

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1887 OF 2022

- 1] Abdul Basit S/o Abdul Sattar
2] Sayra Begum W/o Abdul Sattar
3] Rubina Begum W/o Abdul Saber
4] Abdul Saber S/o Abdul Sattar
5] Shaikh Sahil Anjan S/o Shaikh Salim .. Applicants

Versus

- 1] The State of Maharashtra,
Through Police Inspector,
Bhokar Police Station,
District – Nanded
2] Shama Begum W/o Abdul Bari .. Respondents

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Advocate for applicants : Mr. Ashish Deshmukh h/f. Mr. Sachin S. Deshmukh
APP for the respondent – State : Mr. M.M. Nerlikar
Advocate for the respondent no. 2 : Mr. Avinash R. Borulkar
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**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 24 APRIL 2023

ORDER (MANGESH S. PATIL, J.) :

This is an application under section 482 of the Code of Criminal Procedure, 1973, seeking quashment of crime no. 176 of 2022 registered with Bhokar Police Station, District - Nanded for the offences punishable under section 498A, 323, 504, 506 r/w. 34 of the Indian Penal Code and the subsequent R.C.C. no. 68 of 2022 pending

on the file of the learned Judicial Magistrate First Class, Bhokar on the basis of the chargesheet.

2. We have heard both the sides finally.

3. The applicants are the parents-in-law of the respondent no. 2, paternal aunt of the husband and brother-in-law of the respondent no. 2. The husband is not before us.

4. The sum and substance of the allegations as can be made out from the FIR and the chargesheet are to the effect that the marriage of the respondent no. 2 was solemnized on 14-02-2016. She started cohabiting in the matrimonial home and gave birth to a daughter who on the date of the FIR was 5 years old. Initially she was maintained properly. However, subsequently, her husband started insulting her and started asserting that he had married her only for money. The husband along with all the applicants started insisting her that she should claim her right in the ancestral property which was having potential of laying plots. She was physically and mentally tortured by the husband. Somehow she could continue to cohabit but was driven out on 20-11-2018 and the FIR was lodged on 22-05-2022.

5. Learned advocate for the applicants would submit that there is enormous delay in lodging the FIR which leaves room for doubt about genuineness of the allegations. False and omnibus allegations

have been levelled without attributing specific role to the applicants. Merely because their names appear in the FIR that would not suffice. The statements of the witnesses are quite vague and omnibus. It is improbable that even the paternal aunt and paternal uncle of the husband would have indulged in subjecting the respondent no. 2 to cruelty. Primarily the allegations are only against the husband. Ingredients for constituting the offences cannot be made out. The applicant no. 2 is suffering from blood cancer and is being treated at Tata Memorial Hospital, Mumbai. The applicant no. 5 is serving as a clerk in the office of the Superintendent of Police, Parbhani. Attempt is being made to rope in the applicants to wreak vengeance. It would be abuse of the process of law if the applicants are made to face the prosecution. The case is squarely covered by decision of the Supreme Court in the matter of ***State of Haryana and others Vs. Ch. Bhajan Lal and others; AIR 1992 SC 604.***

6. Learned APP and the learned advocate for the respondent no. 2 strongly oppose the application. They submit that while exercising powers under section 482 of the Code of Criminal Procedure this Court cannot undertake threadbare scrutiny of the material collected by the Investigating Officer. FIR cannot be expected to be an encyclopaedia. Even the delay in filing the FIR does not play vital role since the offence has been registered as a result of matrimonial discord which forms the genesis, in all probability attempts

must have been made for amicable settlement for which some time must have been consumed. In any case, if the respondent no. 2 has been subjected to cruelty, no importance can be attached to the delay in lodging the FIR. They would further submit that there are witnesses supporting the allegations being levelled by the respondent no. 2. The application be rejected.

7. We have considered the rival submissions and perused the papers.

8. We are alive to the limitations on the powers of this Court exercisable under section 482 of the Code of Criminal Procedure in quashing the crime or criminal cases. The whole exercise should be in ascertaining if the ingredients for constituting the offence can be made out against the accused persons or any of them accepting the allegations being levelled in the FIR and the material collected by the Investigating Officer. We cannot indulge in scanning the material as if it is a piece of testimony / evidence. It is only to avoid misuse of the process bearing in mind the usual tendency of the destitute woman to rope in as many relatives of the husband as possible, as noticed in the matter of ***Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others; (2022) 6 SCC 599*** which in turn refers to several other decisions on the point, the power under section 482 of the Code of Criminal Procedure has to be exercised. Again the parameters have

been well settled in the matter of ***State of Haryana and others Vs. Ch. Bhajan Lal and others; AIR 1992 SC 604.***

9. True it is that an FIR cannot be expected to be an encyclopaedia. The respondent no. 2 would narrate and allege the reasons for husband and his relatives to subject her to cruelty with broad particulars. One needs to examine not only the FIR but even the statements of the witnesses and the other material collected.

10. Admittedly, the marriage took place in February 2016 and even according to the respondent no. 2, she was maintained properly and even gave birth to a child. She states that she was driven out from the matrimonial home on 20-11-2018. Since thereafter, she has been residing at her parental home.

11. The allegations are to the effect that the respondent no. 2 is having a share in the ancestral property which has a non-agricultural use potential and the husband and the applicants were allegedly insisting her to claim her share. One can easily appreciate the fact that the husband as alleged in the FIR and the statements of the witnesses could have ill-treated the respondent no. 2. However, the question is as to if these applicants also had played any direct role in subjecting her to cruelty. Though vaguely it is being alleged that husband as well as these applicants had indulged in subjecting her to physical and mental cruelty, no specific role exclusively attributable to each of the

applicants can be discerned in spite of careful consideration of the allegations in the FIR and the statements of the witnesses. They have been collectively named with the husband as having subjected her to cruelty.

12. Precisely in similar set of facts, in the matter of **Kahkashan Kausar** (supra) it was observed that attempt was being made to rope in the relatives of the husband *albeit* the allegations were only against the husband. Paragraph nos. 18 and 19 in the matter of **Kahkashan Kausar** (supra) read as under :-

18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused.

It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

19. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that all accused harassed her mentally and threatened her of terminating her pregnancy. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them.

This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is

concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.

13. In our considered view, it would be sheer abuse of the process of law to allow prosecution of the applicants with the quality of the material in the chargesheet.

14. The application is allowed.

15. Crime no. 176 of 2022 registered with Bhokar Police Station, District - Nanded for the offences punishable under section 498A, 323, 504, 506 r/w. 34 of the Indian Penal Code and the subsequent R.C.C. no. 68 of 2022 pending on the file of the learned Judicial Magistrate First Class, Bhokar, District - Nanded on the basis of the chargesheet are hereby quashed and set aside.

[ABHAY S. WAGHWASE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/