

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

77 CRIMINAL APPLICATION NO. 2414 OF 2022

1. Anmol S/o Madhukar Divekar
2. Madhukar S/o Keshavrao Divekar
3. Anita W/o Madhukar Divekar
4. Rajvir S/o Madhukar Divekar
[Application to the extent of applicant
nos.1 to 4 is disposed of as withdrawn
vide order dated 20.08.2022]
5. Sudhakar S/o Keshavrao Divekar
6. Mandakini W/o Sudhakar Divekar

Versus

1. The State of Maharashtra
2. Swati W/o Anmol Divekar

.....

Advocate for Applicants : Mr. Mahesh L. Muthal
APP for Respondent no.1-State : Mr. S. D. Ghayal
Advocate for Respondent no.2 : Mr. S. G. Kawade

.....

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

DATED : 27 MARCH 2023

PER COURT :-

1. Learned APP informs that the charge sheet has been filed in the interregnum.
2. Leave granted to amend the application. Amendment to be carried out forthwith to add the prayer for quashment of the charge sheet and the criminal case.

3. This is an application under Section 482 of the Code of Criminal Procedure, seeking quashment of crime vide FIR no. 59/2022 registered with Mukundwadi Police Station, District Aurangabad for the offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961 as well as the criminal case bearing R.C.C. No. 897/2022 pending on the file of Judicial Magistrate First Class, Aurangabad.

4. We have heard learned Advocate for the applicants, learned APP for the State and learned Advocate for respondent no.2.

5. The application to the extent of applicant nos. 1 to 4 has already been dismissed as withdrawn.

6. Applicant nos. 5 and 6 are cousin of the husband and his wife respectively.

7. The FIR *inter alia* reads that all the applicants were demanding money and respondent no.2 was subjected to ill-treatment, physical and mental, on that count. Except this statement, there are absolutely no allegations revealing complicity of applicant nos. 5 and 6 in

subjecting respondent no.2 to cruelty. Obviously, if respondent no.2 is aware about their names, no importance can be attached just because their names appear in the FIR.

8. Even according to the FIR, respondent no.2 was subjected to ill-treatment till 27.07.2021 on which date she alleges about having been driven out after an assault was carried out by all the applicants. No such role is attributed to applicant nos. 5 and 6 on any earlier occasion, though marriage was solemnized on 17.05.2018. It is therefore apparent that it is only in the last episode, in which she alleges to have been assaulted and driven out, that the applicant nos. 5 and 6 have been roped in.

9. As is mentioned herein above, the application to the extent of applicant nos. 1 to 4 i.e. husband, parents-in-law and the brother-in-law has already been withdrawn.

10. It is not the case that applicant nos. 5 and 6 have been cohabiting either under same roof or in the vicinity. In our considered view, this is yet another instance where the consistent view of the Supreme Court expressed in the matters of *Preeti Gupta and another v. State of Jharkhand and another AIR 2010 SC 3363*, *Geeta*

Mehrotra and another v. State of U.P.; 2021 SCC OnLine SC 1251 and latest in the case of *Kahkashan Kausar @ Sonam and others v. State of Bihar and others; (2022) 6 SCC 599* stands fortified about attempt to rope in all the relatives of the husband. It would be sheer abuse of the process of the court if applicant nos. 5 and 6 are allowed to be prosecuted.

11. The application is partly allowed. The crime vide FIR no. 59/2022 registered with Mukundwadi Police Station, District Aurangabad for the offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961 and the criminal case bearing R.C.C. No. 897/2022 pending on the file of Judicial Magistrate First Class, Aurangabad are set aside to the extent of applicant nos. 5 and 6.

[ABHAY S. WAGHWASE, J.]

[MANGESH S. PATIL, J.]

vre