

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

CRIMINAL APPLICATION NO.2644 OF 2022

1. Subhash s/o. Tukaram Tarte
(withdrawn),
 2. Nagorao s/o. Tukaram Tarte,
 3. Aruna w/o. Nagorao Tarte
- ..Applicants

Vs.

1. The State of Maharashtra,
 2. Kirtika w/o. Subhash Tarte
- ..Respondents

Mrs.S.G.Chincholkar, Advocate for applicants
Mr.M.M.Nerlikar, APP for respondent no.1
Mr.R.M.Gaikwad, Advocate for respondent no.2

**CORAM : R.G.AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATE : AUGUST 25, 2023**

ORDER :-

This application under Section 482 of the Code of Criminal Procedure, has been filed for quashment of the FIR, being Crime No.0145 of 2019, registered with Police Station, Usmannagar, Dist.Nanded, for the offences punishable under Sections 498-A and 323 read with Section 34 of Indian Penal Code and the consequential Charge-Sheet in R.C.C. No.38 of 2020.

2. What can be gathered from the FIR and the related police papers is that the respondent-wife married applicant no.1 – Subhash in May, 2011. On marriage, she started residing at her matrimonial home. She was treated well for three years of marriage. The couple is blessed with a baby boy. Applicant no.1, thereafter, started harassing and illtreating her, so as to coerce her to fetch Rs.50,000/- from her parents for doing business.

3. Our attention has been drawn to certain documents indicating that applicant no.1 had wife living, when he contracted second marriage with the respondent - informant. It is true that there is on record an application moved under Section 125 of the Code of Criminal Procedure, indicating one lady to have filed said application against applicant no.1. She claimed to have married applicant no.1 way back in 2010, whereas, the informant herein claims to have married with applicant no.1 a year thereafter. Necessarily, applicant no.1 appears to have not disclosed the fact of existence of his first marriage to the informant, when he contracted second marriage with her. As such, it is a matter to be gone into by the trial Court.

4. In our view, there is *prima facie* sufficient material to proceed against applicant no.1. Learned counsel for the applicants relies on the judgment of the Apex Court in the case of **Shivcharan Lal Verma Vs. State of Madhya Pradesh, 2002 DGLS (SC) 209**. Since the said judgment is post-conviction, we do not propose to rely on the same. It has to be proved before the trial court that applicant no.1 had wife living when he contracted the second marriage with the informant. It being the factual matrix, we relegate the parties before the trial court.

5. In view of the above, we expressed disinclination to grant relief to applicant no.1. Learned counsel for the applicants, on instructions, seeks withdrawal of the application of applicant no.1.

6. The application of applicant no.1 stand disposed of as withdrawn.

7. So far as applicant no.2 – brother and his wife (applicant no.3) are concerned, they are alleged to have harassed and illtreated the respondent - informant over her ability to cook. They are also alleged to have instigated applicant no.1 to illtreat and harass her and to make unlawful demand of money. No specific

incident of abetment or harassment by these applicants has been averred in the FIR. In the circumstances, asking applicant nos.2 and 3 to stand trial would be an abuse of the process of court.

8. The application is allowed in terms of prayer clause (b) qua applicant nos.2 and 3.

9. Fee of learned counsel appointed to represent respondent no.2 is quantified at Rs.7,000/- (Rupees Seven Thousand).

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP