

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

CRIMINAL WRIT PETITION NO. 1133 OF 2022

1. Snehalata Harichandrarao Lipne
Age: 60 years, Occu.: Housewife,
R/o Shelgaon, Tq. Partur,
Dist. Jalna

2. Nitin Harichandrarao Lipne
Age: 38 years, Occu.: Service,
R/o Silver Mist, Pimple Soudagar,
Pune

..PETITIONERS

VERSUS

1. State of Maharashtra
Through P.S. Ashti, Tq. Partur,
Dist. Jalna

2. Meera d/o Panditrao More
(Meera w/o Nitin Lipne)
Age: 32 years, Occu.: Service,
R/o Survey No.15/10B, Sargam Society,
Lane No.2, Plot No. 87,
Juna Warje Naka, Karvenagar, Pune

..RESPONDENTS

....

Mr. Anand Chawre, and Ms. Vandana Sadawarte, Advocates h/f Mr. A.B. Gaikwad (Patil), Advocate for petitioners
Mr. M.M. Neralikar, A.P.P. for respondent no.1 – State
Mr. R.A. Jaiswal, Advocate for respondent no.2 (appointed)

....

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 16th FEBRUARY, 2023

PER COURT :

1. Heard finally at admission stage with consent of learned counsel for the respective parties.

2. This petition is filed under Article 226 of the Constitution of India and Section 482 of Code of Criminal Procedure to quash the F.I.R. bearing C.R. No. I-33 of 2018 registered with Ashti Police Station, Dist. Jalna and consequent criminal proceeding bearing R.C.C. No. 6 of 2019 pending on the file of J.M.F.C., Partur for the offences under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of Dowry Prohibition Act, 1961.

3. The marriage of Respondent No.2 and Petitioner No.2 was solemnized on 26th February, 2012. It is stated that the Respondent No.2 left the matrimonial home on 01st June, 2012. The Petitioner No.2 filed a divorce petition on 16th September, 2013, whereas the Respondent No.2 raised a counter claim on 12th June, 2014 for restitution of conjugal rights. The trial Court by its judgment dated 13th December, 2017 dismissed the suit for divorce and decreed the counter claim for restitution of conjugal rights. Subsequent to the said judgment, the Respondent No.2 filed the F.I.R. dated 20th March, 2018, wherein she alleged that after she quit her job in a software company at Vikroli, the Petitioner No.1 started taunting her and demanded remaining dowry of Rs.1.5 lakhs. She claims that all the petitioners came to her parental home and questioned her for quitting the job. She was told that the Petitioner No.2 had married her because of her job. They demanded dowry of Rs.1.5 lakhs and the income that she had earned prior to her

marriage. She claims that all the petitioners abused and threatened her. It is also alleged that all her in-laws assaulted her and drove her out of matrimonial home.

4. Respondent No.2 had filed a proceeding viz. Criminal Miscellaneous Application No. 5124 of 2014 under the Domestic Violence Act, wherein she had made the similar allegations. The said proceeding was dismissed vide order dated 15th September, 2018. The records further reveal that the petitioners had challenged the judgment of the trial Court dismissing the suit of divorce petition. While the matter was pending before the first appellate Court, both the parties agreed to convert the said proceeding into divorce by mutual consent under Section 13(B) of the Hindu Marriage Act, 1955. A perusal of the said petition reveals that the parties had decided to withdraw all the cases filed against each other. The Respondent No.2 had also agreed to waive off her right of maintenance and all other matrimonial expenses. The said suit came to be decreed on 01st August, 2019 and the marital ties between the Applicant No.2 and Respondent No.2 were dissolved by the decree of divorce by mutual consent. In this backdrop, the present petition has been filed for quashing the F.I.R. and criminal proceedings as per the consent given by Respondent No.2.

5. Learned counsel for the Respondent No.2 states that previous proceeding, being Criminal Writ Petition No. 1765 of 2018 filed by these

petitioners was withdrawn since the Court had expressed disinclination to grant the relief. It may be mentioned that the said proceeding was filed prior to the decree of divorce by mutual consent. The present petition has been filed only in view of the no objection accorded by the Respondent No.2 for withdrawal of all the complaints against the petitioners. In view of the same, withdrawal of the previous petition would not be a ground to dismiss the present petition. In our considered view, the marriage having been dissolved with mutual consent and the Respondent No.2 having accorded consent for withdrawal of all the complaints, Respondent No.2 cannot be heard to say that the petition for quashment of the F.I.R. and criminal proceedings is not maintainable.

6. Be that as it may, the records reveal that the F.I.R. was lodged more than five years after the Respondent No.2 left her matrimonial home. In fact the allegations of cruelty were made after the trial Court had dismissed the suit for divorce and decreed the counter claim for restitution of conjugal rights. Moreover, the omnibus allegations made in the F.I.R. against the husband and his entire family do not constitute cruelty within the meaning of Clause (a) and (b) of Explanation to Section 498-A I.P.C. In our considered view, the F.I.R. and the other material on record collected in the course of investigation do not disclose offence as alleged. Hence, it would be an abuse of the process of Court to compel the petitioners to face an unfounded criminal proceeding.

7. In these circumstances, criminal writ petition is allowed in terms of prayer clauses (B) and (C). Consequently, the F.I.R. bearing C.R. No. I-33 of 2018 registered with Ashti Police Station, Dist. Jalna and consequent criminal proceeding bearing R.C.C. No. 6 of 2019 pending on the file of J.M.F.C., Partur for the offences under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of Dowry Prohibition Act, 1961 stand quashed, qua the applicants.

8. Fees of Mr. R.A. Jaiswal, learned counsel appointed to represent the Respondent No.2 is quantified to Rs.6,000/- (Rupees Six Thousand) and to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(R.M. JOSHI, J.)

SSD

(SMT. ANUJA PRABHUDESSAI, J.)