

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

CRIMINAL APPLICATION NO. 3197 OF 2021

1. Hrishikesh S/o. Sudhir Dahiwal,
Age. 30 years, Occ. Service,
R/o. Flat No. 202, Tukaram Vihar,
Kondve Dhavde, Pune.
2. Sushma W/o. Sudhir Dahiwal,
Age. 50 years, Occ. Service,
R/o. Flat No. 202, Tukaram Vihar,
Kondve Dhavde, Pune.
3. Sudhir Rajaram @ Rajabhau Dahiwal,
Age. 50 years, Occ. Service,
R/o. Flat No. 202, Tukaram Vihar,
Kondve Dhavde, Pune.
4. Amruta W/o. Manoj Mundlik,
Age. 35 years, Occ. Household,
R/o. Bidkin,
Tq. And Dist. Aurangabad.
5. Sunil S/o. Rajaram @ Rajabhau Dahiwal,
Age. 35 years, Occ. Business,
R/o. Parbhani,
Tq. And Dist. Parbhani.Applicants

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Amalner, Dist. Beed.
2. Divya W/o. Hrishikesh Dahiwal,
Age. 25 years, Occ. Household,
R/o. Amalner, Tq. Patoda, Dist. Beed.Respondents

Advocate for Applicants : Mr. S.A. Ambilwade
APP for Respondent No.1 : Mr. A.M. Phule
Advocate for Respondent No.2 : Mr. S.B. Choudhari

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

DATE : 15.09.2022.

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

1. By the present Application filed under Section 482 of the Code of Criminal Procedure, the applicants who are original accused are praying for quashing of FIR No. 202/2021 registered with Amalner Police Station, District Beed, for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code, and further for quashing the charge-sheet No. 08/2022 along with the proceeding bearing RCC No. 16/2022 pending before the Judicial Magistrate First Class, Patoda, Tq. Patoda, Dist. Beed.

A. FACTS :

2. In the First Informant Report, which is registered as Crime No. 202/2021, the Informant has stated that the marriage was solemnized in between the applicant No.1 with the (Informant) respondent No. 2, on 18.01.2020 as per Hindu ritual and customs at Pune. After marriage, the informant was treated well for five months. Thereafter, respondent No. 2 was given cruel treatment by saying that her character is not good. They started demanding monies and gold for any reason and also demanded Rs. 10 Lakhs to

purchase flat. At the time of festivals, like on Rangpanchmi, they demanded Silver's syringe and on Gudipadwa, they demanded gold's doll. Even married sister-in-law also demanded money on phone. On 23.06.2020, applicant No. 1 her husband kept her with empty stomach and beaten her, after that applicants called her father and sent her with them. On 10.11.2020, applicant No. 3 and brother-in-law Manoj came to Amalner to took her back to her matrimonial home by giving assurance that in future they will treat her well. On 06.02.2021, she was thrashed by legs and fists and driven out of her matrimonial house by suspecting on her character. Since then, she is residing with her parents. During this time, applicant No. 5 used to ask on phone to give her divorce to applicant No. 1.

3. In the above circumstances, the applicants have approached to the Hon'ble Court under Section 482 of the Code of Criminal Procedure for the quashing of the FIR and further Criminal proceedings.

4. It is seen that the application of applicant No. 1 (husband of respondent No. 2) and applicant No. 2 (mother-in-law of respondent No. 2) is already dismissed as withdrawn by this Court's order dated 18.01.2022. Now, the application is proceeded only as far as applicant Nos. 3 and 4, who are the father-in-law, sister-in-law of respondent No. 2, respectively. Applicant No. 5 is brother of applicant No. 3 and

for respondent No. 2, he is her husband's mama.

5. The applicant No. 4 is residing at Bidkin and the applicant No. 5 is residing at Parbhani.

B. SUBMISSION OF PARTIES :

6. Heard Mr. S.A. Ambilwade for the applicants, Mr. A.M. Phule, learned APP for the State and Mr. S.B. Choudhari, for the respondent No. 2.

