

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.971 OF 2016

Rohan Suresh Pardeshi & Ors. ... Applicants
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Sanjay Bhojwani for the applicants.

Mr. S.S. Pednekar, APP for respondent no.1/State.

Mr. Nitesh Mohite i/by Mr. Satyavrat Joshi for
respondent no.2.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 11, 2022

P.C.:

- 1.** At the outset, the learned advocate for the applicants, on instructions from applicant no.1 who is present in Court, states that applicant no.1 does not want to press the application. He seeks liberty to raise all contentions raised in this application in an appropriate proceedings or before the learned Magistrate.
- 2.** Liberty, as prayed for, is granted.
- 3.** Applicant nos. 2 to 5 are in-laws of opponent no.2. The order impugned issues notice to applicant nos.2 to 5. On perusal of the application filed by respondent no.2, it appears that the respondent no.2 has made allegations against applicant no.1 only. In the entire application, there are no allegations made against

applicant nos.2 to 5.

4. Learned advocate for respondent no.2 raised a preliminary objection regarding maintainability of the application under section 482 of the Criminal Procedure Code. The Apex Court in the case of **Vijay v. State of Maharashtra, (2017) 13 SCC 317** held that mere availability of alternative remedy cannot be a ground to refuse the relief under Section 482 CrPC.

5. Apart from the said judgment, a learned Single Judge of this Court in **Abhijit Bhikaseth Auto v. State of Maharashtra** reported in 2009 CrLJ 889 has held that no appeal lies against the order which are procedural in nature not determining the rights and liabilities of the parties. In that view of the matter, in my considered view, the order impugned being procedural in nature the remedy of appeal under section 29 would not be available to the applicants.

6. As observed above, in absence of any allegations against applicant nos.2 to 5, the learned Magistrate could not have passed impugned order against accused nos.2 to 5.

7. Now a days, it become tendency to make vague allegations against every members of family of husband implicating everybody in proceedings having criminal flavour. Hence, it becomes necessary for Courts to carefully scrutinize the allegations and to find out if the allegations made against the family members really meet requirements of law at least *prima facie*. The Hon'ble Apex Court in **K. Subba Rao and others Vs. State of Telengana**, reported in **(2018) 14 SCC 452** observed that relatives of husband should not be roped in on the basis of vague allegations, unless specific instances of their involvement

are set out..

8. In the facts of the case, in absence of any allegations against the in-laws, the learned Magistrate could not have issued notice to the applicant nos.2 to 5.

9. A Full Bench of this Court in the case of **Nandkishor Pralhad Vyawahare v. Mangala** reported in 2018 Cri LJ 2992 (FB) has held that most of the proceedings under Domestic Violence Act are predominantly civil in nature, applications under section 482 of the Criminal Procedure Code can be entertained as the conclusion of proceedings results in imposition of sentence.

10. In that view of the matter, the following order:

- a) The impugned order dated 26th June 2016 is set aside as against applicant nos.2 to 5.
- b) Enquiry Application No.239 of 2016 stands dismissed as against applicant nos.2 to 5.

11. The criminal application is disposed of in above terms. No costs.

(AMIT BORKAR, J.)