



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

940 CRIMINAL APPLICATION NO. 1483 OF 2024

VIDHYADHAR PANDURANG KELKAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Nitin Trimbak Tribhuwan

APP for Respondent/State : Mr.A.M. Phule

Advocate for Respondent no.2 : Mr.Padalkar Harshad H. and
Mr.Shrirang R. Bhongade

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**CORAM : SMT. VIBHA KANKANWADI AND
R.W.JOSHI, JJ.**

DATE : 19th NOVEMBER, 2024.

ORDER :

1. Present application has been filed under section 482 of the Criminal Procedure Code, initially for quashing FIR vide C.R. No.40/2024 registered with Police Station, Shivaji Nagar, Nanded on 30.01.2024 and later on, by way of an amendment for quashing the proceedings in R.C.C. No.758/2024 pending before the Judicial Magistrate, First Class, Nanded as against applicant no.1 and charge-sheet bearing J.C. No.149/2024 filed before Juvenile Justice Board against applicant no.2 arising out of said FIR for the offence punishable under sections 324, 498-A, 323, 504, 506 read with 34 of the Indian Penal Code.

2. Leave is granted to the applicants to correct the prayer clause. Amendment to be carried out forthwith.

3. Learned advocate for the applicants fairly submits that now he is not pressing the application, on instructions, in respect of applicant no.1, and therefore, he seeks withdrawal of the application. In view of the said statement, the application stands disposed of as withdrawn as against applicant no.1.

4. We are considering the present application for the relief claimed in respect of applicant no.2, who is admittedly a minor son of applicant no.1 and respondent no.2.

5. Heard Mr.N.T. Tribhuwan, learned advocate for the applicants, Mr.A.M. Phule, learned APP for respondent No.1 and Mr.H.H. Padalkar and Mr.S.R. Bhangde, learned advocate for respondent no.2.

6. It is submitted on behalf of the applicants that in a dispute between the husband and wife, it appears that applicant no.2 has been roped in. Respondent no.2 has tried to take advantage of the injury, which she had sustained in road accident, a day earlier to the alleged incident. Unnecessarily, the minor's life is put to stake, and therefore,

he need not be asked to undergo the trial taking into consideration the contents of the FIR.

7. Learned advocate for respondent no.2 strongly opposes the application even for applicant no.2, the son on the ground that the son on the instigation of applicant no.1 had assaulted respondent no.2 and a mother will not file FIR unnecessarily against the son. Respondent no.2 has suffered, and therefore, she has lodged the report. The investigation has been carried out. Statements of the witnesses have been recorded, and therefore, the trial should be allowed to continue.

8. We would like to consider the contents of the FIR first. It is to be noted that applicant no.1 as well as respondent no.2 are Medical Practitioners. They are blessed with son and daughter and it appears that on the day of FIR also, they all were residing together. It is then stated that around 10:00 a.m. on 30.01.2024, respondent no.2 had gone to the place of work and at around 2.00 p.m., phone call was received from applicant no.1 asking her to come to house. Therefore, she went to the house around 2:30 p.m. Thereafter, applicant no.1 had raised a suspicion over her character and then in her bedroom both the applicants entered. Applicant no.1 abused her and caught hold of her hands and then asked the son to assault. Thereupon, the son had

given fist blow on the nose, eye and face of respondent no.2 and thereafter, applicant no.1 had assaulted her with steel scale and rod. The husband had then given threat to kill her. Thereafter both the applicants went in another room, which was by the side of spot. Respondent no.2 then took the daughter with her and without saying anything went to her maternal uncle's house.

9. Thus, perusal of the contents of FIR would show that respondent no.2 wanted to say that on the instigation of applicant no.1, the son has acted in such a manner. It is stated that applicant no.2 is aged 17 years. Taking into consideration the fact that a minor's life has been at stake only on the basis of this FIR, we would say that when in the FIR there is no background stated as to since when the dispute between applicant no.1 and respondent no.2 was going on, it is then hard to believe that the son would have done anything on his own in the form of raising suspicion over the character of mother. Respondent no.2 has not quoted in the FIR as to whether applicant no.2 had said anything to her. It appears that her supplementary statement has been recorded on 14.02.2024 i.e. almost 15 days after the FIR. Perusal of the supplementary statement would show that it is totally against applicant no.1, whereby it appears that the Investigating officer had added section 498-A of IPC.

10. Perusal of the charge-sheet against applicant no.2 with Juvenile Justice Board would show that it is filed under section 324 and 498-A of IPC also against applicant no.2. It is hard to imagine that there could have been common intention between the son and father subjecting the mother to cruelty. Therefore, taking into consideration the material on record, there was absolutely no evidence before the Juvenile Justice Board, which will allow the Board to take cognizance for the offence punishable under section 498-A of the IPC against applicant no.2.

11. Even as regards the offence under section 324 of IPC is concerned, taking into consideration the simple injuries but not stated to have been caused by the son with the help of any instrument of cutting, shooting, stabbing or any instrument which used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison etc., case is also not made out under section 324 of the IPC. Since in the FIR as well as in the supplementary statement, it has not been stated that the son had uttered any word, question of taking cognizance or proceeding with the trial for the offence punishable under sections 504 and 506 of the IPC is also out of question.

12. Now as regards section 323 of IPC is concerned, the basic

ingredient that is required to be proved under section 323 of IPC, we must read section 323 along with section 321 of the IPC. Section 321 provides that whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person. Here it is stated that there was intention by the father. There was instigation by the father. There was no basic dispute between applicant no.2 and respondent no.2. The possibility of husband winning over the mind of the son can not be ruled out, and therefore, with this background it can not be said that there was any common intention even committing offence under section 323 of IPC by applicant no.2. It would be then unjust to ask the minor to face the trial before the Juvenile Justice Board, and therefore, we take this as a fit case, where we can exercise our inherent powers under section 482 of the Criminal Procedure Code. Hence, we proceed to pass following order :-

ORDER

- (i) The application stands partly allowed.
- (ii) Application stands dismissed as withdrawn as against applicant no.1 – Dr.Vidhyadhar Pandurang Kelkar.
- (iii) Proceedings in J.C. No. 149 of 2024 pending before the Juvenile Justice Board, Nanded as against applicant no.2 arising out of FIR bearing C.R. No. 40 of 2024 dated

30th January, 2024 registered with Police Station Shivaji Nagar, Nanded, for the offences punishable under sections 324, 323, 498-A, 504 and 506 read with 34 of the Indian Penal Code stands quashed and set aside.

(iv) In view of section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the name of applicant no.2 be masked while uploading this order.

[R.W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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