

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2591 OF 2019

VIVEK S/O SHANTILAL ZELWAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for the Applicants : Mr.Vijay Y. Patil
APP for the Respondent – State : Mrs. M.A. Deshpande
Advocate for Respondent no.2 : Mr.T.M. Venjane
...

**CORAM : MANGESH S. PATIL &
M.M. SATHAYE, JJ.**

DATE : 10 MARCH 2023

ORDER (M.M. SATHAYE, J) :-

Notice for final disposal was issued in this matter and Respondents appeared through learned APP and learned advocate for the informant.

2. By order dated 10.02.2023, this matter was referred to mediation as it is arising out of matrimonial dispute. By report dated 02.03.2023, learned Mediator has reported that the mediation has failed. In these circumstances, the matter is taken up for final disposal.

3. After arguing the matter for some time, when this Court expressed its disinclination to grant any relief on merits to Applicant nos.1, 2 and 3 i.e. the husband, father-in-law and mother-in-law of Respondent no.2 – informant, learned counsel for the Applicants, on instructions, seeks leave to withdraw the application to the extent of

Applicant nos.1, 2 and 3. The application is, therefore, dismissed as withdrawn to the extent of Applicant nos.1, 2 and 3. Applicant nos.4 to 14, who are now prosecuting the application, are brother-in-law, grandmother and other distant relatives of the husband of Respondent no.2.

4. This is an application under section 482 of the Criminal Procedure Code for quashment of F.I.R. no.0142 of 2019 registered with Ajantha Police Station, Tq. Sillod, Dist. Aurangabad, which is subsequently registered as Regular Criminal Case No. 44 of 2020, for the offences punishable under sections 498-A, 323, 504, 506, 34 of the Indian Penal Code and under sections 3 and 4 of Dowry Prohibition Act.

5. Learned counsel for the Applicants submitted that the allegations against Applicant nos.4 to 14 are omnibus in nature and no specific role is attributed to them in commission of alleged crime. He submitted that Applicant No. 4 is brother and Applicant no.5 is grandmother of the husband and Applicant nos.6 to 14 are distant relatives, who had acted as mediators in the marriage. He further submitted that even according to the F.I.R., the matrimonial house is at Pisadevi Harsul, Ajintha, Dist. Aurangabad and Applicant nos.6 to 14 are residents of other places such as Ravaki, Tq. Jamner, Dist. Jalgaon and Pimpalgaon Hareshwar or proper Ajintha, in Dist. Aurangabad. He submitted that the allegations in the FIR as well as the statements

recorded in subsequent investigation, do not spell out clear and specific role of all these Applicants in commission of alleged crime against Respondent no.2.

6. Per contra, learned counsel for Respondent no.2 – informant wife and learned APP for Respondent no.1 – State contended that there is specific material available against these Applicants also and an opportunity deserves to be granted to the prosecution to prove the case against these Applicants.

7. We have carefully considered the submissions of both the sides and perused the record.

8. Perusal of FIR shows that according to Respondent no.2- informant, the marriage has taken place on 09.02.2018 at Aurangabad and after peaceful cohabitation for 3-4 months, brother-in-law & grand mother along with the husband and parents-in-law started ill-treating Respondent no.2 for demand of Rs.20,00,000/- for purchase of house. Respondent no.2 was driven out of the matrimonial house on 20.06.2018 when she went to her parental house at Ajantha. Then on 02.09.2018 the husband and parents in law alongwith Applicant Nos. 6 & 10 came to take her back but husband and parents-in-law used filthy language and husband tried to act unruly. Things did not work out. Ultimately on 12.10.2018, only husband came and took Respondent No. 2 with him and they started living separately, but husband

continued to harass her at the instance of in laws and again on 26.04.2019, the Respondent No. 2 was driven out when she again came to parental house at Ajantha. Then a meeting took place on 10.06.2019 for reaching settlement, when Applicant nos.6 to 14, who are mediators and distant relatives, were called and after discussing the matter, suddenly mediators took a stand saying that they will find a new bride for husband Vivek and all of them created ruckus and threatened to kill and repeated demand of money to buy house.

9. Perusal of the charge-sheet and statements recorded during the investigation shows that Respondent no.2 has reiterated same case as in the FIR. So also statements of witnesses show that they are identical in nature and the statements of neighbours are hear-say and the statements of mother and brother of Respondent no.2 are exactly the same as in the FIR.

10. The law regarding prosecution of the distant relatives in such cases is crystallized and succinctly stated by Hon'ble Apex Court in ***Preeti Gupta and another Vs. State of Jharkhand and another AIR 2010 SC 3363, Geeta Mehrotra and another Vs. State of U.P.; 2021 SCC OnLine SC 1251 and latest in the case of Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others; (2022) 6 SCC 599.***

11. After going through the record, in our considered opinion, the allegations are totally omnibus in nature and no specific role is attributed to Applicant nos.4 to 14 individually in commission of alleged crime. The statements are simply reiteration of each other and they are made conjointly with the husband and parents-in-law. Applicant No. 4 brother-in-law is stated to be residing at Dehu-Alandi Road, Dist. Pune and Applicant no.5 grand-mother is 75 years old lady, who is stated to be resident of Waki, Tq. Jamner as per cause title, both of which are neither matrimonial house nor parental house of the respondent no.2. Applicant nos.6 to 14, mediators - distant relatives of husband are also residing elsewhere not connected with either matrimonial or parental house of Respondent no.2. With such omnibus and conjoint statements, if Applicant nos.4 to 14 are allowed to be prosecuted, it will be clear abuse of process of Court. According to us, this case is squarely covered by the case law stated supra and it falls in one of the categories provided in the case of ***State of Haryana and others Vs. Ch. Bhajan Lal and others; AIR 1992 SC 604***, and therefore, the alleged crime deserves to be quashed so far as Applicant nos.4 to 14 are concerned.

12. We, therefore allow the Application and quash and set aside F.I.R. no.0142 of 2019 registered with Ajantha Police Station, Tq. Sillod, Dist. Aurangabad and subsequently registered Regular Criminal Case No. 44 of 2020, for the offences punishable under sections

498-A, 323, 504, 506, 34 of the Indian Penal Code and under sections 3 and 4 of Dowry Prohibition Act, to the extent of Applicant nos.4 to 14 only.

[M.M. SATHAYE]
JUDGE

[MANGESH S. PATIL]
JUDGE

sga/