

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

CRIMINAL APPLICATION NO.325 OF 2023

- 1] Krashna s/o Rajaram Hamde
Age: 35 years, Occu.: Service,
Near Samarth Mandir,
Maganpura, Nanded.
Tq. and Dist. Nanded.
 - 2] Sadhana w/o Rajaram Hamde
Age: 52 years, Occu.: Household,
R/o. As above.
 - 3] Balram s/o Rajaram Hamde
Age: 35 years, Occu.: Service,
R/o. Shriram Nagar,
Opposite Sanker Hostel,
Chaitanya Nagar, Taroda (Bk.),
Nanded – 431605.
 - 4] Sainath s/o Vithalrao Warewar
Age: 55 years, Occu.: Agril.,
R/o. Near Police Station,
Saibaba Galli, Umri,
Dist.Nanded.
- ..Applicants

VERSUS

- 1] The State of Maharashtra
Through Police Station Officer,
Varzirabad Police Station,
Dist.Nanded.
 - 2] Surekha w/o Krashna Hamde
Age: 33 years, Occu.: Household,
R/o. H.No.304, Mahindra Royal
Housing Society, Kharalwadi,
Pimpri-Chanchwad, Dist.Pune.
- ..Respondents
(Res. No.2, Ori. Complainant)

...
Advocate for Applicants : Mr.Gajanan G. Kadam
APP for Respondent No.1 : Mr.G.O.Wattamwar
Advocate for Respondent No.2 : Mr.Namdev D. Kendre

...
**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 18 April 2023

ORDER (ABHAY S. WAGHWASE, J.) :-

. Husband, mother-in-law, brother-in-law of respondent no.2 and maternal uncle of applicant no.1, by way of instant criminal application, have prayed for quashing crime bearing No.23 of 2021, registered with Vazirabad Police Station, Dist. Nanded, for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code (IPC).

BACKGROUND BEHIND THE FIR

2. Respondent no.2 wife, who was married to applicant no.1, lodged the FIR alleging that she got acquainted with applicant no.1 on matrimonial site. She on her own, inspite of opposition of her parents, performed marriage with applicant no.1 on 29-09-2019. Initially, for a year, she and applicant no.1 resided in Raj Apartment-B, House No.101, near Cancer Hospital, Latur Phata, Nanded and in September 2020, she alongwith her husband went to reside with in-

laws. She has alleged that applicant no.2 – mother-in-law, while residing with them, alongwith her husband started insulting her saying that applicant no.1 would have got huge dowry he being in Government service. It is alleged that they said that there was no proper honour in the marriage and on such count after raising demand for money, which they expect to be brought from her father, they beat her and subjected her to physical and mental harassment. She has alleged that subsequently mother-in-law and brother-in-law – Balram abused her asking her to bring money from her father and even issued life threats if she fails to do so. She has alleged that applicant no.4 also visited their house and instigated husband to beat her. There was suspicion of her character. According to her, on 02-11-2020 she went to her parents house for Diwali and when she returned back, she found the house locked and when lock was broke opened, she realized that her personal belongings were missing and her husband was also missing. Therefore, for above reasons, she lodged the FIR.

It is the above FIR, which is now sought to be quashed by exercising powers under Sections 482 of the Code of Criminal Procedure (Cr.P.C.).

SUBMISSIONS ON BEHALF OF APPLICANTS

3. Inviting our attention to the FIR, learned Advocate for the applicants would submit that false and afterthought allegations are levelled. Entire family is sought to be involved only out of marital discord between applicant no.1 - husband and respondent no.2 – wife. He would submit that from the FIR itself it is clear that respondent no.2 was residing with her husband since their marriage. That, she has also categorically stated that mother-in-law against whom, there are allegations, was residing with her brother-in-law separately. Therefore, there was no occasion to mal-treat or ill-treat her. According to him, applicant nos.3 and 4 are unnecessarily dragged even when they have no concern and even otherwise general and omnibus allegations are raised against them. Thus, for above reasons, relief as prayed is sought.

SUBMISSIONS ON BEHALF OF STATE AND RESPONDENT NO.2

4. Learned APP and learned Advocate for respondent no.2, while opposing the application, would submit that applicants are named and their roles are defined. There are allegations against husband, mother-in-law and brother-in-law at several places in the FIR. Even applicant nos.3 and 4 have been blamed by respondent no.2 for

inflicting physical and mental cruelty and therefore, according to him, all the applicants deserve to face prosecution.

ANALYSIS AND CONCLUSION

5. At the outset, it needs to be clarified that after disinclination shown by this Court to grant relief to applicant nos.1 and 2, learned Advocate for the applicants, on instructions, sought leave to withdraw application to their extent. Therefore, now it is only to be considered whether there is abuse of process of law as against applicant nos.3 and 4.

6. By way of instant proceeding, applicants are seeking quashment of FIR by exercising powers under Section 482 of the Code of Criminal Procedure (Cr.P.C.).

In catena of judgments, the Hon'ble Apex Court has time and again reiterated that inherent powers under Section 482 of Cr.P.C. can be exercised by the High Court; *firstly*, to give effect to an order under Cr.P.C., *secondly*, to prevent abuse of process of court and *thirdly*, to secure ends of justice. Law with regard to above Section is dealt in series of landmark judgments viz. ***Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors.***, reported in ***(2007) 12 SCC 1*** and ***Mahendra K.C. v. State of Karnataka and Another***; reported in

(2022) 2 Supreme Court Cases 129.

7. Bearing in mind the scope, object and contingencies in which powers under Section 482 of Cr.P.C. can be exercised as spelt out in the aforesaid pronouncements, we have examined the FIR. On doing so, it is emerging that applicant no.1 and respondent no.2 got acquainted on matrimonial site. It appears that respondent no.2 on her own approached with marriage proposal and finally she on her own decided to perform marriage inspite of opposition from her parents and thereafter, initially she and applicant no.1 husband spent a year or so separately and since September 2020, she came to reside with in-laws. It is also emerging that at that time, father-in-law was residing with his parents separately. Allegations are levelled that applicant no.2 – mother-in-law started taunting, commenting and subjecting her to cruelty. In the FIR, there are allegations against applicant no.3 joining her in taunting, commenting and putting up demand of money. There are also allegations against applicant no.4 for visiting their house and instigating husband. However, except stray allegations against applicant no.3 and 4, as to when such episodes in which they were allegedly involved have occurred, has not been specifically spelt out in the FIR. No details and particulars

of cruelty are stated in the FIR as against them. The statements of relatives though recorded are on the same lines about ill-treatment by insulting, abusing and raising demand of money. Quantum of demand is not spelt out in the initial part of the FIR. It seems that respondent no.2 was with her parents since 02-11-2020 and instant FIR is lodged on 24-01-2021. Therefore, with nature and quality of allegations levelled against applicant nos.3 and 4, in our opinion, continuation of proceeding and prosecution against them is apparently an abuse of process of law. Therefore, these two applicants have made out a case for grant of relief. Accordingly, we proceed to pass the following order :-

ORDER

(I) Criminal Application is partly allowed.

(II) The FIR No.23 of 2021 registered with Vazirabad Police Station, District Nanded, for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the IPC, to the extent of applicant nos.3 and 4, is quashed and set aside.

(III) Application to the extent of applicant nos.1 and 2 is dismissed as withdrawn.

(ABHAY S. WAGHWASE)
JUDGE

(MANGESH S. PATIL)
JUDGE