



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

941 CRIMINAL APPLICATION NO.2059 OF 2023

- 1 Aijaz Khaja Shaikh,
Age 39 yrs., Occ. Business,
R/o Plot No.72, Near Nandanvan
Colony, Chandmari Masjid,
Jaisingpura, Aurangabad.
- 2 Shaikh Khaja Shaikh Hussain,
Age 75 yrs., Occ. Nil,
R/o Plot No.59/1, D-6,
Near Nandanvan Colony,
Chandmari Masjid, Jaisingpura,
Aurangabad.
- 3 Smt. Naseem Khaja Shaikh,
Age 70 yrs., Occ. Household,
R/o Plot No.59/1, D-6,
Near Nandanvan Colony,
Chandmari Masjid, Jaisingpura,
Aurangabad.
- 4 Gayas Khaja Shaikh,
Age 34 yrs., Occ. Rickshaw Driver,
R/o Plot No.59/1, D-6,
Near Nandanvan Colony,
Chandmari Masjid, Jaisingpura,
Aurangabad.
- 5 Sarabano Aijaz Shaikh,
Age 33 yrs., Occ. Household,
R/o Plot No.7, Banjara village,
Bularum, Hyderabad (Telangana).

... Applicants

... Versus ...

- 1 The State of Maharashtra
Through The Police Inspector,
Cantonment Police Station,
Aurangabad.
- 2 Nilofar Aijaz Shaikh,
Age 38 yrs., Occ. Household,
R/o Plot No.72,
Near Nandanvan Colony,
Chandmari Masjid, Jaisingpura,
Aurangabad.

... **Respondents**

...

Mr. S.D. Joshi, Advocate for applicants

Mr. A.M. Phule, APP for respondent No.1

Mr. Taher Ali Quadri a/w Mr. Shaikh M. Rizwan, Advocate for respondent
No.2

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**CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.**

DATE : 25th OCTOBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 initially for quashing First Information Report vide Crime No.125/2023 dated 01.04.2023 registered with Cantonment Police Station, Aurangabad and subsequently by way of amendment for

quashing of charge sheet No.99/2023 dated 15.07.2023 filed before Judicial Magistrate First Class, Chhatrapati Sambhajnagar (Court No.16), for the offence punishable under Section 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2 It is not in dispute that the marriage between applicant No.1 and respondent No.2 had taken place on 22.10.2010. They have son, aged 11 on the date of First Information Report. Applicant No.2 is father, applicant No.3 is mother, applicant No.4 is brother of applicant No.1 and applicant No.5 is his second wife.

3 Heard learned Advocate Mr. S.D. Joshi for applicants, learned APP Mr. A.M. Phule for respondent No.1 and learned Advocate Mr. S.M. Rizwan for respondent No.2.

4 After hearing learned Advocate for applicants, when disinclination is shown to grant any relief to applicant No.1, on instructions, he sought withdrawal of the application. In view of the same the application stands withdrawn as against applicant No.1.

5 Matter proceeded for consideration of relief claimed by applicant Nos.2 to 5. In her First Information Report respondent No.2 has stated that

her marital life with applicant No.1 was going smoothly for about 10 years, however, since last three years she found changes in the behaviour of husband. She was then driven out of the house by mother-in-law, father-in-law and brother-in-law. She had then seen some objectionable photographs of applicant No.1 with applicant No.5. Applicant No.1 used to talk with applicant No.5 on phone. In fact, applicant No.5 is in relationship prior to the alleged second marriage with applicant No.5 and, therefore, even she used to speak to applicant No.5. Informant asked to applicant No.1 about the said objectionable photographs, whereupon he sought pardon and told that he will not indulge in any such activity henceforth. Due to the fame of the family she did not take any action, but there was no change in the behaviour of her husband. Once, she asked applicant No.1 about applicant No.5 and at that time applicant No.1 told that he has performed marriage with applicant No.5 and he would give talaq to informant. Informant also asked about the same to applicant No.5, whereupon she told that she has performed marriage with applicant No.1 and informant has liberty to do whatever she wants. Husband gave threat to the informant that if any complaint is lodged against him and applicant No.5 or she goes to Hyderabad, where applicant No.5 is residing, then he would commit suicide. Therefore, she had not lodged report with any Police Station. When she told the fact to other applicants, then they blamed informant. Informant was treated with cruelty in the form

of mental as well as physical. Applicant No.1 had also taken personal loan from H.D.F.C. Bank in 2019 to the extent of Rs.3,00,000/- and as he is not depositing the installments, Bank is calling the informant. Informant came to be assaulted on 26.02.2023 and even it was told to the son of informant that he should bring amount of Rs.1,00,000/- from the father of informant for registering name to the house. All these acts are amounting to harassment and, therefore, she has lodged First Information Report.

6 The most important fact to be noted is that it is not stated by informant as to when her husband disclosed to her that he has performed second marriage with applicant No.5. If she wants to say that the harassment is due to the second wife, then disclosure of that date was necessary. Respondent No.2 has filed affidavit-in-reply, which is nothing but the reiteration of First Information Report and she also states that she has filed proceedings under Domestic Violence Act. In view of the fact that the petition stood withdrawn for applicant No.1 i.e. husband, we are required to consider the role attributed to other applicants. Applicant No.5, with whom the second marriage is stated to be performed, cannot be taken as “relative of husband” and, therefore, offence under Section 498-A of the Indian Penal Code cannot be said to be made out against her. All the allegations are mainly against the husband and no specific role is attributed to parents-in-

law and brother-in-law. Therefore, this is a fit case where the proceedings should be quashed and set aside as against applicant Nos.2 to 5. Hence, following order.

ORDER

- i) Criminal Application stands partly allowed.
- ii) Criminal Application stands disposed of as withdrawn, after disinclination, against applicant No.1.
- iii) Criminal Application stands allowed as against applicants No.2) Shaikh Khaja Shaikh Hussain, 3) Smt. Naseem Khaja Shaikh, 4) Gayas Khaja Shaikh and 5) Sarabano Aijaz Shaikh.
- iv) Proceedings i.e. Charge Sheet No.99/2023 dated 15.07.2023 filed by Cantonment Police Station, in the Court of Judicial Magistrate First Class, Chhatrapati Sambhajnagar (Court No.16) arising out of First Information Report vide Crime No.125/2023 dated 01.04.2023 registered with Cantonment Police Station, Dist. Aurangabad, for the offence punishable under Section 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 stands quashed and set aside as against applicant Nos.2 to 5.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)