

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

49 CRIMINAL APPLICATION NO.4287 OF 2022

NAGESH CHANGDEV BHAD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. N.K. Tungar
APP for Respondent No.1: Mr. S.N. Morampalle
Advocate for Respondent No.2 : Mr. G.J. Kore
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**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 28th AUGUST, 2023.**

PER COURT :-

Heard the learned counsel for the respective parties.

2. The application has been filed under Section 482 of Cr.P.C. for quashing of Regular Criminal Case No. 1527 of 2020 pending before the learned Chief Judicial Magistrate, Latur arising out of the Charge sheet No. 154 of 2020 dated 19.12.2020, which arises out of the crime No. 0355 of 2020 registered against the present applicant under Section 498-A, 377, 323, 504, 506, 34 of I.P.C. at Shivaji Nagar Police Station, Latur on 22.11.2020.

3. The husband is before us. This court vide order dated 18.04.2022, passed in criminal application No.131 of 2021, has quashed the F.I.R. and the consequential charge sheet against the in-laws of the respondent wife.

4. The case of the respondent/wife, as is disclosed in the F.I.R., is that she married the applicant on 1.2.2020. The marriage expenditure was born by her parents. The applicant was addicted to alcohol. He started ill-treating her. The applicant had unnatural sexual intercourse with her during the period from 5.3.2020 to 8.3.2020 and then on 11.3.2020 she was driven out of her matrimonial house, after having been beaten up by the applicant and co-accused (who have been granted relief).

5. The learned A.P.P. and the learned counsel for the respondent/wife submit that the allegations are serious in nature, which *prima facie* make out a case to proceed against the applicant. According to them, no mini trial can be conducted here. They therefore urge for rejection of the application.

6. The applicant has placed on record a copy of notice issued by him to the respondent/wife. Admittedly, the said notice has been replied by the respondent/wife's advocate. A copy thereof is also placed on record at pages 54 to 59. Close reading thereof, suggests that the respondent/wife admitted to have happy married life during the period during which the applicant allegedly had unnatural sexual intercourse with her. When she averred in the F.I.R. to have been driven out of her matrimonial house, however, she in the reply to the notice, states that she on her own left the house since her grand-

mother had passed away. As such, notice reply falsifies the allegations in the F.I.R. Admittedly, the respondent wife did not undergo the medical examination to prima facie make out an offence punishable under Section 377 of I.P.C.

7. In the aforesaid backdrop, directing the applicant to stand the trial would be an abuse of process of Court. We are therefore, inclined to allow this application. The application thus stands allowed in terms of prayer clause "B".

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)

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