

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 675 OF 2022

1. Umesh S/o Gangagir Giri (**Dismissed**)
2. Chandrakalabai W/o Gangagir Giri (**Dismissed**)
3. Ghanshyam S/o Gangagir Giri
4. Nikita W/o Ghanshyam Giri .. Petitioners

Versus

1. The State of Maharashtra
Through Police Inspector,
New Mondha Police Station,
Parbhani, Dist. Parbhani
2. Mrs. Manisha W/o Umesh Giri .. Respondents

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Advocate for petitioners : Mr. Pushpak U. Gujrathi

APP for the respondent – State : Mr. V.S. Badakh

Advocate for the respondent no. 2 : Mr. Dhananjay M. Shinde

Petition dismissed against petitioners no. 1 & 2 vide Court's order dated 04-07-2022

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**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 30 MARCH 2023

ORDER (MANGESH S. PATIL, J.) :

Heard.

2. This is a petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure for quashment of the crime no. 418 of 2021 registered at New Mondha Police Station, Parbhani, District – Parbhani for the offences punishable under section

498A r/w. 34 of the Indian Penal Code and the consequent criminal case bearing R.C.C. no. 211 of 2022 pending before the 5th Judicial Magistrate First Class, Parbhani.

3. The offence has been registered on the basis of FIR lodged by the respondent no. 2 who happens to be the wife of the petitioner no.1, daughter-in-law of petitioner no. 2 and sister-in-law of the rest of the two petitioners. Petition to the extent of petitioners no. 1 and 2 i.e. husband and the mother-in-law has been dismissed as withdrawn on 04-07-2022. It is therefore necessary to ascertain if some role can be attributed to the petitioners no. 3 and 4 and the material collected by the Investigating Officer in that respect.

4. Admittedly, the marriage was solemnized on 24-02-2019 and it appears that respondent no. 2 cohabited with the husband till 10-01-2020 when she was sent back to the paternal home. No attempts were made to take her back.

5. There are several allegations against the husband and the mother-in-law with which we are not concerned for the time being. In none of these earlier times till she was cohabiting in the matrimonial home, any whisper about the role played by the petitioners no. 3 and 4 has been made either in the FIR or even in the statements of the parents and the brother.

6. The only role attributed to them in the FIR and in the statement of the witnesses is to the effect that the husband was disowning the child. When on 08-04-2021 respondent no. 2 along with the son, her father, brother and one more person went to the matrimonial home, the petitioner no. 1 refused to let her in. He again expressly disowned the child and stated that it is the petitioners no. 3 and 4 who having told him that he was not allowing her to enter the house. Accepting this version at its face value, conspicuous absence of the petitioners no. 3 and 4 at the spot would not permit invoking the provisions of section 34 of the Indian Penal Code by resorting to which these two petitioners are now sought to be implicated.

7. The submission of the learned advocate of the respondent no. 2 that this version of the husband would constitute instigation, is attractive. However, there is absolutely no iota of material to substantiate that the petitioners no. 3 and 4 were really instigating the husband to subject the respondent no. 2 to cruelty by suspecting her chastity and questioning the paternity of the child. It would at the most constitute instigation to the incident of refusing entry to the respondent no. 2 in the matrimonial home which has nothing to do with the cruelty as is being attributed to the husband and the mother-in-law.

8. It would be an abuse of the process if with the quality of material collected in investigation rather dearth of it, the petitioners no. 3 and 4 are made to face the prosecution.

9. The petition is allowed to the extent of respondents no. 3 and 4.

10. Crime no. 418 of 2021 registered at New Mondha Police Station, Parbhani, District – Parbhani for the offences punishable under section 498A r/w. 34 of the Indian Penal Code and the consequent criminal case bearing R.C.C. no. 211 of 2022 pending before the 5th Judicial Magistrate First Class, Parbhani are quashed and set aside.

[ABHAY S. WAGHWASE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/