

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 677 OF 2022

1. Ajabrao Girmaji Bhagat
Age : 66 years, Occ.: Retired,
R/at – Subhash Tekdi, Saibaba Nagar,
Near Block – A, 412, Ulhasnagar,
Dist. Thane.
2. Smt. Venubai Ajabrao Bhagat
Age : 63 years, Occ. Household,
R/at - Subhash Tekdi, Saibaba Nagar,
Near Block – A, 412, Ulhasnagar,
Dist. Thane.
3. Narendra Ajabrao Bhagat
Age : 35 years, Occ. Student,
R/at - Subhash Tekdi, Saibaba Nagar,
Near Block – A, 412, Ulhasnagar,
Dist. Thane.
4. Smt. Sujata Bhaskar Lohkare
Age : 41 years, Occ. Household,
R/at – 202/A, B-1,
Shree Shrijidham, Parsik Nagar,
Kalwa (W), Dist. Thane.
5. Bhaskar Eknath Lohkare
Age : 50 years, Occ. Business,
R/at - 202/A, B-1,
Shree Shrijidham, Parsik Nagar,
Kalwa (W), Dist. Thane.
6. Ravindra Ajabrao Bhagat
Age : 37 years, Occ. Student,
R/at - Subhash Tekdi, Saibaba Nagar,
Near Block – A, 412, Ulhasnagar,
Dist. Thane.

... Applicants

Versus

1. State of Maharashtra,
Through Mangrulpir Police Station,
Washim
2. Dr. Vaishali Ravindra Bhagat
Age : 31 years, Occ. Doctor,
C/o. Sudhakar Sadashiv Arjune,
Ashok Nagar, Mangrulpir,
Dist. Washim

...Respondents

Mr. Ashok Kotangale, Advocate h/f Mr. S.A. Walde, Advocate for applicants.

Mr. A.M. Kadukar, APP for respondent No.1.

Mr. A.K. Madane, Advocate for respondent No.2.

**CORAM : VINAY JOSHI, AND
BHARAT P DESHPANDE, JJ.**
DATED : 11.04.2023

ORAL JUDGMENT : (PER: Vinjay Joshi, J.)

. **Admit.** Heard finally by the consent of the learned counsel for the respective parties.

(2) This is an application seeking to quash FIR in Crime No.831/2019, registered with Mangrulpir, District – Washim, for the offences punishable under Sections 498-A, 377, 354, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

(3) Applicants are husband, parents of husband, brother-in-law, sisters-in-law and sister's husband of the informant lady. It is applicants contention that allegations levelled in the FIR are totally vague, untrue and false. According to applicants, the informant stayed in matrimonial house barely for three months and thus, there was no occasion for harassing informant at her matrimonial house. According to applicants, the husband has time to time paid money to

the wife and thus, there is no question of raising monetary demand. It is submitted that the entire allegations are of vague and general nature, which cannot be believed. Learned counsel for the applicants has pointed out that the wife has filed two earlier proceedings namely petition for divorce and application under the provisions of Domestic Violence Act, however, there is total absence of allegations pertaining to the offence punishable under Sections 377 and 354 in those proceedings. On that count, it has been submitted that the concerned allegations made in FIR are totally false, imaginary and concocted one. Learned counsel for the applicants has relied on some decisions to contain that in absence of specific allegations, the family members cannot be put on criminal prosecution.

(4) Application is resisted by learned APP as well as Mr. Madane, learned counsel appearing for informant lady. It is submitted that the contents of FIR discloses a detailed narration, as to how, applicants have harassed the lady and made her life miserable. It is argued that since the informant lady was in the bid of saving her marriage, for initial days she did not filed report but beared the harassment. According to the informant, the material collected during course of investigation is sufficient to put applicants on trial. It is the

last submission that the veracity of the statements and worth cannot be tested, at the stage of deciding this application, since, it is a matter of trial.

