

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 636 OF 2021

1. Uday S/o Ramesh Rao Patil
2. Smt. Kamalbai W/o Ramesh Rao Patil
3. Sau. Tara W/o Digamber Patil
4. Sharad S/o Waman Rao Salunkhe
5. Sujit S/o Sharad Salunkhe .. Petitioners

Versus

1. The State of Maharashtra
Through the Police Inspector,
Ramanand Police Station, Jalgaon,
District Jalgaon
2. Smita Uday Patil .. Respondents

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Advocate for petitioners : Mr. V.D. Hon, Sr. Advocate i/b. Mr. Ashwin V. Hon
APP for the respondent – State : Mr. S.D. Ghayal
Advocate for respondent no. 2 : Mr. Girish Nagori and Mr. Joslyn Menezes
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**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 18 APRIL 2023

ORDER (MANGESH S. PATIL, J.) :

By invoking the powers of this Court under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, the petitioners are seeking quashment of crime no.91 of 2021 registered with Ramanand Police Station, Jalgaon for the offences punishable under section 498A, 323, 504, 506, 406 r/w. 34

of the Indian Penal Code and consequent criminal case bearing R.C.C. no. 618 of 2021 pending before the learned Judicial Magistrate First Class, Jalgaon.

2. At the joint request of the parties, we have heard both the sides finally.

3. After hearing the parties, when we express our disinclination to grant any relief on merits to the petitioner nos. 1 to 3, their learned advocate, on instructions, seeks leave to withdraw the writ petition to their extent.

4. The sum and substance of the allegations in the FIR lodged by the respondent no. 2 on 02-04-2021 are to the effect that her marriage was solemnized with the petitioner no. 1 on 12-05-2015. She was maintained properly barely for couple of months. Since thereafter, the petitioner no. 1 - husband and petitioner no. 3 - mother in law started taunting and teasing her by saying that she was not intelligent, had no virtues and even was not good looking. Husband was also beating her at the instigation of the mother in law. Somehow with the hope that everything would become peaceful by passage of time she tolerated such torture. However, the husband kept on saying her that he did not like her but had married her only because of the insistence of his mother. He even took her to the hospital of one Dr. Swapna Patil, Amalner for carrying out abortion against her wish but because of

the reprimand by the Doctor it could be avoided. It is then alleged that even the rest of the petitioners were instigating the husband and the mother in law to subject her to cruelty. They started suspecting her chastity, started calling her debaucherous, even the husband disowned the girl born to her. Ultimately, she was assaulted and driven out on 02-11-2019.

5. The learned advocate for the petitioners would submit that the petitioners no. 4 and 5 are distant relatives who even reside in a different village and not in the matrimonial home. Petitioner no. 4 is the maternal uncle of the petitioner no. 1 - husband and the petitioner no. 5 is the son of the petitioner no. 4. Attempt is being made to falsely implicate them. There are no specific overt acts attributed to them. Though they have been named in the FIR and the statements of the witnesses, the reference is collective, together with the rest of the petitioners.

6. The learned advocate would further submit that the FIR has been lodged belatedly as a counter blast to the allegations levelled by the petitioner no. 1 - husband in a divorce petition filed by him against the respondent no. 2 on 07-01-2020. After causing appearance in the divorce petition she has concocted a story and lodged the FIR falsely implicating the petitioners.

7. The learned advocate would then point out that the Investigating Officer has recorded the statement of Dr. Swapna Patil under section 161 of the Code of Criminal Procedure and she has flatly denied about any incident as is being alleged in the FIR to have occurred wherein the respondent no. 2 has alleged that the petitioner no. 1 - husband had taken her to the hospital of Dr. Swapna Patil for carrying out the abortion. This clearly belies the allegations in the FIR and corroborates the petitioner's version of it being engineered.

8. Lastly, the learned advocate submits that accepting the allegations in the FIR and the statements of the witnesses at their face value, except naming the petitioners no. 4 and 5 collectively with the rest of the petitioners, no specific role is attributed to the petitioners no. 4 and 5. It would be abuse of the process of law if they are made to face the prosecution.

9. Learned APP and the learned advocate for the respondent no. 2 strongly oppose the petition even to the extent of the petitioners no. 4 and 5. They submit that there is enough material to reveal their complicity. They have instigated the husband and the mother in law to subject the respondent no. 2 to cruelty. An opportunity needs to be extended to the prosecution to substantiate the allegations. No threadbare enquiry is contemplated at this juncture.

10. We have carefully considered the rival submissions and perused the papers.

11. We are only concerned with the alleged involvement of the petitioners no. 4 and 5 in subjecting the respondent no. 2 to cruelty.

12. True it is that FIR is not supposed to be an encyclopedia and one cannot expect all the details making out necessary ingredients for the offences. But then, admittedly, the chargesheet has been filed and is available on the record.

13. Accepting the allegations in the chargesheet and the statement of the witnesses recorded under section 161 of the Code of Criminal Procedure, those are omnibus and similarly vague. Petitioners no. 4 and 5 have been collectively referred to as having taken part along with the rest of the petitioners in subjecting the respondent no. 2 to cruelty. Apart from the fact that they are residing separate in a different village of a different Taluka, the only allegation attributed to them is regarding exhortation to the petitioners no. 1 and 2 to subject the respondent no. 2 to cruelty. Even according to these allegations, these petitioners no. 4 and 5 have not actually subjected her to any physical or mental cruelty or ill-treatment.

14. We are of the considered view that care has been taken to somehow rope in even such distant relatives. Petitioner no. 4 is the

maternal uncle of the petitioner no. 1 - husband and the petitioner no. 5 is the son of the petitioner no. 4. It is being vaguely alleged that even they started casting aspersions on her character and instigated the petitioner no. 1 - husband to demand money.

15. We are afraid, these allegations in the peculiar facts and circumstances do not make out all the necessary ingredients with which the petitioners no. 4 and 5 are being sought to be implicated. Their case is squarely covered by the observations in the matter of ***Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others; (2022) 6 SCC 599.***

16. It would be abuse of the process of law if even such distant relatives like the petitioners no. 4 and 5 are made to face the prosecution based on such vague and omnibus allegations. Their case is covered by the categories laid down in the matter of ***State of Haryana and others Vs. Ch. Bhajan Lal and others; AIR 1992 SC 604.***

17. Writ petition is partly allowed.

18. Writ petition to the extent of petitioners no. 4 and 5 is allowed. Crime no.91 of 2021 registered at Ramanand Police Station, Jalgaon for the offences punishable under section 498A, 323, 504, 506, 406 r/w. 34 of the Indian Penal Code and criminal case bearing

R.C.C. no. 618 of 2021 pending before the learned Judicial Magistrate First Class, Jalgaon to their extent is quashed and set aside.

19. Writ petition to the extent of petitioner nos. 1 to 3 is dismissed as withdrawn.

[ABHAY S. WAGHWASE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/