



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.248 OF 2023

1. Hitesh s/o. Jagannath Nikam,
Age: 35 years, Occu: Service, (Husband)
 2. Jagannath s/o. Narayan Nikam,
Age: 64 years, Occu: Retired, (Father-in-law)
 3. Anuradha w/o. Jagannath Nikam,
Age: 55 years, Occu: Household, (Mother-in-law)
- All R/o. Plot No. 16,
Devdatta Apartment, Anand Nagar,
Near Aakashwani Bhavan,
Gangapur Road, Nashik,
Tq. & Dist. Nashik.
4. Sameer Jagannath Nikam
Age: 31 years, Occu: Service,
R/o. 407, Sunflower Building,
Nilkanth Gardens, Deonar Village Road,
Govandi (East), Mumbai. (Brother-in-law)
 5. Rajendra s/o. Narayan Nikam
Age: 57 years, Occu: Service (Uncle-in-law)
 6. Varsha w/o. Rajendra Nikam
Age: 52 years, Occu: Service, (Aunt-in-law)
- Both R/o. 2/9, Chaitanya Nagar,
Near Nirmala Convent School, Nashik,
Tq. & Dist. Nashik. ..Petitioners

Versus

1. The State of Maharashtra,
Through Erandol Police Station,
Dist. Jalgaon.
2. Sou. Vishakha w/o. Hitesh Nikam,
Age: 30 years, Occu: Service,
R/o. Plot No.143/46, New Laxmi
Nagar, Tq. Erandol, Dist. Jalgaon. ..Respondents

...
Mr. T. K. Sant, Advocate for the Petitioners.
Mr. V. K. Kotecha, APP for Respondent No.1.
Mr. P. S. Ingle, Advocate for Respondent No.2. (Appointed)

...
**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 06th SEPTEMBER, 2024.**

ORDER (Per S. G. Chapalgaonkar, J.):

1. The petitioners have approached this Court under Article 226 of the Constitution of India with prayer to quash and set aside FIR in Crime No.27 of 2021 dated 20.02.2022 registered with Erandol Police Station, Jalgaon for offences punishable under Sections 498-A, 313, 406, 323, 504, 506 r/w 34 of the Indian Penal Code as well as proceeding in R.C.C. No.60/2022 pending before learned Judicial Magistrate First Class, Erandol.

2. The respondent no.2 lodged FIR with Police Station Erandol alleging that on 19.03.2019 she married with Hitesh Jagannath Nikam-accused no.1. Her father gifted various precious articles worth Rs.10,00,000/- in marriage. The respondent no.2 started residing at matrimonial house at Nashik alongwith her in-laws. Her husband was serving in private company at New Zealand. While she was residing at Nashik, her husband told her that he has relationship with another girl. He was intending to marry her, however, because of pressure of parents, he married with respondent no.2 and refused to maintain matrimonial relationship with her. The FIR gives some instances of weird behaviour of her husband during trip at Thailand and Indonesia. So far as petitioners are concerned, allegations are made that all accused persons were asking her to bring Rs.20,00,000/- from her parents for construction of house and raise bank loan of Rs.40,00,000/- in

her name and for that purpose they mentally tortured her. One more instance is given in FIR that she was asked to visit graveyard at night time to offer pooja articles on a bank of river. She further alleges that she was administered allopathy pills resulting into termination of pregnancy. On the basis of said information, crime has been registered against in all six accused persons. The present petition has been dismissed as withdrawn so far as petitioner no.1-husband.

3. Apparently, allegations in the FIR depicts differences between respondent no.2 and her husband. So far as allegations against petitioner nos.2 to 6 are concerned, those are mainly as regards to the demand of Rs.20,00,000/- for construction of house. However, no particulars of such demand are elaborated in the report. The omnibus allegations are made against the petitioners without particulars of overtact. No specific incident is mentioned that would bring home complicity of petitioners. Although, there is allegation that respondent no.2 was administered pills with intention to terminate pregnancy, the medical evidence or material in charge-sheet is bereft to support such allegations. The Supreme Court in case of ***Preeti Gupta and Another Vs. State of Jharkhand and Another***¹ observed in paragraph nos.30 and 32 as under:

“30. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to

¹ AIR 2010 SC 3363.

insurmountable harassment, agony and pain to the complainant, accused and his close relations.”

4. If aforesaid guidelines are considered in light of contents of charge-sheet, it contains police statement of mother, father and sister of respondent no.2. All three statements are stereotype. No particulars of alleged cruelty or demand are elaborated in those statements. Except change in names of persons making statements, all the contents are stereotyped akin to the contents of FIR.

5. It can be observed that respondent no.2 was served with notice for restitution of conjugal rights dated 10.11.2021 at the instance of her husband. After service of such notice, the present FIR has been lodged. Apparently, FIR is counter blast to the notice seeking restitution of marriage. The possibility that respondent no.2 had differences with her husband cannot be ruled out. However, so far as allegations against petitioner nos.2 to 6 are concerned, those being omnibus are apparently intended to implicate as many as in-laws in the criminal proceeding. At this stage, keeping in mind the principles of law as espoused in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***², it can be observed that this is a case of malicious use of criminal procedure for wreaking vengeance on the accused due to private and personal grudge against husband. In the aforesaid circumstance, we find that there is no reason to permit continuation of criminal proceeding against petitioner nos.2 to 6. Hence, following order:

ORDER

a. Writ Petition is partly allowed.

b. The FIR in Crime No.27 of 20212 registered with Erandol Police Station, Jalgaon as well as proceeding in R.C.C. No.60/2022 pending before learned Judicial Magistrate First Class at Erandol are hereby quashed and set aside to the extent of petitioner nos.2 to 6.

c. Writ Petition is disposed of.

d. Since Mr. P. S. Ingle, learned Advocate is appointed through legal aid to represent respondent no.2, the Secretary, High Court Legal Services Sub-Committee, Aurangabad Bench do pay the fees of the appointed counsel for respondent no.2 as per schedule.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE