

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

CRIMINAL APPLICATION NO. 76 OF 2022

1. Sattar Habibsab Shaikh
(withdrawn vide order dt. 02/02/2022)
2. Shakeela Habib Shaikh
Age: 65 years, Occu.: Household,
R/o House No.1, Maula Ali Nagar,
Maulana Azad Chock, Ahmedpur,
Tq. Ahmedpur, Dist. Latur
3. Habbeb Aminsab Shaikh
Age: 70 years, Occu.: Nil,
R/o As above
4. Shaheda Sadiq Shaikh
Age: 23 years, Occu.: Household,
R/o Babalgaon, Tq. Kandhar,
Dist. Nanded
5. Jabbar Habeeb Shaikh
Age: 37 years, Occu.: Labour,
R/o House No.1, Maula Ali Nagar
Maulana Azad Chock, Ahmedpur,
Tq. Ahmedpur, Dist. Latur
6. Mukhtar Habeeb Shaikh
Age: 36 years, Occu.: Labour,
R/o As above
7. Razzak Habeeb Shaikh
Age: 24 years, Occu.: Labour,
R/o As above
8. Bilal Hussain Sab Shaikh
Age: 42 years, Occu.: Labour,
R/o Fatepura, Ahmedpur,
Tq. Ahmedpur, Dist. Latur

..APPLICANTS

VERSUS

1. State of Maharashtra
Through Ahmedpur Police Station,
Tq. Ahmedpur, Dist. Latur

2. Tabassum Shaikh Sattar
Age: 20 years, Occu.: Household,
R/o Mahboobnagar, Ahmedpur,
Tq. Ahmedpur, Dist. Latur

..RESPONDENTS

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Ms. A.N. Ansari, Advocate for applicants

Mr. P.G. Borade, A.P.P. for respondent no.1 – State

Mrs. B.B. Gunjal, Advocate for respondent no.2 (appointed)

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**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 07th FEBRUARY, 2023

PER COURT :

1. At the outset, learned counsel for the applicants seeks leave to amend prayer clause (B) as to specify the number of criminal case and the Court before which the same is pending.

2. Leave granted. Amendment to be carried out forthwith.

3. Heard finally at admission stage with consent of learned counsel for the respective parties.

4. This is an application under Section 482 of Code of Criminal Procedure to quash the F.I.R. bearing C.R. No. 381 of 2021 registered at Ahmedpur Police Station, Dist. Latur and consequent charge-sheet bearing

R.C.C. No. 87 of 2022 pending on the file of Sessions Judge-1, Ahmedpur for offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code and under Section 4 of Muslim Women (Protection of Rights on Marriage) Act, 2019.

5. The aforesaid crime was registered pursuant to the F.I.R. lodged by the Respondent No.2 against her husband and in-laws. Applicant No.1 – husband has withdrawn the application vide order dated 02nd February, 2022. Applicant Nos.2 and 3 are the parents-in-law, whereas Applicant No.4 is the married sister-in-law and Applicant Nos. 5 to 7 are the brothers-in-law of the Respondent No.2. Applicant No.8 is the friend of Applicant No.1.

6. The marriage of Respondent No.2 and Applicant No.1 was solemnized on 29th January, 2021. The Respondent No.2 lodged the F.I.R. on 26th August, 2021 alleging that the Applicant No.1 used to suspect that she was having illicit relationship. The Applicant No.1 told her that he had married her only under family pressure. She has alleged that the Applicant No.1 used to assault her and that his family members i.e. parents-in-law, married sister-in-law and brothers-in-law did not support her and on the contrary abused her and demanded Rs.1 lakh from her parents. Respondent No.2 has made several accusations against the Applicant No.1 and has also alleged that he had tried to throw her from the bridge over *Sangavi* river.

She claimed that the Applicant No.1 did not keep physical relationship with her. She further states that her husband, mother-in-law and sister-in-law compelled her to consume some tablets which were purchased from Applicant No.8. She went to her parental home two months prior to lodging of the F.I.R. It is further stated in the F.I.R. that on 25th August, 2021 her husband came to her parental home and called her and her parents in the courtyard and uttered the words “*Talaq, Talaq, Talaq*” and gave her *Talaqnama*, contents of which indicated that their marriage was dissolved with triple *Talaq*. She has stated that the said *Talaqnama* was signed by Applicant No.8 and one Jabbar Shaikh. It is stated in the F.I.R. that her husband is impotent and his relatives got him married by concealing the said fact.

7. A perusal of the F.I.R. prima facie reveals that the accusations of physical and mental cruelty are essentially against the Applicant No.1. The only allegation against Applicant Nos. 2 to 7 are that they did not support the Respondent No.2 when she informed them about the ill-treatment meted out to her by her husband. In addition she has made omnibus allegations that Applicant Nos.2 to 7 had demanded Rs.1 lakh from her parents. No specific instances have been given in this regard. Furthermore, the allegation that her husband, mother-in-law and sister-in-law had compelled her to consume some tablets, are equally vague. There is thus no prima facie material on

record to indicate that the Applicant Nos. 2 to 7 had subjected the Respondent No.2 to cruelty within the meaning of Clauses (a) and (b) of Explanation to Section 498-A I.P.C. In the absence of such material, these applicants cannot be compelled to face trial for the offences under Section 498-A I.P.C. and other offences as alleged.

8. Section 4 of Muslim Women (Protection of Rights on Marriage) Act, 2019 prescribes punishment for pronouncing the word '*Talaq*' and provided that *"any Muslim husband who pronounces talaq referred to in Section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine."* As noted above, the application has been withdrawn by the Applicant No.1 – husband. Applicant Nos. 2 to 8, who are the family members and friend of the Applicant No.1, cannot be prosecuted for offence under the said Act.

9. Applicant No.8 is not a relative of the husband of the Respondent No.2, there are vague allegations that the husband, mother-in-law and sister-in-law of the Respondent No.2 had purchased some tablets from him. Apart from this allegation, there is absolutely no material on record to prove that Applicant No.8 is involved in committing any offence as alleged. In such circumstances, continuation of criminal proceedings against these applicants would be sheer abuse of the process of law.

10. In the result, criminal application is allowed in terms of prayer clause (B). Consequently, the F.I.R. bearing C.R. No. 381 of 2021 registered at Ahmedpur Police Station, Dist. Latur and consequent charge-sheet bearing R.C.C. No. 87 of 2022 pending on the file of Sessions Judge-1, Ahmedpur for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code and under Section 4 of Muslim Women (Protection of Rights on Marriage) Act, 2019 stand quashed, qua Applicant Nos. 2 to 8.

11. Fees of Mrs. B.B. Gunjal, learned counsel appointed to represent Respondent No.2, is quantified to Rs.6,000/- (Rupees Six Thousand).

(R.M. JOSHI, J.)

SSD

(SMT. ANUJA PRABHUDESSAI, J.)