

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

CRIMINAL WRIT PETITION NO. 275 OF 2023

Mohammad Kasim Shaikh Ahmed ..PETITIONER

VERSUS

State of Maharashtra and Another ..RESPONDENTS

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Mr. G.R. Syed, Advocate for petitioner

Mr. M.M. Neralikar, A.P.P. for respondent no.1 – State

Mr. J.S. Jain, Advocate for respondent no.2 (appointed)

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 27th JUNE, 2023**

PER COURT :

1. This petition, under Article 226 of the Constitution of India, has been filed for quashment of First Information Report ('F.I.R.'), being Crime No. 99 of 2022 registered with Dharangaon Police Station, Dist. Jalgaon for the offences punishable under Sections 498-A, 294, 323, 504 and 506 of the Indian Penal Code and consequential charge-sheet filed in R.C.C. No. 117 of 2022 pending on the file of J.M.F.C., Dharangaon.

2. Heard.

3. The F.I.R. has been lodged on 02nd April, 2022. The informant married one Jainoddin Shaikh (co-accused) on 19th May, 2016. This is the second marriage of both of them as their first partners were died. After her

marriage she started residing at her matrimonial home at Vikroli, Mumbai. Her husband has three daughters and one son from his first wedlock. Najmabi - mother of first wife of her husband was also residing with them. After two months of marriage, the informant conceived. Her husband asked her to terminate the pregnancy as he married her only to serve him and to lookafter his children. The informant refused to terminate the pregnancy. Najmabi would instigate the husband to ill-treat the informant. Both of them used to ill-treat and abuse her on that account. Present applicant is the brother of first wife of husband of the informant. He used to visit her house and abuse her. Brother-in-law of the informant, co-accused, also used to visit the house and abuse her on account of abortion and asked to fetch Rs.5 lakhs from her parents to purchase a flat. The husband and mother-in-law took her to the hospital for abortion, but were asked to return by the doctor there informing them that the same is illegal. Being annoyed thereby, they beat her up on stomach by fists and kicks and also with stick. They also told her not to relate this fact to anyone, lest they would kill her. Fed up with the said ill-treatment, Respondent No.2 – wife narrated her woes to her parents. In January 2017, they visited her house and reasoned with the husband and mother-in-law. In response thereto, both of them abused the informant and her parents and driven them out of the house. On two occasions efforts for reconciliation were made with the help of relatives, but vain.

4. It has further been alleged in the F.I.R. that in July 2017, Respondent No.2 – wife delivered a baby girl. Neither the husband nor the mother-in-law paid visit to the maternal house of the informant. In February 2021 she shifted to Ramnagar, Jalgaon. The husband went there and ill-treated her for divorce. In July 2021, the husband alongwith mother-in-law, brother-in-law and present applicant came to the house of the informant and asked her to sign the divorce papers (*talaqnama*). On her refusal, the mother-in-law abused her and pulled her hair. Others also abused and beat her up. On intervention of neighbors, the applicant and co-accused left. Thereafter, the informant approached Women Vigilance Committee, Jalgaon. On failure of reconciliation, the informant lodged the F.I.R.

5. Learned counsel for the applicant would submit that the applicant is a distant relative of the informant. The allegations of ill-treatment and beating are mainly against the husband and mother-in-law. There is no specific role attributed against the present applicant in the F.I.R. Averments in the F.I.R. against the present applicant are general, vague and omnibus. He, therefore, urged for allowing the application.

6. Learned A.P.P. and learned counsel representing Respondent No.2 would, on the other hand, submit that role of the present applicant in the alleged crime has been specifically narrated in the F.I.R. He used to pay visits

to the house of the informant at Mumbai and instigate the husband and mother-in-law of the informant to coerce her to fetch Rs.5 lakhs from her parents for purchase of flat. There is also mention of the incident wherein the applicant alongwith co-accused visited the house of the applicant at Jalgaon for obtaining her signature on divorce papers. In view of the aforesaid averments and specific role attributed against the applicant, both of them urged for dismissal of the petition.

7. Considered the submissions advanced. Perused the F.I.R. and related police papers. Averments in the F.I.R. have already been referred to hereinabove. Same indicates that it is a matrimonial dispute. The main allegations are against the husband and mother-in-law. Present applicant is the brother-in-law of the informant, not residing with them. As such, it is difficult to understand as to why he should intervene in the matrimonial dispute of the informant and her husband. The F.I.R. is also silent to state day, date and time when the applicant visited the matrimonial house of the applicant to ill-treat her. The other incident of ill-treatment is alleged to have taken place at Jalgaon, whereas the applicant is resident of Mumbai. Since the allegations against the applicant are general, vague and omnibus, in our view, asking him to stand trial based on such material would be an abuse of process of Court. We are, therefore, inclined to grant the applicant relief.

8. In view of above, criminal writ petition is allowed in terms of prayer clause [B].

9. Fees of Mr. J.S. Jain, learned counsel, appointed to represent Respondent No.2 is quantified to Rs.7,000/- (Rupees Seven Thousand).

SSD (SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)