

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1787 OF 2021

- 1] Satyashila W/o Pandharinath Vaidya
2] Shyam S/o Pandharinath Vaidya
3] Vaishali W/o Shyam Vaidya @
Vaishali D/o Haribhau Bhise .. Applicants

Versus

- 1] The State of Maharashtra
Through Police Station Majalgaon (Rural)
Dist. Beed
2] Sunita W/o Ram Vaidya .. Respondents

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Advocate for the applicants : Mr. Amar V. Lavte
APP for the respondent – State : Mr. S.D. Ghayal
Advocate for respondent no. 2 : Ms. Manisha Dalave h/f. Mr. V.D. Salunke

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

DATE : 24 APRIL 2023

ORAL ORDER (MANGESH S. PATIL, J.) :

This is an application under section 482 of the Code of Criminal Procedure, 1973, seeking quashment of crime no. 165 of 2021 registered with Majalgaon Police Station (Rural), District – Beed for the offences punishable under section 498A, 323, 403, 506 r/w. 34 of the Indian Penal Code and the chargesheet and criminal case bearing R.C.C. no. 380 of 2021 pending on the file of learned Judicial Magistrate First Class, Majalgaon, District – Beed.

2. We have heard both the sides finally.

3. After hearing the parties when we express our disinclination to grant any relief to the applicant no. 1 who happens to be the mother-in-law of the respondent no. 2, learned advocate, on instructions, seeks leave to withdraw the application to her extent.

4. The husband is not before us. We are, therefore, required to consider only the material available against the applicant nos. 2 and 3, if any.

5. The sum and substance of the allegations as can be discerned from the FIR and the statements of the witnesses is to the effect that the marriage took place on 02-05-2005. After maintaining the respondent no. 2 properly for first year of the marriage, all the applicants and the husband subjected her to cruelty. Her husband started asserting that he had unwillingly married her. There was a demand for money to buy a car. She was subjected to ill-treatment. The applicants were instigating the husband to assault her. In spite of she having narrated the incidents to her parents and they having intervened with some independent individuals whose statements have been recorded under section 161 of the Code of Criminal Procedure, namely, Kadaji Kondiba Jadhav, Manohar Mukundrao Kundkar, the ill-treatment persisted and she was driven out.

6. The learned advocate for the applicants submits that the applicant nos. 2 and 3 have been falsely roped in to wreak vengeance. There are no specific allegations attributing them to have indulged in some cruelty. It is merely being alleged that they had instigated the husband and in turn he had subjected her to cruelty. He submits that applicant nos. 2 and 3 are residing elsewhere and not in the matrimonial home. Based on such vague and omnibus allegations, they cannot be made to face trial. It would be abuse of the process of law.

7. Learned APP and the learned advocate for the respondent no. 2 strongly oppose the application. They submit that at this juncture, no threadbare scrutiny of the material collected by the Investigating Officer can be resorted to. The statements of independent witnesses are sufficient to disclose commission of crime of alleged cruelty meted out to the respondent no. 2 by the husband and all the applicants.

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

9. The foremost thing that needs to be borne in mind is that the respondent no. 2 could cohabit in the matrimonial home for almost 15 years. The dispute seems to have started only thereafter. She could beget couple of children who succumbed at the early age. We are indicating these circumstances just to point out that if really the

respondent no. 2 could cohabit in the matrimonial home for so long and if soon after the marriage she was subjected to ill-treatment for the alleged demand, it was expected in the normal course that she would narrate the incidents if some role was attributable to the applicants 2 and 3 who happen to be brother-in-law and his wife. They have been collectively named along with the husband and the applicant no.1 mother-in-law as having subjected her to cruelty.

10. Obviously, there seems to be some bickering between the couple. Though the FIR is silent, in her complaint with the women's grievance cell she has even alleged about he having solemnized second marriage and having begotten a daughter and it is only when the second lady with a daughter was brought to matrimonial home that the dispute started. Again we intend to point out this to demonstrate that if this was the cause for the matrimonial discord, no allegations are being levelled as against the applicants 2 and 3 about having instigated the husband even in having an affair and solemnizing the second marriage or bringing the second lady home.

11. Pertinently, none of the witnesses whose statements have been recorded under section 161 of the Code of Criminal Procedure have come out with any version regarding such second marriage and a girl having been borne out of such relation.

12. Again, even witnesses from the parental side of the respondent no. 2, are quite vague and omnibus in attributing the allegations against the applicant nos. 2 and 3. They have also in unison named the husband and the mother-in-law.

13. The allegations in our considered view are such vague to demonstrate that case squarely falling on the lines that was the fact situation in the matter of ***Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others; (2022) 6 SCC 599.***

14. It would be abuse of the process of law if the applicant nos. 2 and 3 are made to face the prosecution as has been laid down in the parameters of ***State of Haryana and others Vs. Ch. Bhajan Lal and others; AIR 1992 SC 604.***

15. The application is partly allowed.

16. Crime no. 165 of 2021 registered with Majalgaon Police Station (Rural), District – Beed for the offences punishable under section 498A, 323, 403, 506 r/w. 34 of the Indian Penal Code and the chargesheet and criminal case bearing R.C.C. no. 380 of 2021 pending on the file of learned Judicial Magistrate First Class, Majalgaon, District – Beed to the extent of applicant nos. 2 and 3 are quashed and set aside.

17. The application to the extent of applicant no.1 is dismissed as withdrawn.

[ABHAY S. WAGHWASE]
JUDGE

arp/

[MANGESH S. PATIL]
JUDGE