thus :-

“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.”

12] 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.

13] Considering the facts of the present case and on perusal of record, we are in agreement with the submission advanced on behalf of the applicant Nos. 2 to 8 that only with an intention to harass the

applicant Nos. 2 to 8 with ulterior motive, the respondent No.2, has filed the complaint also against relatives of husband i.e. applicant Nos. 2 to 8. Continuation of prosecution against Applicant Nos. 2 to 8, who are relatives of husband, in our opinion, would amount to abuse of process of law. Therefore, this is a fit case wherein we should exercise discretion to quash and set aside the FIR and resultant criminal proceedings against applicant Nos. 2 to 8.

14] Hence, we partly allow the application by quashing and setting aside the FIR bearing No. 0406 of 2021 and further proceedings in RCC No. 67 of 2022 as far as applicant Nos. 2 to 8 are concerned, are quashed and set aside.

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

ORDER

- i. The application of applicant No. 1 is disposed of as withdrawn.
- ii. The application of applicant Nos. 2 to 8 is allowed in terms of prayer clauses (B) and (D).
- iii. Criminal Application stands disposed of, accordingly.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]