(5) The informant lady got married with applicant No.6-Ravindra, on 10.07.2016. The marriage was proved to be short lived. It is informants case that since inception she was subjected to physical as well as mental harassment on the part of all the applicants. We have examined the contents of FIR with minute details as well as the statement of the relatives. It is informants case that after initial seven to eight days from the marriage, the family members of her husband started to humiliate her by saying that she is a rustic lady and monetary demand was raised on account of purchase of furniture. The informant lady stated that her husband used to demand and insist for unnatural sex and had the same on some occasion. She narrated that her father-in-law and brother-in-law kept ill eye on her as well as touched her in inappropriate manner. It is her contention that she had disclosed all the misbehaviour to her mother-in-law, however, she asked her to keep quite and also instigated others for such activities. So far as, sister-in-law and her husband is concerned, it is alleged that they used to visit intermittently and were giving threats and therefore,

the report.

(6) Undisputedly, after 3½ months from the marriage, the couple separated, resultantly the wife started residing separately at her matrimonial house. The informant lady has filed a petition for divorce on 28.08.2018, in the competent Court at Taluka Mangrulpir, District – Washim. We have examined the pleadings wherein besides the allegations pertaining to Section 498-A of the Indian Penal Code, we could not find anything, as regards to the offences punishable under Sections 377 and 354 of the Indian Penal Code. Likewise, the case is of an application filed by the wife to the Magistrate in terms of Section 12 of the Domestic Violence Act, instituted on 29.07.2019. In said application, she has stated about harassment, monetary demand, but no grievance was put about the rest of the offences.

(7) Learned counsel for the applicants would submit that the allegations as regards to the unnatural offence and outraging modesty are concerned, they are totally false, since, they have not been made in prior proceedings. There is no dispute on the point that in earlier two proceedings, there is no slightest reference about those

allegations against husband, father-in-law and brother-in-law. We could have understood the absence of reference, if the wife has applied for restitution of conjugal rights and in that case, she may not wish to disclose the things to save her marriage. However, the wife has filed petition for divorce and in that contingency, if there were such serious allegations, it would have been reflected, in the earlier proceedings. Therefore, total absence of rest of the allegations persuades us to accept the applicants contention that for the sake of dispute those additional allegations have been levelled in the FIR, which was filed in proximity to the earlier petition.

(8) As regards to the allegations pertaining to matrimonial harassment are concerned, they appears to be consistent in earlier proceedings too. The informant lady has stated the instances about matrimonial harassment, at the hands of husband, parents-in-law and brother-in-law, who were residing under the same roof. Certainly, this is not a stage to discard the said statement at the threshold, since, it is a matter of trial, which we cannot undertake at all. As regards to the sister-in-law and her husband (applicant Nos.4 & 5) are concerned, they are residing separately from the couple. The FIR bears a single line reference stating that intermittently they used to

visit informant's house and were giving threats, without any specification. On the canvass of their separate residence, the said statement is of no avail nor to be considered as sufficient to put them on trial. However, as regards to the rest of the applicants are concerned. *Prima facie* case is made out to put them on trial for the offences punishable under Sections 498-A, 504, 506 and read with Section 34 of the Indian Penal Code.

(9) Learned counsel for the applicants relied on the decisions of this Court in cases of *Sainuddin Khan s/o Sanaullah Khan and Ors. Vs. State of Maharashtra and anr., in Criminal Application (APL) No.465/2016, decided on 05.04.2018* and *Smt. Vrushali Jayesh Kore Vs. State of Maharashtra and anr., in Criminal Application No.1122/2021, decided on 07.01.2023* as well as decision of Supreme Court in case of *Kahkashan Kausar Alias Sonam and Ors. Vs. State of Bihar and Ors, (2022) 6 SCC 599*. There can be no dispute that if on facts the Court comes to the conclusion that the allegations are vague, actuated with malafides, then the prosecution cannot be allowed to be continued. However, there is no ratio as such to apply as each case differs on facts.

(10) In view of above, by partly allowing this application, we hereby quash and set aside FIR as well as charge-sheet against applicants No.4-Sujata and No.5-Bhaskar, in entirety, we hereby also quash and set aside the prosecution to the extent of offences punishable under Sections 377 and 354 of the Indian Penal Code against the rest applicants.

(11) We clarify that the prosecution shall continue against rest of the applicants for the offences punishable under Sections 498-A, 504, 506 read with Section 34 of the Indian Penal Code, in the Court of competent jurisdiction.

(12) Application stands disposed in the above terms.

[BHARAT P. DESHPANDE, J.]

[VINAY JOSHI, J.]

Prity