

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

CRIMINAL APPLICATION NO. 948 OF 2021

1. Zuber Ahmed Sardar Shaikh
Age: 41 years, Occu.: Service,
R/o Plot No.58, 59, 60,
Amar Complex, Behind Dagdi Chawl,
Dargah Daira Road, Mukundnagar,
Ahmednagar
2. Zubedabano Sardar Shaikh
Age: 65 years, Occu.: Household,
R/o As above
3. Mohammad Sameer Sardar Shaikh
Age: 39 years, Occu.: Advocate,
R/o As above
4. Shahanawaz Sardar Shaikh
Age: 36 years, Occu.: Business,
R/o As above
5. Najma Usman Sayyad
Age: 60 years, Occu.: Household,
R/o Plot No. 14, Himmat Nagar,
Nagar-Aurangabad Road,
Near Laxmi Nagar, Ahmednagar

..APPLICANTS

VERSUS

1. State of Maharashtra
Through Police Station Officer,
Loni Police Station, Ahmednagar
Tq. & Dist. Ahmednagar
2. Sumayya Zuber Shaikh
Age: 30 years, Occu.: Household,
R/o c/o Mahemood Umar Patel,
Hasnapur, Loni (Bk.), Tq. Rahata,
Dist. Ahmednagar

..RESPONDENTS

....
Mr. S.S. Bora, Advocate for applicants
Mr. P.G. Borade, A.P.P. for respondent no.1 – State
Mr. T.J. Momin, Advocate for respondent no.2
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**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.
DATE : 02nd MARCH, 2023**

PER COURT :

1. At the outset, learned counsel for the applicants seeks leave to withdraw the application as against Applicant No.1. He further seeks leave to amend the prayer clause as to incorporate the R.C.C. number.

2. Leave granted. Criminal application stands disposed of as withdrawn as against Applicant No.1. Amendment to be carried out forthwith.

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

4. This is an application under Section 482 of Code of Criminal Procedure to quash the F.I.R. bearing C.R. No. 75 of 2021 registered with Loni Police Station, Dist. Ahmednagar and consequent R.C.C. No. 258 of 2021 pending on the file of J.M.F.C., Rahata for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code.

5. The marriage between Applicant No.1 and Respondent No.2 was solemnized on 04th October, 2015. They have one child from the said wedlock. Respondent No.2 left the matrimonial home on 06th March, 2018 and lodged the F.I.R. on 01st March, 2021 alleging that her husband and her in-laws had subjected her to physical and mental cruelty. Based on the allegations made in the F.I.R., the aforestated crime came to be registered.

6. Learned counsel for the applicants submits that there are no specific allegations against the applicants and they cannot be subjected to face criminal trial on the basis of omnibus allegations. He further submits that not only the husband and his family members but distant relatives are also roped in by the Respondent No.2 in the matrimonial dispute. He claims that the allegations levelled in the F.I.R. and other material on record collected during the course of investigation do no prima facie discloses commission of cognizable offence by these applicants.

7. Per contra, learned A.P.P. and learned counsel for the Respondent No.2 submit that the Respondent No.2 has made specific allegations against all these applicants and hence this would not be a fit case to exercise power under Section 482 Cr.P.C. and quash the proceeding.

8. We have perused the record and considered the submissions advanced by learned counsel for the respective parties. The only question for our consideration is whether the allegations levelled in the F.I.R. and other material on record prima face discloses commission of cognizable offence against these applicants.

9. The F.I.R. reveals that the Respondent No.2 had lived in the matrimonial home for about one and half month after her marriage. She claims that the applicants follow the Sunni practice, they used to bathe thrice a day and ask her to wash the clothes for whole day. They also used to taunt her for being unable to do household work properly. She has made omnibus allegations against these applicants that they used to abuse and assault her and demanded Rs.4 lakhs to get furniture. The F.I.R. further reveals that the husband of Respondent No.2 was employed at Bangalore and after one and half month of the marriage, she joined him at Bangalore. She made several allegations against her husband and has further stated that she had returned to her matrimonial home to celebrate Eid and thereafter gone to her parental home. She claims that her husband had quarreled with her on phone and subsequently with the intervention of the elders in the family, she returned to matrimonial home and later accompanied her husband to Bangalore. She was pregnant and during her seventh month of pregnancy, her husband dropped her to her parental home. On 21st June, 2017 she delivered a girl

child. She claims that her husband and others had come to see her at her parental home and had quarreled with her because they did not want a girl child and were expecting a boy child. She has further stated that the applicants did not allow her to nurse the baby. She claims that during her delivery, she had certain mental health issues.

10. Respondent No.2 claims that Applicant Nos. 3 and 4 – brothers-in-law came to her parental home to take her back to the matrimonial home since her husband had returned from Bangalore. She claims that he had treated her well for sometime and again subjected her to physical and mental cruelty. She has further stated that all the applicants pushed her into one room, took away her mobile phone and did not allow her to take care the baby. Later on they called her parents and told them that she was having some mental health issue and to take her home. Accordingly, her parents took her home. After 4-5 days her father-in-law called her and asked her to return to the matrimonial home. She claims that her husband told her that he is not interested in keeping any relation with her and that he was ready to give her divorce. She once again returned to her parents home on 06th March, 2018. She claims that during this period neither her husband nor his family members even enquired about her wellbeing, even though she was continuously calling them and telling them that she was interested in cohabiting with the Applicant No.1. She claims that her husband took her to

Hyderabad on 24th February, 2020 i.e. at the place of his employment. She claimed that once again he started abusing and assaulting her. She has alleged that he threatened to kill her and thereafter brought her back to her parental home. She claims that she lodged the F.I.R. alleging that she was subjected to cruelty from 21st June, 2017 till 24th February, 2020 and that the applicants also demanded Rs.4 lakhs for purchasing household articles.

11. A perusal of the F.I.R. prima facie reveals that the allegations of cruelty are essentially against the husband. Apart from omnibus allegations against the other applicants, there is no material on record to indicate that these applicants had subjected the Respondent No.2 to physical or mental cruelty within the meaning of clauses (a) or (b) of Explanation to Section 498-A I.P.C. On the contrary, perusal of the F.I.R. reveals that the father-in-law as well as the brothers-in-law of the Respondent No.2 had made several attempts to bring her back to the matrimonial home. The F.I.R. also indicates that the Respondent No.2 was having mental health issue and it is for this reason that the applicants had not allowed her to carry or nurse the baby. The allegations in the F.I.R. even if accepted at their face value, would not amount to cruelty within the meaning of Section 498-A I.P.C.

12. In our considered view, the Respondent No.2 has dragged the entire family of the Applicant No.1 in her matrimonial dispute. Suffice it to

say that in the absence of any specific role attributed to these applications, they cannot be compelled to face criminal trial and hence this would be a fit case to exercise the power under Section 482 Cr.P.C. to prevent an abuse of the process of Court.

13. In the result, criminal application is allowed in terms of prayer clauses (c-1). Consequently, the F.I.R. bearing C.R. No. 75 of 2021 registered with Loni Police Station, Dist. Ahmednagar and consequent R.C.C. No. 258 of 2021 pending on the file of J.M.F.C., Rahata for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code stand quashed, qua Applicant Nos. 2 to 5.

(R.M. JOSHI, J.)

SSD

(SMT. ANUJA PRABHUDESSAI, J.)