



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

**904 CRIMINAL APPLICATION NO. 4808 OF 2024
WITH
CRIMINAL APPLICATION NO. 1531 OF 2023**

**SURAJ LAXMAN DAPKE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for Applicants : Mr. Suraj R. Bagal h/f Mr. Bharat N
Gadegaonkar
APP for Respondent/State : Mr. A.V. Lavate
Advocate for Respondent No. 2 : Mr. A.D. Waghmare
...

**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

DATE : 19.12.2024.

PER COURT :

1. Both these applications have been filed for quashing of the proceedings in RCC 234 of 2024, pending before the Judicial Magistrate, First Class, Kalamnuri, District Hingoli, arising out the FIR vide Crime No. 40 of 2023, registered with Police Station Kamalnuri, District Hingoli on 19.01.2023, for the offence punishable under Sections 498-A, 313, 323, 323, 316, 504, 506 read with Section 34 of the Indian Penal Code.

2. The parties have arrived at settlement. Applicant Suraj is the husband of informant and it appears that they both have filed a Hindu Marriage Petition bearing No. 133 of 2024 for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, before the learned Civil Judge, Senior Division, Hingoli. The terms of the settlement have been verified through the learned Registrar, (Judicial) of this Court. The applicants in Criminal Application No. 1531 of 2023 are the mother-in-law, father-in-law, husband's sister, husband's brother, applicant No.1's sister, husband of applicant No. 5, husbands relative, husband's grand mother and husband's cousin sister. Applicant No. 2 in Criminal Application No. 4808 of 2024 is not related to the husband.

3. Taking into consideration the settlement, there would have been no hurdle for allowing the applications as regards the offence punishable under Section 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code, however in the charge-sheet even Sections 313 and 316 of the Indian Penal Code have also been added, therefore, we have considered

the entire charge-sheet and the contents of the FIR. As per the FIR all the accused persons were harassing the informant mentally and physically. She was left at her maternal uncle's home on 11.05.2022. At that time, the informant was pregnant. She was admitted in hospital on 30.06.2022, whereupon, it was revealed that unborn child expired in the womb and according to the informant it was due to the mental and physical harassment.

4. Section 312 of the Indian Penal Code defines causing miscarriage. It prescribes that whoever caused a women with child to miscarriage and if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, then it is punishable under Section 313 of the Indian Penal Code if it is without the woman's consent. Here an opinion appears to have been sought by the Investigation Officer. Dr. Arpita V. Patil has given a certificate on 25.01.2023 stating that she had made the delivery of macerated still born baby of informant on 30.06.2022. The reason for the same could be stressful condition of the patient during the pregnancy. The important point is to be noted is that, except this certificate there is no

admission papers appear to have not been collected, which could have given the history. Now in the certificate, there does not appear to be a short conclusion of the doctor or the words 'could be' have been used. Section 316 of the Indian Penal Code prescribes punishment for causing death of unborn child by the act amounting culpable homicide.

5. Perusal of the ingredients of the Section 316 would show that some positive act is required, which would have caused death of quick unborn child. Therefore, the contents of the FIR were not sufficient to attract the ingredients of the offence punishable under Sections 313 and 316 of the Indian Penal Code and therefore, there is no hurdle in exercising powers under Section 482 of the Code of Criminal Procedure, 1973 against all the applicants. Hence the following order :

ORDER

- (i) Both the applications stand allowed.
- (ii) The proceedings bearing RCC No. 234 of 2024 pending before the learned Judicial Magistrate, First Class, Kalamnuri, District Hingoli, arising out of the FIR vide Cr. No. 40 of 2023 dated 19.01.2023 registered with Kalamnuri

Police Station for the offence punishable under Sections 498-A, 313, 316, 323, 324, 504, 506 read with Section 34 of the Indian Penal Code stands quashed and set aside as against all the applicants.

(iii) We impose costs on the applicant Suraj Laxman Dapke, to the extent of Rs. 25,000/- (Rs. Twenty Five Thousand Only), to be deposited on or before 06.01.2025, with the High Court Legal Services Authority, Sub Committee, High Court, Bench at Aurangabad.

(iv) We make it clear that in case of failure on the part of applicant Suraj Laxman Dapke to deposit the said amount, the order will get revived as against him.

(ROHIT W. JOSHI)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE