

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

CRIMINAL APPLICATION NO.605 OF 2022

Shivaji s/o Kashinath Atakare & anr. ... **APPLICANTS**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....
Ms Ashwini A. Lomte, Advocate holding for
Mr. S.J. Salunke, Advocate for applicants
Mrs. V.N. Patil Jadhav, A.P.P. for respondent No.1.
Mr. D.B. Pokale, Advocate for respondent No.2.
.....

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

DATE : 1st FEBRUARY, 2023

ORDER (PER R.M. JOSHI, J.):

With the consent of learned counsel for rival parties,
heard finally at the stage of admission.

2. This is an application under Section 482 of the Code of Criminal Procedure for quashing First Informant Report No.211/2021, registered with Beed (City) Police Station and consequential charge sheet and R.C.C. No.585/2021, pending on the file of learned Judicial Magistrate, First Class, Beed for the offences punishable under Sections 498-A, 323, 504, 506

read with Section 34 of the Indian Penal Code.

3. The respondent No.2 was married to Vaijinath on 26/5/2003 and from the said wedlock, two children are born. It is alleged in the First Informant Report that the husband of the respondent No.2 used to demand Rs.4,00,000/- and would abuse her for not meeting the unlawful demand. She has levelled several other allegations against her husband. She claims, he never used to take care of the family and that she left her matrimonial home and started staying separately. The applicant No.1 is the brother-in-law of respondent No.2 and applicant No.2 is his wife. The only allegations against them are that they used to instigate the husband of the respondent No.2 to beat her.

4. Learned counsel for the applicants submitted that, there are no specific allegations against these applicants in order to make out any offence. According to her, the allegations made against them are general in nature and on that basis they cannot be subjected to the criminal process.

5. Learned A.P.P. and learned counsel for respondent No.2 submitted that, there are allegations against the present

applicants too that they instigated the husband of respondent No.2 to cause assault on her. According to them, this is not a fit case to quash the proceedings against the present applicants.

6. In order to attract the offence punishable under Section 498-A of the Indian Penal Code, the husband or his relatives must subject a woman to cruelty within the meaning of clause (a) and (b) of Explanation to Section 498-A of the Indian Penal Code. A careful perusal of First Information Report discloses that the allegations of cruelty are essentially against the husband. In fact, the entire First Information Report prima facie indicates that the respondent No.2 has grievance only against her husband for his various acts and deeds. The only allegation against these applicants is the solitary statement that they used to instigate the husband of the respondent No.2 to physically abuse her. This is a general statement without giving any particulars as to when and how these applicants had instigated the husband of respondent No.2. Except for such omnibus statement, there is no other material on record to indicate that these applicants had subjected respondent No.2 to cruelty within the meaning of Section 498-A of the Indian Penal Code.

7. The Hon'ble Apex Court, in case of **State of Haryana & ors. Vs. Ch. Bhajan Lal [AIR 1992 SC 604]**, has given illustrations in which this Court can exercise the powers under Section 482 of the Code of Criminal Procedure to quash the criminal proceedings, and in our view, the present case is squarely covered by illustrations (1) and (3) given therein, which are as under :

“(1) Where the allegations made in the first information report or the complaint, 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 the accused.

(2)

(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.

8. Having regard to the nature of allegations against the present applicants and considering the entire material on record, we do not find any cognizable offence being made out against the present applicants and under such circumstance, to call upon them to undergo the rigour of the criminal process will be abuse of process of the Court. Hence, the Criminal Application stands allowed in terms of (C), (D) and (E). The

First Informant Report No.211/2021, registered with Beed (City) Police Station and consequential charge sheet and R.C.C. No.585/2021, pending on the file of learned Judicial Magistrate, First Class, Beed for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code are quashed against the present applicants.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

fmp/-