

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

CRIMINAL APPLICATION NO.1043 OF 2021

- 1 Jyoti Ashok Thorat,
 Age 31 yrs., Occ. Housewife & Agri.,
- 2 Taibai Sanjay Thorat,
 Age 33 yrs., Occ. Housewife & Agri.,
- 3 Sanjay Kundlik Thorat,
 Age 41 yrs., Occ. Agri.,
- 4 Ashok Kundlik Thorat,
 Age 38 yrs., Occ. Agri.,
- 5 Laxmibai Kundlik Thorat,
 Age 73 yrs., Occ. Housewife,
- 6 Kunal Sanjay Thorat,
 Age 21 yrs., Occ. Education,
- 7 Abhijit Ashok Thorat,
 Age 16 yrs., Occ. Education,
 (since minor, through his natural guardian
 father i.e. applicant No.4)
- 8 Abhinandan Ashok Thorat,
 Age 15 yrs., Occ. Education,
 (since minor, through his natural guardian
 father i.e. applicant No.4)
- 9 Pooja Sanjay Thorat,
 Age 17 yrs., Occ. Education,

All are r/at Tondapur, Post – Warangaphata,
Tq. Kalamnuri, Dist. Hingoli.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through Police Station,
Akhada Balapur, Tq. Kalamnuri,
Dist. Hingoli.
- 2 Sureshna Yuvraj Thorat,
Age 29 yrs. Occ. Education,
R/o C/o Mohan Rami Gachche,
Ramji Niwas, Datta Nagar,
Gokunda, Tq. Kinwat,
Dist. Nanded.

... **Respondents**

...

Mr. P.D. Jarare, Advocate for applicants
Mr. A.V. Deshmukh, APP for respondent No.1
Mr. N.U. Telgaonkar, Advocate for respondent No.2

...

**CORAM : SMT. VIBHA KANKANWADI
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 08th AUGUST, 2023

PRONOUNCED ON : 19th AUGUST, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for quashment of First Information Report invoking the powers of this Court under Section 482 of the Code of Criminal Procedure, 1973. The First Information Report has

been lodged by respondent No.2 vide Crime No.24/2021 with Akhada Balapur Police Station, Dist. Hingoli, for the offence punishable under Section 498-A, 323, 294, 504, 506 read with Section 34 of the Indian Penal Code, 1860 on 26.01.2021.

2 It is not in dispute that respondent No.2 got married to one Yuvraj Thorat on 25.03.2012. Said Yuvraj is the son of applicant No.5, applicant No.1 is the wife of applicant No.4, applicant No.2 is wife of applicant No.3, applicant Nos.3 and 4 are the sons of applicant No.5, applicant Nos.6 and 9 are the son and daughter of applicant Nos.2 and 3 and applicant Nos.7 and 8 are the sons of applicant Nos.1 and 4. Thus, the applicants are the relatives of husband of respondent No.2 - informant. Further, it is not in dispute that respondent No.2 had lodged First Information Report vide Crime No.121/2017 with Dighi Police Station, Pune City, for the offence punishable under Section 498-A, 323, 504 read with Section 34 of the Indian Penal Code.

3 With the said background, we have heard learned Advocate Mr. P.D. Jarare for the applicants, learned APP Mr. A.V. Deshmukh for respondent No.1 and learned Advocate Mr. N.U. Telgaonkar for respondent No.2, and perused the documents like copy of the charge sheet, copy of the charge

sheet in respect of earlier crime filed before the Court of Judicial Magistrate First Class, Khadki, Pune, charge framed in the said matter Exh.22 by learned Judicial Magistrate First Class, Khadki, Pune on 06.04.2018.

4 It has been vehemently submitted on behalf of the applicants that the present First Information Report which is the second in number has been filed with mala fide intention and unnecessarily all the relatives including minors have been roped. In fact, the perusal of the First Information Report would show that from 2018 the informant and her husband along with their daughter had shifted to Hyderabad where the husband had taken up the job as Software Engineer. That means, the present applicants were not residing with them. She also states that for about six months she along with her husband and daughter resided at Kinwat after the lock-down due to COVID-19 pandemic. Thereafter, her husband has gone to his native place Tondapur for Diwali and then she says that she requested him to take her along with him, he had not taken her. Till the end of December her husband did not return to Kinwat and then she says that she went to Tondapur on 03.01.2021 to meet her husband. She then says that she had made inquiry with the present applicants regarding the whereabouts of her husband and then they had caused mental as well as physical harassment to her. She has also quoted some incident dated 24.01.2021,

wherein her father and mother are also stated to have been involved. The First Information Report is based on only the surmises. The delay in lodging the First Information Report has not been explained at all. In fact, respondent No.2 was married earlier and by suppressing her marriage it appears that the marriage was performed with her husband and, therefore, the husband has made complaint in respect of said fact. Now, the charge sheet is also filed, but perusal of the same would show that it consists of mainly all close relatives of respondent No.2. Statement of any independent witness has not been recorded. Therefore, when no offence can be said to be transpiring, it would be unjust to ask the applicants to face the trial.

5 Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the application. They submitted that the charge sheet is filed and cognizance of the same has been taken by the competent Court. The contents of the charge sheet would show that there is ample evidence against the present applicants. Statement of independent witnesses also been recorded. Those independent witnesses are Tajmul Gulam Dastgir Patel and Uttam Dagduji Thorat. It is also supported by medical evidence. The mother and respondent No.2 had sustained injuries in the incident dated 24.01.2021.