7. On hearing the parties for considerable time and after showing disinclination to entertain the Criminal Application in respect of applicant No. 3. Mr. Ambilwade, the applicants' Advocate sought leave to withdraw the Criminal Application to the extent of applicant No. 3, on instructions of his clients. Hence, the criminal Application so far as applicant No. 3 are concerned, stands disposed of as withdrawn. He, therefore, prayed for quashing the FIR and the proceedings arising therefrom to the extent of applicant Nos. 4 and 5.

8. Learned counsel Mr. Ambilwade submitted that the allegations are made in the complaint, even if are taken as it is, for the sake of argument, it is apparent on the face of record that the entire events and / or cause of action there is no allegations against applicant Nos. 4 to 5. The applicant Nos. 4 and 5 reside separately from the family of applicant No. 1. They are falsely implicated in the present crime. The allegations against the applicant Nos. 4 and 5 are only that

they used to harass the complainant on telephone. Without there being any complicity of applicants, deliberately and with an ulterior motive of harassing to applicants, names of applicant Nos. 4 and 5 are involved by respondent No. 2.

9. He further submitted that the Informant/complainant was not at all willing to get married with applicant No. 1 but at the pressure of her father she got married with the applicant No. 1 and she was not at all willing to stay with applicant No. 1. That's why, respondent No. 2 has lodged the complaint after due deliberations and on legal advice, on false and baseless allegations against the applicants. He, therefore, prayed for quashing the FIR as far as applicant Nos. 4 and 5. The applicant Nos. 4 to 5 are residing far away from the place where the incident in question has taken place. They have nothing to do with the marital life of respondent No.2. The criminal complaint is lodged only with an intention to pressurize the applicants. He, therefore, prayed for quashing the FIR and the proceedings arising therefrom to the extent of applicant Nos. 4 and 5.

10. Learned APP – Mr. A.M. Phule and learned counsel Mr. S.B. Choudhari, for respondent No. 2 submitted that specific allegations have been made against all accused persons in the Criminal Application, hence there is no question of quashing the FIR and the proceedings arising therefrom.

C. ANALYSIS :

11. For quashing the criminal proceedings under Section 482 of the Cr.P.C. we have to see, whether the allegations in the FIR, *prima facie*, establish the ingredients of the offence alleged.

12. Perusal of the FIR would show that there are general and vague allegations against applicant Nos. 4 and 5. Applicant Nos. 4 and 5 are married sister-in-law and cousin father-in-law of respondent No. 2, respectively. There are no specific allegations against applicant Nos. 4 and 5 in the FIR. The only allegation in the FIR against applicant No. 4 is that she had telephonically demanded monies from respondent No. 2 and allegation against applicant No. 5 is that he used to telephonically ask respondent No. 2 to give divorce. Admittedly, applicant Nos. 4 and 5 lives in a different places than the one where the incident in question has occurred. Therefore, in our considered view, only with a view to harass applicant Nos. 4 and 5, they have been arraigned as an accused in the complaint by respondent No. 2.

13. The Supreme 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.”

14. 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.

15. Taking into consideration the ratio laid down in the cases of *Shaikh Mushrraf Pasha* and *Geeta Mehrotra* (supra), we are of the considered view that so far as applicant Nos. 4 and 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.

16. 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 as against applicant Nos. 4 and 5. Hence, we pass the following order :

ORDER

1. Criminal Application insofar as applicant No. 3 is concerned, stands disposed of as withdrawn.

2. Criminal Application so far as applicant Nos. 4 and 5 are concerned, stands allowed in terms of prayer clause 'B' and 'B-1'.

3. FIR vide Crime No. 202/2021 registered at

Amalner Police Station, Tq. Patoda, District Beed, for the offences punishable under Sections 498-A, 323, 5045, 506 read with 34 of IPC and the charge-sheet No. 08/2022 along with the proceeding bearing RCC No. 16/2022 pending before the Judicial Magistrate First Class, Patoda, Tq. Patoda, Dist. Beed, are quashed and set aside as against the applicant Nos. 4 and 5 namely, Amruta W/o. Manoj Mundlik and Sunil S/o. Rajaram @ Rajabhau Dahiwal, respectively.

4. Criminal Application stands disposed of.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)