

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

CRIMINAL APPLICATION [APL] NO. 1321/2022.

1.Shri Mayur s/o Pralhad Bhagwat,
Aged 35 years,, Occupation
Service, Resident of 54A Ekvira Vidyut
Colony, Near Navsari, Amravati
444604 (Maharashtra State)
**(Application is dismissed as withdrawn
against Applicant No.1 as per order
dated 04.10.2022)**

2.Shri Deepak s/o Pralhad Bhagwat,
Aged 40 years,, Occupation
Service, Resident of 504, Fifth
Floor, Chafa Wing, Jai Amba Garden City
Behind Maharshi School
Amravati 444604 (Maharashtra State).

3.Sau. Sheetal w/o Deepak Bhagwat,
Aged 35 years,, Occupation
Housewife, Resident of 504, Fifth
Floor, Chafa Wing, Jai Amba Garden City
Behind Maharshi School
Amravati 444604 (Maharashtra State).

4.Shri Ashok s/o Shankarrao Bhagwat,
Aged 58 years,, Occupation
Service, Contractor, Resident of
Ekvira Vidyut Colony, Near Datta
Mandir, Behind Jawahar Navodaya Vidyalaya,
Navsari, Amravati (Maharashtra State)

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5.Sau Varsha w/o Ashok Bhagwat,
Aged 53 years,, Occupation
Housewife, Resident of
Ekvira Vidyut Colony, Near Datta
Mandir, Behind Jawahar Navodaya Vidyalaya,
Navsari, Amravati (Maharashtra State)

6.Sau Sangita wd/o Narayan Bhagwat,
Aged 48 years,, Occupation
Housewife, Resident of at Post
Manbha, Tq. Karanja Lad,
District Washim (Maharashtra State).

7.Sau Vaishnavi d/o Narayan Bhagwat,
Aged 22 years,, Occupation
Student, Resident of at Post Manbha,
Tq. Karanja Lad, District Washim.
(Maharashtra State)

8.Chakuli alias Ayushi Ashok Bhagwat,
Aged 24 years,, Occupation
Student, Resident of Ekvira Vidyut
Colony, Near Datta Mandir, Behind
Jawahar Navodaya Vidyalaya,
Navsari, Amravati (Maharashtra State).

9.Shri Sahebrao Yadavrao Ghuse,
Aged 71 years,, Occupation
Farmer, Resident of Vidyut Nagar,
Amravati (Maharashtra State)

...

APPLICANTS.

VERSUS

1.State of Maharashtra,
through its P.S.O. Dabki Road,
Akola, District Akola
(Maharashtra State).

2.Sau Priya w/o Mayur Bhagwat,
Aged years, Occupation – Household,
resident of c/o. Dilip Rathod, Bharti
Plot, Balapur Road, Pagapog Chowk,
Old City, Akola, Tahsil and District
Akola Pin Code -

... **NON-APPLICANTS.**

Ms A. Dangre, Advocate for Applicants.
Mr. S.S. Doifode, Addl.P.P. for Non-applicant No.1 /State.
Ms Sonali Saware, Advocate [Appointed] for Non-applicant No.2.

**CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES,, JJ.**

DATE : AUGUST 10, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J) :

Admit. Heard finally by consent of the learned
Counsel appearing for the respective parties.

2. At the inception it is to be clarified that this application is
dismissed since withdrawn as regards the applicant no.1 – husband.

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Resultantly Application remains to the extent of applicant nos.2 to 9 only. However, during the pendency of the proceedings, applicant no.9 had expired, hence, virtually it remains to the extent of applicant nos. 2 to 8 only, who are nearer relatives of the husband.

3. To specify the relations of applicants with informant – applicant no.2 is brother-in-law; applicant no.3 is sister-in-law, applicant no.4 is cousin father-in-law, applicant no.5 is cousin mother-in-law, applicant no.6 is another cousin mother-in-law, applicant no.7 is daughter of applicant no.6, and applicant no.8 is daughter of applicant nos. 4 and 5. Applicants seek to quash the first information report bearing Crime No.189/2022 registered with Dabki Road Police Station, Akola District for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code, along with the related charge sheet bearing Regular Criminal Case No.1118/2022.

4. Quashing is sought on account of inadequacy of material. It is contended that the allegations made in the first information report and statements of witnesses do not disclose specific instances

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pointing role of present applicants. Entire allegations are of general nature, vague and does not make any specific instances of harassment on the part of applicants. It is submitted that besides general reference of applicants, there is no other material to make out a triable case against them. According to applicants, even if allegations are taken at their face value and accepted in their entirety, they do not prima facie constitute any offence, and therefore, the proceedings are liable to be quashed.

