

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

CRIMINAL APPLICATION (APL) NO. 816 OF 2022

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| 1. Sau. Mona Alas Mahi w/o Pravinrao
Gulhane, Aged about 41 years,
Occ. Private Business, | } | ... Applicants |
| 2. Pravinrao s/o Ram Gulhane
Aged about 50 years,
Occu. Legal Pracitioner at Amravati
Both R/o infront Gurudwara,
Gandhi Nagar, Amravati (M/S) | } | |

Versus

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| 1. State of Maharashtra,
Through P.S.O. P.S. Achalpur,
Dist. Amravati. | } | |
| 2. Saul. Sonali w/o Laxman Shrirao
Aged 35 years, C/o. Food, Civil Supplies &
Consumer Protection Department,
Zonal Office, Near Ajab Banglow,
Zero mails, Civil Lines, Nagpur - 440001 | } | ... Non-applicants |

Mr. R.B. Gaikwad, Advocate for applicant.

Mr. N.R. Rode, APP for non-applicant No.1.

Mr. R.M. Pande, Advocate for non-applicant No.2.

CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.
DATE : 26.07.2023.

ORAL JUDGMENT: (PER: Vinay Joshi,J)

Heard.

(2) **Admit.** Heard finally by consent of both the learned counsel for the parties.

(3) This is an application in terms of Section 482 of the Code of Criminal Procedure, seeking to quash FIR in Crime No.239/2019 registered with Police Station Achalpur, District – Amravati, for the offence punishable under Sections 498-A, 504, 506 read with Section 34 of The Indian Penal Code.

(4) Applicants' are sister-in-law and husband of sister-in-law of the informant lady. The informant got married with co-accused Laxman on 16.04.2014 and resumed to co-habit with him at Nagpur. It is informant's case that in marriage they offered gold ornaments and cash amount. Soon after the marriage she started to reside with her husband, in-laws, brother-in-law and his wife. It is her case that since beginning there was mental as well as physical harassment meted out at the instance of monetary demand. She stated that the things of harassment repeated and therefore, the report.

(5) For the purpose of clarity, we may mention that, we

are not dealing in this petition, as regards to the husband, his parents and other family members who were residing in the matrimonial house with the informant. This application is of married sister, and her husband, who are admittedly residing separately at Amravati. So far as applicants are concerned, we find general allegations that intermittently after two months they use to visit their place, abuses and raises monetary demand. Besides that, on telephone also they abused her. Contextually, we have gone through the statement of informant recorded by police which equally bears vague reference that after interval of two months, they used to visit the house of informant where they abused and raised the monetary demand. The similar statements are given by the parents of the informant lady.

(6) It emerges that the entire allegations are against the family members who are residing in matrimonial house. The allegations are particularly against the husband. The role ascribed to these applicants is of harassment on their part at their occasional visits. Undoubtedly, the applicants were not residing in the matrimonial house, rather applicant No.1 married long back having her children and staying with her husband and own family at

Amravati. It is informed that applicant No.1 is serving as a Security Guard whilst applicant No.2 (her husband) is practicing Advocate at Amravati. In order to sustain a criminal prosecution there must be a *prima facie* material to indicate the involvement of the applicants.

(7) In reported decision in case of ***Mirza Iqbal @ Golu and another Vs. State of Uttar Pradesh and anr. 2021 STPL 12157 SC***, the Supreme Court has taken a note regarding tendency of making entire family members of husband liable to settle the matrimonial score. In said decision, in absence of specific allegations, the proceeding was terminated. In case at hand, besides casual reference without specification there is nothing against the applicants. Neither the informant stated the dates nor what was the demand raised by these applicants and particular occasion of their visit.

(8) The informant learned counsel by placing reliance on the decision of this Court in the case of ***Sunita Kumari w/o Ram Sevak and Ors, Vs. State of Maharashtra and anr.*** in Criminal Application (APL) No.1660/2022 decided on 22.12.2022, would submit that merely because some of the relatives are staying separately that cannot be a ground for quashing of the FIR. In said decision, this

Court on the basis of peculiar facts of said case held that FIR makes out the allegations despite separate residence and therefore, declined to exercise jurisdiction. The said decision does not lay down any legal ratio as the decision is based on the facts of that case.

(9) The Hon'ble Supreme Court in reported case of ***Zandu Pharmaceutical Works Ltd. and Ors. Vs. Mohd. Sharaful Haque and anr.*** reported in ***(2005) 1 SCC 122***, has observed thus : (para 8)

“It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

(10) Inherent powers under Section 482 of the Code of Criminal Procedure though to be exercised sparingly, however, if any abuse of the process leading to injustice is brought to the notice of the

Court, then the Court would be justified in preventing injustice by invoking inherent powers of this Court. The ultimate object of justice is to find out the truth and punish the guilty as well as to protect the innocent. The tendency of implicating the husband's all relations is also not uncommon. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the parties. In absence of *prima facie* material continuation of the prosecution would amount to abuse of the process of Court. In view of that, we pass the following order:

ORDER

- (1) The application is allowed.
- (2) We hereby quash and set aside the FIR and charge-sheet relating to Crime No. 239/2019 registered with Police Station Achalpur, District – Amravati, for the offence punishable under Sections 498-A, 504, 506 read with Section 34 of the Indian Penal Code, as regards to applicants only.
- (3) Application stands disposed of in the above terms.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]