6 At the outset, it is to be noted that when it is not in dispute that she had already filed the First Information Report, it was incumbent upon this Court to see prima facie as to what are the allegations in the First Information Report and how the cognizance of the same has been taken by Judicial Magistrate First Class, Khadki, Pune. In the said case husband is accused No.1, his brothers Sanjay and Ashok, who are present applicant Nos.3 and 4, their wives applicant Nos.1 and 2 are the accused persons. There are other accused persons also in that case, but they are not accused in the present case. From the contents of the first FIR and charge sheet, learned Judicial Magistrate First Class, Khadki, Pune has framed the charge and it appears from the charge that it is in respect of the offence that had taken place from 22.10.2016 till the date of the First Information Report 27.06.2017 it is alleged that they had subjected her to cruelty and then there are allegations about misappropriation, assault and criminal intimidation. Therefore, the charge that has been framed under Section 498-A, 406, 323, 504 read with Section 34 of the Indian Penal Code and the place of offence is said to be Datta Nagar, Pune. Therefore, taking into consideration the present First Information Report in her First Information Report all these facts were stated by her that she has already lodged the First Information Report with Khadki Police Station, Pune. She has stated about the alleged harassment from 03.01.2021 till 24.01.2021 and the alleged harassment is

said to be at Tondapur. Therefore, the said First FIR is not in any way hurdle to the present FIR. Now, it is required to be seen as to whether the present FIR and the evidence collected is showing any prima facie offence as alleged. All the applicants have given their place of residence as Tondapur. Specific act has been attributed to applicant Nos.1 to 5 and then as regards applicant Nos.6 to 9 is concerned, it is contended that they along with accused Nos.1 to 5 had dragged the informant and her mother and assaulted them by fists and kicks. Important point to be noted is that it is then stated that the husband, who is not before this Court in this petition, was abusing her in filthy language and making allegations that she has affair and he would kill them. This reason or intention cannot be with the nephews and niece of respondent No.2. Applicant Nos.7 and 8 are minors. As regards the relationship of applicant Nos.6 to 9 with respondent No.2 is paternal aunt (Kaku/Kaki). Why they would raise suspicion over the character of paternal aunt. Intention on the part of the respondent No.2 appears to be clear that she wanted to rope everybody in the family. Time and again, Hon'ble Supreme Court as well as this Court has held that such incidences of roping the entire family is growing. Here, in this case, since the marriage in 2012 respondent No.2 was residing with her husband at Hyderabad. The First Information Report is not clear on this point as to when they went to Hyderabad. But it is certain that somewhere in 2018 or 2019 they shifted to Hyderabad from

Pune. Even at that time, when respondent No.2 along with her husband and daughter were residing at Pune, the present applicants were not residing with them. Even after the lock-down, husband, informant and daughter were said to be residing at Kinwat. She then says that she went to meet her husband, who had gone to Tondapur on 03.01.2021 and then says that from 03.01.2021 to 24.01.2021 she was residing at Tondapur with the applicants. So, during that period i.e. around 22 days whether the applicant Nos.6 to 9 would have developed such intention to commit cruelty against paternal aunt, giving abuses to her or assault her, is a question. The answer is definitely 'in the negative'. Therefore, at least as against the applicant Nos.6 to 9 is concerned, no prima facie case has been made out.

7 As regards the mother-in-law is concerned i.e. applicant No.5, her age is 73. She was not an accused in the earlier First Information Report. It appears that she is ordinarily residing at Tondapur. Minute perusal of the First Information Report would show that there is omnibus allegations against the mother-in-law by saying that she had not allowed the informant to meet her husband and started to give ill-treatment mentally and physically. As regards incident dated 24.01.2021 is concerned, role that has been attributed is with the other accused persons in making the allegations that she had also assaulted the parents of respondent No.2 and the respondent

No.2. When no such specific role is attributed and the role is in common, then it may not attract the ingredients of Section 498-A of the Indian Penal Code. Therefore, the First Information Report deserves to be quashed and set aside as against applicant Nos.5 to 9. As against applicant Nos.1 to 4 is concerned, we may say that there is some element of evidence against them, which is of course, prima facie, just to look at from the point of view and scope of this petition. Since the parameters laid down in **State of Haryana and others vs. Ch. Bhajan Lal and others, AIR 1992 SC 604** have been complied with, the application deserves to be partly allowed. With this reason, we proceed to pass following order.

ORDER

1 Application stands rejected as against applicant Nos.1 to 4.

2 Application stands allowed as against applicant Nos.5 to 9.

3 The First Information Report vide Crime No.24/2021 dated 26.01.2021 registered with Akhada Balapur Police Station, Dist. Hingoli, for the offence punishable under Section 498-A, 323, 294, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and the entire proceedings i.e. Regular Criminal Case No.95/2021 pending before learned Judicial

Magistrate First Class, Kalamnuri, Dist. Hingoli, stands quashed and set aside, as against applicant Nos.5 to 9. Consequently, no proceedings be taken up arising out of First Information Report vide Crime No.24/2021 dated 26.01.2021 registered with Akhada Balapur Police Station, Dist. Hingoli, for the offence punishable under Section 498-A, 323, 294, 504, 506 read with Section 34 of the Indian Penal Code, before learned Judicial Magistrate First Class, Kalamnuri, Dist. Hingoli as against applicant Nos.5 and 6, and before Juvenile Justice Board, Hingoli as against applicant Nos.7 to 9.

4 Application stands disposed of accordingly.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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