

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2482 OF 2022

1. Anil Pralhad Rathod,
Age: 32 years, Occu. Agri,
R/o. Varvanti. Tq. Ahmedpur, Dist. Latur.
2. Sunil Pralhad Rathod,
Age: 30 years, Occu. Education
R/o. Varvanti. Tq. Ahmedpur, Dist. Latur.
3. Pralhad Hari Rathod,
Age: 72 years. Occu. Household,
R/o. Varvanti, Tq. Ahmedpur, Dist. Latur.
4. Laxmibai Pralhad Rathod,
Age: 74 years, Occu. Household,
R/o. Varvanti, Tq. Ahmedpur, Dist. Latur.
5. Sangita Pralhad Rathod,
Age: 22 years, Occu. Education,
R/o. Varvanti. Tq. Ahmedpur, Dist. Latur.
6. Anita Ramesh Jadhav,
Age: 41 years, Occu. Service,
R/o. New Vidya Nagar, Ahmedpur,
Tq. Ahmedpur. Dist. Latur.
7. Kavita Prakash Ade,
Age: 41 years, Occu. Service,
R/o. Tandulwadi, Tq. Palam,
Dist. Parbhani

... **APPLICANTS**

VERSUS

1. The State of Maharashtra
Through the Officer Incharge of
Police Station, Malakoli, Tq. Loha,
Dist. Nanded.
2. Renuka Anil Rathod,
Age: 24 years. Occu. Household,
R/o. Thaku Naik Tanda, Risangaon
Tq. Loha, Dist. Nanded.

... **RESPONDENTS**

...
Mr. Yogesh P. Deshmukh, Advocate for the applicants
Mr. R.V. Dasalkar, APP Respondent/State
Mr. D.A. Madake h/f. Mr. S.B. Madde, Advocate for respondent No.2
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**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 27.03.2023

ORDER (MANGESH S. PATIL, J.) :

This is an application under Section 482 of the Code of Criminal Procedure seeking quashment of Crime No.0020/2021 registered with Malakoli Police Station, Tq. Loha, Dist. Nanded for the offences punishable under Section 498-A, 323, 506 read with Section 34 of the Indian Penal Code and the consequent charge sheet and the criminal case R.C.C. No.68/2021 pending on the file of learned JMFC, Loha.

2. At the outset it is necessary to observe that when this Court had expressed its disinclination to grant any relief to the applicant Nos.1, 3 and 4, they had withdrawn their application and it was dismissed to their extent.

3. The rest of the applicants are the brother, unmarried sister and married sisters of the husband of the respondent No.2.

4. We have heard both the sides and perused the papers.

5. The respondent No.2 alleges that she was married to the applicant No.1 on 28.03.2016. She was maintained properly till August 2020. She could beget a son and was carrying pregnancy of about eight months second time when the FIR was lodged on 23.01.2021. She alleges that she was subjected to physical and mental torture by all the applicants. Even they started suspecting her character. They started demanding money and was ultimately driven out of the house. She tried to settled the dispute

and resume cohabitation but was not allowed to do so.

6. The learned advocate for the applicants would submit that a false and concocted FIR has been lodged which is clearly an after thought. The applicant No.1 had specifically alleged that the respondent No.2 was maintaining adulterous relationship with a person and in spite of repeated requests she did not desist and ultimately filed a petition for divorce specifically on the ground of such adultery by arraying the paramour. It is thereafter, as a counter blast, the FIR has been lodged. The genesis of the FIR is such matrimonial discord. The other relations of the applicant No.1 had no role in the matter. It would be abuse of the process of law if they are made to face the prosecution with such vague and concocted version.

7. The learned APP and the learned advocate for the respondent No.2 strongly oppose the application.

8. We have carefully gone through the papers. Obviously, we cannot comment upon the serious allegations being levelled by the applicant No.1 - husband against the respondent No.2 - wife about she being in adulterous relation. The issue is subjudice before the competent court.

9. However, the fact remains that the sequence of the events would carry some weight. It is only after the husband filed a petition for divorce with such serious allegations on 02.12.2020 that the FIR has been lodged on 23.01.2021. A copy of the petition with the notice was served to the wife on 15.12.2020 as can be seen from the bailiff report (Exhibit-D). Meaning thereby that the FIR has been lodged after she became aware about

the serious allegations being levelled by the applicant No.1.

10. The applicants have also annexed a copy of the complaint filed by the applicant No.1 with the PI of Police Station, Ahmedpur on 18.09.2020 bearing an acknowledgment of the officer incharge of the police station. Even in that it was alleged that she was in adulterous relation and that she and her paramour were threatening him to shell of money and severe the matrimonial ties. The fact of lodging of such complaint even before filing of the petition for divorce has not been controverted by the respondents. As is mentioned herein above we are not commenting upon the veracity or otherwise of the allegations being levelled by the applicant No.1. We are merely referring to these sequence of events to demonstrate that the FIR has been lodged after the respondent No.2 became aware about the seriousness of allegations.

11. If such was the sequence of events, it was expected that the respondent No.2 would come out with the details regarding the alleged demand for money and the incident of subjecting her to cruelty. The FIR is as vague as it could be. The applicant Nos.2,5,6 and 7 have been named jointly with the applicant Nos.1, 3 and 4 as having subjected her to cruelty. If the husband, father-in-law and mother-in-law were demanding the money and subjecting her to cruelty, it was imperative to demonstrate some overt act or the role exclusively played by the rest of the applicants in subjecting her to cruelty. Merely because some of them are residents of the same village one cannot reach a conclusion that even they had participated in

subjecting her to cruelty.

12. The statements of the witnesses recorded under Section 161 are also similarly vague. Since the respondent No.2 and in all probability even her relations from the parental side being aware about the allegations being levelled by the applicant No.1 touching her character, it was expected of them to have come out with some statements in respect of these allegations if according to them those were untrue. Not even a faint attempt has been made by either the respondent No.2 or the witnesses who are the parents, paternal and maternal uncles to address these allegations. Even they are equally vague as is the FIR while attributing some role to the applicants Nos.2, 5 to 7. In our considered view, it would be abuse of the process of law if these other applicants are made to face the prosecution, as is laid down in the matter of **State of Haryana and Ors. V/s Ch. Bhajan Lal and Ors.; (1992) SCC (Cri) 426.**

13. The Application is partly allowed. The Crime No.0020/2021 registered with Malakoli Police Station, Tq. Loha, Dist. Nanded and the consequent charge sheet and the criminal case R.C.C. No.68/2021 pending on the file of learned JMFC, Loha is quashed and set aside to the extent of the applicant Nos.2,5, 6 and 7. The application to the extent of applicant No.1,3,4 is dismissed.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)