

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

42 CRIMINAL APPLICATION NO.3351 OF 2022

**NITESH JAGANNATH DHAVARE AND OTHERS
VERSUS**

JYOTI @ MOHINI W/O. NITESH DHAVARE

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Advocate for Applicants : Mr. Dhaware Rajkumar B.
Advocate for Respondent No. 2 : Mr. Gadsing Umesh S. Sandanshiv,
Mr.M.B. Gadsing Umesh S.

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CORAM : KISHORE C. SANT, J.

DATE : 25.04.2023

PER COURT :

01. After hearing, the application is taken up for final disposal by consent of the parties.

02. The challenge is to the order dated 26.10.2021 passed by the learned Judicial Magistrate First Class, Court No.3, issuing process for the offences punishable under Sections 498-A, 323, r/w 34 of the Indian Penal Code and for quashing of RCC No. 66/2019.

03. Applicant No.1 is the husband of respondent. Applicants nos. 2, 3 are the parents of the husband, applicant no. 4 is his brother , applicant no. 5 is wife of brother, applicant nos. 6 and 7 are brothers of her husband, applicant no. 8 is married sister of her husband. The

respondent filed a private complaint with the allegations against the accused / applicants of cruelty at their hands. It is alleged that on 07.04.2019 all the applicants had been to the parents of the respondent, they assaulted and abused the respondent for filing complaint to the police in respect of incident dated 10.02.2019. It is also alleged that there was demand from the parents of the respondent.

04. The learned Magistrate recorded a verification of the respondent and called for report u/s. 202 from the police. The police submitted report on 05.08.2021, In report, it is stated that the allegations are prima facie found to be correct. The learned Magistrate on perusal of the report issued the process.

05. The learned Advocate for the applicant submits that no specific allegation is made against any of the applicant specifically. Applicants No. 4, 5, 6 and 8 are resident of different place and they were not present when the alleged incident took place. Applicant No.8 is married sister of applicant No.1 and is residing with her husband and she has not visited to the house of parents of respondents. He therefore, submits that the case is made out for quashing of proceeding and the impugned order.

06. He submits that even proceeding under Domestic Violence Act was filed and this Court has quashed the said proceedings except against applicant Nos. 1 to 3.

07. The learned counsel for the respondent submits that the complaint is supported by the police report. The learned Magistrate has rightly allowed application partly by application of mind and no interference is called for. He has also filed detailed reply on record. Considering the allegations made in the complaint and considering the report that is placed on record of the police, this Court finds the allegations are not specific in respect of any of the applicant. All the common allegations are against all the applicants.

08. However, considering the fact that applicant No.1 happens to be his husband, applicant Nos.2 and 3 are parents of the husband and applicant No. 7 is the brother of the husband staying with him, this Court finds that prima-face case made out against them. So far as, the applicants Nos. 4 to 6 and 8, they are not residing with the other applicants. So, to their extent, the proceeding will be an abuse of process of law. Hence, the following order :

ORDER

- (i) The application stands partly allowed.
- (ii) The proceeding of Regular Criminal Case No. 66/2019 pending in the Court of learned Judicial Magistrate First Class, Court No.3 is quashed the impugned order dated 26.10.2021 issued by the said Court is set aside to the extent of applicant Nos. 4, 6 and 8.
- (iii) The application, thus, stands disposed off.

(KISHORE C. SANT, J.)

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