

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

CRIMINAL APPLICATION NO.3072 OF 2019

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| 1 | Mahadeo S/o Vishnu Waghmare,
Age-29 years, Occu.: Labour, | |
| 2 | Sitabai W/o Vishnu Waghmare,
Age-65 years, Occu.: Household, | |
| 3 | Balasaheb S/o Vishnu Waghmare,
Age-27 years, Occu.: Labour,
All R/o Govardhan Hivra,
Tq. Parli (V), Dist. Beed. | ... APPLICANTS |

VERSUS

- | | | |
|---|--|------------------------|
| 1 | The State of Maharashtra
Through Police Station Sirsala,
Tq. Parli (V), Dist. Beed. | |
| 2 | Jyoti W/o Mahadeo Waghmare
Age: 20 Years, Occu: Household,
R/o Govardhan Hivra, at present
Mohkhed, Tq. Dharur, Dist. Beed. | ... RESPONDENTS |

...
Mr. B.R. Sable, Advocate for the applicants
Mr. V.S. Badakh, APP Respondent/State
Mr. S.B. Solanke, Advocate for respondent No.2

...
CORAM : **MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : **27.03.2023**

ORDER (MANGESH S. PATIL, J.) :

This is an application under Section 482 of the Code of Criminal Procedure seeking quashment of Crime No.0103/2019 registered with Police Station Sirsala, Tq. Parli (V), Dist. Beed for the offences punishable under Section 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code and the consequent charge-sheet and the criminal case R.C.C. No.133/2019

pending on the file of learned Magistrate at Parli.

2. The FIR alleges that the respondent No.2 was married to the applicant No.1 on 16.04.2016. It is necessary to note at this stage itself that there seems to be an error in mentioning the date of the marriage. The learned advocate for the respondent No.2 admits that it was solemnized on 17.04.2017. It is alleged that after marriage when she started cohabiting with the applicants who are the husband, mother-in-law and brother-in-law, she was maintained peacefully for three to four months thereafter they started insisting her to bring money from her mother and brother for purchasing land. She informed the matter to her grandfather Sarjerao Shankarrao Chopde and mother, who tried to convince the applicants but in vain. It was ultimately declared that they would maintain her only if she was able to bring money. She was assaulted repeatedly and the mother-in-law and brother-in-law abused her. She was kept starving and by suspecting her character she was driven out about 1 ½ years prior to the FIR dated 02.05.2019.

3. Learned advocate for the applicants submits that the allegations are vague and omnibus besides being improbable. The FIR has been lodged in May 2019 that is just after two years of marriage. Accepting the statement in the FIR that she was driven out 1 ½ years prior to the lodging of the FIR, it would be apparent that she cohabited in the matrimonial home not even for six months out of which even she admits that she was maintained properly for three to four months. There was no time in

between these two dates to comprehend as to if she was really subjected to any ill-treatment. It would be misuse of the process of law if based on such vague and omnibus allegations the applicants are allowed to face the prosecution.

4. Learned APP and the learned advocate for the respondent No.2 oppose the application. They submit that there are sufficient allegation. The charge-sheet has been filed. Prosecution should get fair opportunity to lead evidence. The FIR cannot be expected to be an encyclopedia and the application be rejected.

5. We have perused the papers. After we express our disinclination to grant any relief to the applicant No.1 who is the husband, his learned advocate, on instructions, seeks leave to withdraw the application to his extent.

6. Admittedly, the marriage was solemnized on 17.04.2017. The FIR reads that the applicants maintain the respondent No.2 properly for first three to four months and it also reads that she was driven out about 1 ½ year prior to the lodging of the FIR. This leaves a window of around three to four months for the period in which the allegations being levelled will have to fit in.

7. Since the offence is registered as a sequel to a matrimonial dispute, no importance can be attached to the fact that all the applicants have been named not only in the FIR but even in the statements of the witnesses.

8. This being a proceeding invoking the powers of this Court under Section 482 of the Code of Criminal Procedure, we understand the limitations on the powers of this Court. No full fledged inquiry can be undertaken to ascertain veracity or otherwise of the allegations. Simultaneously, the usual tendency to rope in all the relations of the husband while lodging the complaint is often commented by the Supreme Court in plethora of judgments namely **Kumari Geeta Mehrotra and Anr. Vs. State of U.P. and Anr.**; AIR 2013 SC 181, **Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors.**; (2022) 6 SCC 599 and **Preeti Gupta and Anr. V. State of Jharkhand and anr**; AIR 2010 SC 3363.

9. It is trite that FIR is not expected to be an encyclopedia. But then, when an offence is registered pursuant to the FIR and the investigating officer undertakes investigation and files a charge sheet, it is imperative that there must be some material to demonstrate involvement of each of the accused in commission of the crime. A conjoint reading of the FIR and the papers of the investigation demonstrates that the respondent No.2 was meted out the alleged cruelty during a period of two to three months. The allegations in the FIR have merely been repeated by the grandfather of the respondent No.2 and her mother with equal vagueness. No specific and exclusive overt act is attributed to the applicant Nos.2 and 3. Along with the applicant No.1 they have merely been named in respect of the alleged demand, subsequent allegations regarding her character and the ill-treatment meted out to her.

10. True it is that couple of independent witnesses have come forward namely Dattu Shankar Waghmare and Vitthal Bhaurao Ghodke whose statements were recorded on 03.05.2019 and they have mentioned about having heard that a quarrel was going on in the house of the applicant in about three to four months after the date of marriage and that on their inquiry respondent No.2 having told them about the demand for money and the ill-treatment meted out to her by these applicants. If their version is to be accepted, it would be a hearsay one.

11. With the vague and omnibus statements the applicant Nos.2 and 3 are being made to face the prosecution. The quality of material collected by the investigating officer fits this case in the category of the cases those were before the Supreme Court (supra).

12. It would be abuse of the process as laid down in the matter of **State of Haryana and Ors. V/s Ch. Bhajan Lal and Ors.; (1992) SCC (Cri) 426.**

13. The Application is partly allowed. The Crime No.0103/2019 registered with Police Station Sirsala, Tq. Parli (V), Dist. Beed and the consequent charge sheet and the criminal case R.C.C. No.133/2019 pending on the file of learned Magistrate, Parli is quashed and set aside to the extent of the applicant Nos.2 and 3. The application to the extent of applicant No.1 is dismissed.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)