

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

921 CRIMINAL APPLICATION NO. 2799 OF 2019

**SHAIKH IRASHAD S/O. SK. RAZZAQUE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicants : Mr. G. R. Syed
APP for Respondent No.1-State : Mr. R. D. Sanap
Advocate for Respondent No.2 : Ms. Sarita Gaikwad (appointed)

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

DATE : 28 FEBRUARY 2023

PER COURT :-

1. At the outset, learned counsel for the applicants seeks leave to withdraw the application against applicant no.1. Learned counsel also seeks to amend the prayer clause as to incorporate the R.C.C. number.
2. Leave granted. Amendment to be carried out forthwith. The application to the extent of applicant no.1 stands dismissed as withdrawn.
3. With consent, heard finally at admission stage.
4. This is an application under Section 482 of the Code of Criminal Procedure (Cr.PC.) to quash the First Information Report No. 0210 of 2018

(FIR) registered at Nanalpeth Police Station, Parbhani and the RCC No. 596 of 2018 pending on the file of learned Judicial Magistrate, First Class at Parbhani for the offences punishable under Sections 498-A, 323, 504 r/w 34 of the Indian Penal Code (IPC).

5. Heard learned counsel for the applicants, learned APP for the State and learned counsel for respondent no.2. We have perused the records and considered the submissions advanced by learned counsel for the respective parties. The only question for our consideration is whether the FIR and the other records, which form part of the chargesheet, shows involvement of applicant nos.2 to 6 in commission of the crime as alleged.

6. Records reveal that the marriage of respondent no.2 and applicant no.1 was solemnized on 30.05.2003. They have four children from the said wedlock. Respondent no.2 lodged the FIR on 24.05.2018 alleging that her husband started ill-treating her within 15 days of the marriage. She has further stated that he used to constantly tell her to return to her parental home. She stated that her husband did not contact her for a period of eight months when she was at her parental home. He agreed to cohabit with her only when they had decided to lodge a complaint against him. She claims that he treated her well for some days and once again started abusing and assaulting her. She claims that applicant no.1 used to constantly demand

Rs.50,000/- from her father and insisted that her father should provide him an employment. She claims that one Ahmed Siddiqui, a friend of applicant no.1, constantly interfered in their lives. Her husband also used to constantly threaten to divorce her. When she once again went to her parental home, her husband filed a suit for restitution of conjugal rights. She claims that when she went to her matrimonial home to see her daughters, applicant no.1, his sister and her husband assaulted her and did not allow her to meet her children. She claims that her husband has been constantly subjecting her to physical and mental cruelty. Based on the said allegations, the aforesaid crime came to be registered against applicant no.1 and his family members.

7. The records *prima facie* reveal that the allegations of physical and mental cruelty are essentially against applicant no.1-husband. Applicant no.2 is the mother and applicant no. 3 is the brother of applicant no.1. Applicant nos. 4 and 5 are the married sisters of applicant no.1, whereas applicant no.6 is the husband of applicant no.5. These applicants were not residing in the matrimonial home of respondent no.2. The allegations against these applicants are omnibus and there is no specific accusation that they had subjected respondent no.2 to physical and mental cruelty, within the meaning of clauses (a) and (b) of the Explanation to Section 498-A of IPC. It is evident that respondent no.2 has dragged the entire family of applicant no.1 in the matrimonial dispute. Subjecting these applicants to face criminal trial on the

basis of unfounded allegations would be nothing but an abuse of the process of law. Under the circumstances, we are of the considered view that this is a fit case to exercise powers under Section 482 of Cr.P.C. and to quash the proceedings *qua* the applicant nos. 2 to 6. In the result, the application is allowed in terms of prayer clauses (B) and (C). Consequently, the FIR being crime no. 0210/2018 registered with Nanalpeth Police Station and R.C.C. No. 596 of 2018 pending on the file of learned JMFC, Parbhani are quashed *qua* the applicant nos. 2 to 6. The criminal application is accordingly disposed off.

8. Fees of the appointed Advocate is quantified at Rs.6,000/-, to be paid by the High Court Legal Services Authority, Sub-Committee, Aurangabad.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

VRE