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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPLICATION NO. 1335 OF 2022**

1. Rushikesh T. Patil	
2. Komal T. Patil	
3. Tulsiram A. Patil	
4. Nayan S. Baviskar	
5. Sandip A. Baviskar	...Applicants
Versus	
State of Maharashtra & Anr.	...Respondents

Mr. Sahil Choudhari h/f. Mr. Praful Patil for the Applicants.
Mr.Y.Y. Dabake, APP for the Respondent.
Mr. Aniket Nikam i/b Mr. Amit Icham for the Respondent No.2.

**CORAM : PRAKASH D. NAIK &
N. R. BORKAR, JJ.
DATE : 08.12.2023.**

PC:-

1. Heard both sides.

2. At the outset, learned counsel for the applicants, on instructions, submits that he would not press this application *qua* applicant Nos.1 to 3. However, the reliefs sought in this application may be considered in respect to applicant Nos.4 and 5.

3. The First Information Report (FIR) was registered at the instance of complainant/respondent No.2 on 17.10.2022 with Kondhawa Police Station vide C.R. No.1037 of 2022 for the offences punishable under Section 498-A, 406, 323, 504, and 506 read with 34 of the Indian Penal Code against the applicants.

4. The applicant No.4 is the sister-in-law of respondent No.2 and the applicant No.5 is the husband of applicant No.4.

5. The case of the prosecution is that the marriage between respondent No.2/complainant and applicant No.1 was performed on 28.3.2016. After marriage, the complainant went to matrimonial home and started residing with the accused. Initially, she was treated well and thereafter, she was subjected to ill-treatment. The husband, mother-in-law and father-in-law continuously subjected her to harassment. On 6.9.2016, she was assaulted by her husband in connivance with father-in-law and mother-in-law. It is further alleged that applicant No.4 (sister-in-law) and applicant No.5 (husband of sister-in-law) had abused and threatened her by visiting her matrimonial home and saying that if she continuous to stay at her matrimonial home, the applicant No.4 will be deprived of her rights in the property. Pursuant to the registration of FIR, the investigation was conducted and after completing the investigation, charge-sheet has been filed.

6. The learned counsel for the applicants submits that the applicant No.4 is the married sister of applicant No.1. She is residing with applicant No.5. She has been falsely implicated in this case. The FIR and statements of witnesses, who are related to the complainant, are concocted and vague. The allegations attributed to applicant Nos.4 and 5 are in respect of alleged incident of 6.9.2016. The FIR was registered on 17.10.2022. Prior to registration of FIR, the complainant had initiated

proceedings under the Protection of Women from Domestic Violence Act, 2005 (for short "D.V. Act") on 5.3.2021 which are pending in the concerned court. The husband of respondent No.2 had initiated divorce proceedings before the Civil Judge Junior Division, Amalner on 15.6.2021. The FIR has been belatedly registered on 17.10.2022.

7. The learned APP submitted that pursuant to the registration of FIR, the investigation was completed and charge-sheet has been filed and the role has been attributed to all the accused.

8. Learned advocate for respondent No.2 submitted that specific allegations are made against all the accused, *overt-act* has been attributed to the applicant Nos.4 and 5, which is evident from the contents of FIR. The complainant has referred to the incident dated 6.9.2016 wherein applicant Nos.4 and 5 had abused and threatened the complainant. She was asked to leave the matrimonial home as applicant No.4 was apprehending that she will be deprived of her rights in the property. There was continuous harassment by applicant Nos.4 and 5 to the complainant. The statement of first informant had been corroborated by other witnesses, whose statements are part of charge-sheet. Since the charge-sheet is filed, the applicants have remedy to prefer an application for discharge before the trial Court. Although the complainant had initiated the proceedings under the D.V. Act prior to registration of FIR, the allegations in the proceedings under the D.V. Act as well as

in the FIR are identical. It cannot be said that the allegations are concocted or afterthought. Hence, the application may be dismissed and at the most the applicant Nos.4 and 5 may be permitted to move an application for discharge.

9. We have perused the FIR and other statements which forms part of charge-sheet. As stated above that, the marriage was solemnized in the year 2016. The applicant No.4 is the sister of the complainant's husband and applicant No.5 is the husband of the applicant No.4. They are residing separately. The complainant had alleged that in September 2016 they have threatened the complainant. The statements of other witnesses, who are related to the complainant are verbatim. The allegations are *omnibus*. The allegations are vague. Therefore, applicant Nos. 4 and 5 cannot be forced to face the criminal prosecution. Considering the nature of allegations against applicant Nos.4 and 5, we are inclined to exercise the powers under Section 482 of Code of Criminal Procedure to quash the charge-sheet/proceedings against applicant Nos.4 and 5.

ORDER

- (i) The Application *qua* applicant Nos.1 to 3 is permitted to be withdrawn with liberty to move an application for discharge before the trial Court.
- (ii) The Application *qua* applicant Nos.4 and 5 stands allowed.

(iii) The criminal proceedings in R.C.C. No.318 of 2023 pending before the learned J.M.F.C., Pune Cantonment Court, Pune *qua* applicant Nos.4 and 5 are quashed and set aside.

(iv) The Application is disposed of.

(N.R. BORKAR, J.)

(PRAKASH D. NAIK, J.)