

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

CRIMINAL APPLICATION NO. 1390 OF 2022

Suresh Waman Tambe and Others

..APPLICANTS

VERSUS

State of Maharashtra and Another

..RESPONDENTS

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Mr. A.A. Yadkikar a/w Mr. Akshay Kulkarni and Mr. Sham Jawale, Advocates
for applicants

Mr. S.D. Ghayal, A.P.P. for respondent no.1 – State

Mr. J.V. Patil, Advocate for respondent no.2

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 14th JUNE, 2023**

PER COURT :

1. This application under Section 482 of Code of Criminal Procedure has been filed for quashing of the proceedings in Regular Criminal Case No. 778 of 2021 pending on the file of Judicial Magistrate First Class, Sangamner in connection with First Information Report ('F.I.R.') vide Crime No. 279 of 2021 registered with Sangamner Taluka Police Station, Dist. Ahmednagar for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code.

2. The applicants herein are the parents and brothers-in-law of the informant. The relief is asked mainly on the ground of the informant to have

not resided in the company of the applicants for long since before lodging of the F.I.R. dated 22nd June, 2021. According to the applicants, the informant after marriage stayed only for six months at her matrimonial home and then shifted to Sangamner. Both, the informant and her husband stayed at Sangamner and Nashik. Whatever allegations/averments made in the F.I.R. are vague, details of which have not been given.

3. Learned counsel for the applicants made submissions consistent with the averments in the present application and ultimately urged for allowing the same.

4. Learned A.P.P. and learned counsel representing the informant would, on the other hand, submit that on filing of the charge-sheet, charge has been framed. The matter was posted for recording of evidence. Turning to the merits of the case, learned counsel would submit that averments in the F.I.R. suggest involvement of the applicants in the offence in question. It is, therefore, not a fit case to grant the applicants relief. Dismissal of the application was ultimately urged for.

5. Considered the submissions advanced. Perused the F.I.R. and papers of investigation. Although this is a writ petition, relief has mainly been sought under Section 482 of Code of Criminal Procedure. The Apex

Court in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors., AIR 1992 SC 604*** has observed thus :-

“In following categories of cases, the High Court may in exercise of powers under Article 226 or the under Section 482 of the Code of Criminal Procedure may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases.

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) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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.

4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of F.I.R. was not justified.”

6. True, the charge has been framed. The record indicates that on the day the charge-sheet filed, the charge came to be framed. According to learned counsel for the applicants, the counsel for the applicants was not present before the Court on that date. Signatures of the applicants were simply obtained on form of plea. Without going into the technicalities, it is desirable to decide the present application on merits.

7. The informant married Sushilkumar (co-accused), not an applicant herein, in December 2018. It has been averred in the F.I.R. that the

informant was treated well by her in-laws for a period of first three months of marriage. The applicants and husband of the informant thereafter started ill-treating her over non payment of dowry and have not been duly honoured in the marriage. It has further been averred that the informant was starved. She was teased over her complexion. She was even alleged of being an inauspicious lady. The informant thereafter left the matrimonial home and resided at her parental home for three months. Her husband thereafter contacted her to tell that since his parents and she (informant) could not pull on together, he decided to take a premises on rent at Sangamner to stay with her. The F.I.R. further indicates that accordingly her husband took a premises on rent. The informant resumed cohabitation. Both of them stayed at Sangamner, away from the applicants herein. Close reading of further averments in the F.I.R. would indicate that the informant has grievance against her husband. According to her, her husband thereafter again started ill-treating her over the reasons for which she was ill-treated earlier. In the meanwhile she conceived and went to her parental home for delivery. After her return, she started residing alongwith her husband and their child, again in a premises taken on rent.

8. On the same lines are the statements of the relations of the informant. Close reading of the averments in the F.I.R. would suggest the informant to have resided for a period of only six months alongwith the

applicants at her matrimonial home just after the marriage. Thereafter both, the informant and her husband stayed separately at Sangamner until before the F.I.R. was lodged. As such, the grievance of the informant against the applicants is restricted for a period of six months. For three months thereof she was admittedly treated well. Close reading of the F.I.R. would further indicate that general allegations have been made against the applicants. No details as to when and how the applicants ill-treated her have been given.

9. In this factual backdrop, allowing the prosecution to proceed against the applicants would, in our view, be an abuse of process of Court. Interest of justice demands grant of the application. We are, therefore, inclined to allow the application. Criminal application is allowed in terms of prayer clause (C).

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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