5. The couple got married on 15.07.2018, as per Hindu customary rights. The informant is resident of Akola. As usual, after marriage she resumed cohabitation with her husband at Amravati. It is the prosecution case that after marriage, applicants along with husband started to curse the informant on account of inadequate offerings in the marriage. They use to raise monetary demand as well as, valuable ornaments. The informant was physically and mentally harassed by applicants. She has stated that though applicants [the term 'applicants' does not include husband], were residing separately, however, on every weekend they use to stay with the couple and were harassing her. The informant stated that her

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husband used to suspect on her character. Husband used to confine her and physically assault by making demand. Some time she was threatened to kill by pouring kerosene on her person. She alleges that while her husband used to beat her, applicants were instigating him.

6. Precisely, the informant has stated a long story of harassment, monetary demand, however, apart from omnibus statements made against all the relatives, there is nothing against them. The principle contention is that the First Information Report and investigation papers, merely bears a casual reference of family members of husband without any details. According to applicants on the basis of vague allegations applicants can not be forced to face the trial. For this purpose, learned counsel for applicants relied on the decision of Supreme Court in **Geeta Mehrotra and another vrs. State of Uttar Pradesh and another - (2012) 10 SCC 741**, wherein it has been observed that absence of specific allegations and prima facie case against the relatives, is a subject matter of quashing, as requirements is of specific disclosure of active involvement of the accused.

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7. The principle question is whether the allegations made against applicants, who are relatives of husband are in the nature of general and omnibus, requiring to quash the prosecution. We have carefully examined the police papers, in particular First Information Report dated 29.04.2022. On perusal of entire first information report, we note that the principle allegations are against husband. We have examined the statements of other relatives of the informant, which appears to be of hearsay nature. All of them have stated a story of harassment, however, no specific instances, nor their personal experience have been stated. On reading the entire material, we could only make out general allegations that all were instigating the husband and joined him in harassing the informant. Though the informant has stated that she was mentally and physically harassed, however, specific instances mode, manner, nature of harassment has not been stated.

8. Besides general allegations, we are unable to see any specific role on the part of applicants. As per the contents of the first information report itself, the couple was residing separately,

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therefore, unless specific role is assigned, other relatives, who are residing separately, cannot be hauled on the basis of general allegations.

9. Learned counsel appearing for applicants by placing reliance on the decision of this Court in case of **Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors. - 2022 SCC Online SC 162**, would submit that, tendency of roping all family members in matrimonial dispute is a routine. The Court has taken note of said situation and expressed that the Court has to meticulously examine the facts and find out whether there are specific allegations constituting the offence.

10. In resistance the learned counsel appearing for the informant took us through the reply and annexed documents. It reveals that the entire allegations are against husband, she is unable to point out incriminating material against applicants. The learned Counsel for applicants has relied on the decision of this Court in case of **Mrs. Indubai Waman Pawar and others .vrs. State of Maharashtra and another – Criminal Writ Petition No.411/2022** decided on

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01.03.2023, wherein in similar circumstances this Court has formed an opinion that without sufficient material, relatives of husband cannot be hauled in criminal prosecution.

11. The Supreme Court in reported case of **State of Harayana and Ors. Vs. Bhajnanlal and others - 1992 Supp (1) SCC 335**, has laid down guidelines to be adhered while exercising inherent powers under Section 482 of the Code of Criminal Procedure.

12. Having regard to the facts, we find that the case of applicants would fall in the category of guidelines No.1 and 3, which reads as below:-

“1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2.....

3. Where the un-controverted allegations made in the FIR or complaint and the

evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.”

13. The informant lady has already filed proceeding under Domestic Violence Act, as well as summary proceeding in terms of Section 125 of the Code of Criminal Procedure, which is pending. On the other hand, husband has filed restitution petition against the informant. Apparently, there is a rift in matrimonial relations. The possibility of implicating all family members to create pressure can not be ruled out. Considering the overall allegations, which are of general and vague nature, prima facie, they does not make out role of applicants to constitute that they have subjected the victim to physical and mental cruelty within the meaning of Section 498-A of the Indian Penal Code. Facing of criminal prosecution is a serious affair to which one shall not be pushed unless there is substantial material. Having regard to all above facts, we are satisfied that the case is made out to exercise our inherent powers. Criminal Application deserves to be allowed, hence, we proceed to pass the following order.

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ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The first information report bearing Crime No.189/2022 registered with Dabki Road Police Station, Akola District for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code, along with the related charge sheet bearing Regular Criminal Case No.1118/2022 is hereby quashed and set aside, so far as it relates to applicants - Deepak s/o Pralhad Bhagwat, Sau. Sheetal w/o Deepak Bhagwat, Ashok s/o Shankarrao Bhagwat, Sau Varsha w/o Ashok Bhagwat, Sau Sangita wd/o Narayan Bhagwat, Sau Vaishnavi d/o Narayan Bhagwat and Chakuli alias Ayushi Ashok Bhagwat only.

JUDGE

JUDGE