

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

971 CRIMINAL APPLICATION NO.3351 OF 2021

- 1) Madanlal Kundanmal Dhoka,
Age 67 years, Occ. Nil,
R/o. Khadakpura Peth, Beed,
Tq. & Dist. Beed.
- 2) Mahavir Madanlal Dhoka,
Age 43 years, Occ. Private Job,
R/o. C/o. Yogita Jain, Divine
City Sahara City Premises,
Behind Airport, Gandheli, Beed
Bypass, Gat No. 124, Aurangabad.
- 3) Nirmala Madanlal Dhoka,
Age 62 years, Occ. Household,
R/o. Khadakpura Peth, Beed,
Tq. & Dist. Beed.
- 4) Maya Paras Lunawat,
Age 45 years, Occ. Service
r/o. In front of Sarda Nagari, Beed,
Tq. & Dist. Beed.

... Petitioners

VERSUS

- 1) State of Maharashtra
Through Peth Beed Police Station,
Beed.
- 2) Swati @ Akshara w/o Gautam Dhoka,
Age 29 years, Occ. Household,
R/o. Khadakpura Peth, Beed,
Tq. & Dist. Beed.

... Respondents.

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Advocate for the Petitioners : Mr. Dharurkar Chaitanya V.
APP for the Respondent No. 1 : Mr. V.S. Badakh
Advocate for Respondent No. 2 : Mr. S.B. Choudhari

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

DATE : 21.03.2023

PER COURT :

Heard both the sides.

2. The applicants are seeking quashment of Crime and the consequent charge-sheet filed on the basis of the F.I.R. lodged by the respondent No. 2 bearing F.I.R. No. 206/2020 registered with Peth Beed Police Station District Beed and R.C.C. No. 590/2020 pending on the file of the Judicial Magistrate First Class Beed for the offences punishable under Sections 498A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

3. The learned advocate for the applicants submits that the husband is not before us, only the parents in law, the brother in law and the sister in law of the respondent No. 2 are seeking quashment. Accepting the allegations in the F.I.R. at their face value, those are vague and omnibus. The respondent No. 3 had barely stayed at the matrimonial home for three months. The allegations are vague and do not attribute specific overt act to any of the applicants. The F.I.R. has been lodged belatedly. The applicants No. 2 and 4/brother in law and sister in law have been residing elsewhere and not in the matrimonial home.

4. The learned advocate would place reliance on the decision in the matter of *Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors. (Criminal Appeal No.195/2022 decided on 08.02.2022)(2022) 6 SCC 599*. He would point out that in similar set of facts and circumstances, relying upon consistent view expressed by the Supreme Court in the matters of (1) *Arnesh Kumar Vs. State of Bihar and Anr. (2014) 8 SCC 273*, (2) *Preeta Gupta and Anr. Vs. State of Jharkhand and Anr; (2010) 7 SCC 667*, (3)

Rajesh Sharma and Ors. Vs. State of U.P. & Anr; (2018) 10 SCC 472 and (4) Geeta Mehrotra and Anr. Vs. State of UP and Anr.; (2012) 10 SCC 741, the crime has been quashed.

5. The learned A.P.P. and the learned advocate for the respondent No. 2 oppose the application.

6. We have carefully considered the rival submissions and the papers. Needless to state that the powers of this Court under Section 482 of the Code of Criminal Procedure are to be used sparingly and in rarest of rare cases. It is equally trite that all the aforementioned decisions take into consideration a consistent phenomena to rope in all the relations from the husband side whenever an offence is registered by a wife for the offence punishable under Section 498A of the Indian Penal Code.

7. Each case has to be considered on the basis of the peculiar facts and circumstances.

8. The F.I.R. specifically demonstrates that the marriage was solemnized on 18.06.2018 and since after 16.09.2018 the respondent No. 2 has gone back to the parental house. Meaning thereby that she resided at the matrimonial home for just three months.

9. It is also apparent that the F.I.R. has been lodged on 07.08.2020 and not soon after she had gone back to the parental home.

10. The F.I.R. alleges that soon after the marriage all the relations from the matrimonial side subjected her to cruelty by taunting her that she was not being orthodox and were also insisting her to fetch money from her parents. They also started suspecting her chastity and threatened her not to come for cohabitation unless money was brought. All the gold ornaments were removed and retained while she was being driven out.

11. It does appear that the allegations are levelled against all the applicants and the husband. But no specific and precise role is attributed to the present applicants.

12. But then, the parents in law must have been cohabiting with the respondent No. 2 and her husband under the same roof. Going by the probabilities, the allegations roping in the parents in law cannot be said to be improbable. An opportunity deserves to be extended to her to establish the allegations against the husband as well as the parents in law.

13. So far as the brother in law and sister in law are concerned they have been residing elsewhere. When the couple has cohabited barely for three months, the allegations in the F.I.R. and the statements of the parental side witnesses of the respondent No. 2 can certainly be said to be omnibus qua the applicants No. 2 and 4.

14. We allow the application partly. F.I.R. No. 206/2020 registered with Peth Beed Police Station District Beed and R.C.C. No. 590/2020 pending on the file of the Judicial Magistrate First Class Beed for the offences punishable under Sections 498A, 323, 504, 506 read with Section 34 of the Indian Penal Code is quashed to the extent of applicant Nos. 2 and 4.

15. The Criminal Application to the extent of the applicant Nos. 1 and 3 is dismissed.

(M. M. SATHAYE, J.)

(MANGESH S. PATIL, J.)

mkd/-