

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

CRIMINAL APPLICATION NO.19 OF 2021

1. Vikas s/o. Vishwanath Lawande,
 2. Poonam d/o. Vishwanath Lawande,
 3. Pramila w/o. Kishor Daund,
 4. Kishor s/o. Sitaram Daund
- ..Applicants

Vs.

The State of Maharashtra and anr. ..Respondents

Mr.P.B.Shirsath, Advocate for applicants

Mr.A.R.Kale, APP for respondent no.1

Mr.Tushar Shinde, Advocate h/f. Mr.C.K.Shinde, Advocate for
respondent no.2

**CORAM : SMT. ANUJA PRABHUDESSAI
AND R.M.JOSHI, JJ.
DATE : JANUARY 23, 2023**

ORDER :-

Heard finally with the consent of learned counsel for the parties.

2. This is an application under Section 482 of the Code of Criminal Procedure for quashing FIR No.I-2040 of 2020 registered with Rahuri Police Station, Dist.Ahmednagar, for the offences punishable under Sections 498-A, 406, 323, 504 and 506 read with Section 34 of

Indian Penal Code so also the criminal proceedings, i.e. R.C.C. No.205 of 2021, pending on the file of learned Judicial Magistrate, First Class, Rahuri, Dist. Ahmednagar.

3. At the outset, learned counsel for the applicants, on instructions, seeks leave to withdraw the application as regards the applicant no.1. Leave granted. The application stands dismissed as withdrawn qua the applicant no.1.

4. Learned counsel for the applicants submits that the FIR does not disclose any cognizable offence as against applicant nos.2 to 4, i.e. sister, maternal aunt and maternal uncle of the husband of respondent no.2. He submits that in the statement dated 04.12.2020 made by the respondent no.2 before the One Stop Centre at Ahmednagar, she had not made any allegations of demand of dowry as against these applicants. He submits that the allegations in the FIR are afterthought and the FIR has been filed only in view of the notice served by the applicant no.1 for divorce by mutual consent. Learned counsel for the applicants submits that the FIR as well as other material collected in the course of investigation, even if

accepted in their entirety, do not constitute the offence, as alleged. He, therefore, submits that this is fit case to exercise the jurisdiction under Section 482 of the Code of Criminal Procedure to prevent abuse of process of the court.

5. Per contra, learned counsel for the respondent no.2 submits that the applicants herein had subjected the respondent no.2 to cruelty within ten days from the date of marriage. He submits that the FIR is not an encyclopedia as to contain all the details. He submits that the FIR discloses the essential ingredients of the offences, as alleged. He further submits that the respondent no.2 had not narrated the incident in the statement dated 04.12.2020 as she was hopeful of reconciliation. He submits that the FIR as well as the other material on record indicates that the applicants had subjected the respondent no.2 to physical and mental cruelty and hence, this would not be a fit case for exercise of jurisdiction under Section 482 of the Code of Criminal Procedure.

6. Perused the record and considered the submissions advanced by learned counsel for the respective parties. The powers of the Courts to exercise the discretion under Section 482 of the

Code of Criminal Procedure are well settled. In the case of **State of Haryana Vs. Bhajanlal and ors., AIR 1992 SC 604**, the Hon'ble Supreme Court has laid down certain illustrations to be followed by the courts, while exercising such discretion. The relevant illustration would be illustration nos.1 and 3, which read thus:-

1. Where the allegations made in the First Information Report even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against accused;

2. xxxx

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

7. In the instant case, the record reveals that the marriage of the respondent no.2 and the applicant no.1 – Vikas was solemnized on 12.02.2020. She left the matrimonial home on 14.06.2020. She approached the One Stop Centre at Ahmednagar on 02.11.2020. Her statement was recorded before the One Stop Centre on 04.10.2020, wherein she alleged that her mother-in-law had expired within twenty days from the date of her marriage and that her husband and his family members accused her for bringing

bad luck to the family. She had stated that her husband insisted that she should return to her parental home. They would quarrel with her over trivial issues. In the said statement, she alleged that her husband used to constantly demand money for setting up a dispensary. She had further stated that when she returned to her parental home for the first death anniversary of her grand mother, her in-laws sent a message asking her not to return to the matrimonial home and stated that she should sever her marital ties and that they were not interested in initiating the court proceedings. They told her that they would repay the expenditure incurred for the marriage. It is for these reasons, she refused to go to her matrimonial home.

8. The respondent no.2 filed the FIR on the very next day, i.e. on 05.12.2000, wherein she stated that she was treated well for the first twenty days of the marriage. After the death of her mother-in-law, her husband and other family members started harassing her. They subjected her to physical and mental cruelty. She has alleged that these applicants blamed her for death of her mother-in-law and they insisted that she should return to her parental home. She has further stated that her husband had

demanded Rs.Ten Lakhs from her parents to set up a dispensary. She claimed that when she had informed her husband that her parents had incurred considerable expenditure for her marriage and they would not be able to pay Rs.Ten Lakhs, these applicants abused and assaulted her. She has further stated that she had informed her parents about the said incidents and when her parents intervened, her in-laws treated her well for some time. She claimed that on 14.06.2020, her husband and the applicant no.2 assaulted her for not meeting the unlawful demand of Rs.Ten Lakhs. She claimed that her husband and the applicant no.2 took away her gold ornaments and told her that she should not return to the matrimonial home unless she brings the money from her parents. She claimed that her husband and the applicant no.4 came to her parental home and threatened her for not lodging a complaint to the police.

9. It is pertinent to note that the allegations of demand of dowry are *prima facie* against her husband (applicant no.1). Though the respondent no.2 had stated that the applicant no.2 had also removed the gold ornaments for not fulfilling the unlawful demand in the previous statement dated 04.12.2020, which also forms part of the charge sheet, she had not leveled any such accusations against

the applicant no.2. Learned APP states that the investigating agency has not recovered any such gold ornaments from the applicant no.2. The applicant nos.3 and 4 are residents of a different village. Omnibus allegations are made against them that they had abused and assaulted her. There are no allegations of demand of dowry or cruelty as against these applicants.

10. Having perused the FIR and all the material collected in the course of investigation, we are of the considered view that the case is squarely covered by illustration nos.1 and 3 given in the case of **Bhajanlal** (Supra). In the circumstances, compelling the applicant nos.2 to 4 to face the criminal trial on the basis of the unfounded allegations, would be an abuse of the process of law.

11. In view of the above, the application is allowed in terms of prayer clauses (B) and (C-1) qua the applicant nos.2 to 4. Consequently, F.I.R. No.I-2040 of 2020 registered with Rahuri Police Station, Dist.Ahmednagar, for the offences punishable under Sections 498-A, 406, 323, 504 and 506 read with Section 34 of Indian Penal Code so also the criminal proceedings, i.e. R.C.C. No.205 of 2021, pending on the file of learned Judicial Magistrate,

First Class, Rahuri, Dist. Ahmednagar, shall stand quashed, qua the applicant nos.2 to 4.

[R.M. JOSHI, J.]

[SMT. ANUJA PRABHUDESSAI, J.]

KBP