



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1970 OF 2019

- 1] Jahedda Mahboob Sayyad @
Bismilabai Mahebubsab Sayyad
 - 2] Khauum @ Ismil Maheboob Sayyad
 - 3] Joya @ Juhira Ismail Sayyad
 - 4] Mainoddin Maheboob Sayyad
 - 5] Jainuddin Mehaboob Sayyad
 - 6] Parvin Washim Pathan
- .. Applicants

Versus

- 1] The State of Maharashtra
Through Police Station Vivekanand Chowk,
District – Latur
 - 2] Taha W/o Daddamiya Sayyad
- .. Respondents

...
Advocate for applicants : Mr. Gaurav L. Deshpande
APP for the respondent – State : Mr. V.M. Jaware
Advocate for respondent no. 2 : Mr. Fayaz K. Patel
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 4 MARCH 2024

ORDER (MANGESH S. PATIL, J.) :

This is an application under section 482 of the Code of Criminal Procedure seeking quashment of crime no. 326 of 2018 registered with Vivekanand Chowk Police Station, Latur for the offences punishable under section 498-A, 323, 34 of the Indian Penal Code, consequent chargesheet no. 23 of 2019 and Regular Criminal Case No. 52 of 2019 pending on the file of the jurisdictional magistrate.

2. We have heard both the sides finally.

3. The respondent no. 2 lodged the FIR with the allegations that her marriage was solemnized on 08-01-2017. She was maintained properly for first four months. Thereafter, her husband and the in-laws started subjecting her to cruelty by declaring that they were dis-liking her, she had not brought adequate gifts and at the instigation of the relatives of the husband, the husband started physically and mentally harassing her.

4. It is then alleged in the FIR that after some understanding, her husband rented a separate residence for the couple. She got pregnant and delivered a girl. However, thereafter, the husband again started harassing her alleging that she was suffering from thyroid malfunction and he was to solemnize second marriage.

5. The FIR then alleges that the ill-treatment having become intolerable, she approached the women's grievance cell and lodged a complaint. The husband appeared before the cell, promised to take her for resumption of cohabitation but did not turn up. The FIR was then lodged on 27-09-2018.

6. The learned advocate for the applicants would submit that accepting the allegations in the FIR at the face value and even the statements of the witnesses, basically the allegations are only against the husband. No specific and precise allegations have been levelled against the applicants. Even the applicant no. 1 has not been

described in the FIR with correct name. Her correct name is Bismilabi and not Jaheda. Allegations are vague and omnibus. No specific incident has been reported. The statements of the witnesses are equally vague. The applicants have been implicated to wreak vengeance. It would be abuse of the process of law to make the applicants to face the trial.

7. Per contra, learned APP and the learned advocate for the respondent no. 2 would oppose the application. They would submit that the prosecution deserves to be extended an opportunity to substantiate the charge by leading independent evidence. This is not the stage to decipher the material collected by the Investigating Officer. The respondent no. 2 had even approached the grievance cell. The FIR could not be an encyclopedia. It is not a matter of false implication. Being the relatives of the husband of the applicants, in all probability, they had occasion to visit the house of the couple and the application be rejected.

8. We have considered the rival submissions and perused the papers.

9. There is no dispute as far as the date of marriage being 08-01-2017. There is also no dispute, rather the FIR itself mentions that the respondent no. 2 was maintained properly for first four months. Though there is no specific date or month, even the FIR mentions that

the couple started residing separately in a premises rented by the husband. The husband himself is not before us. If all these circumstances are taken into consideration collectively, it was a bare minimum requirement to demonstrate the material so as to attribute specific role to each of these applicants in subjecting the respondent no. 2 to cruelty for variety of reasons, some of which have not been spoken about in the FIR but are mentioned by the witnesses in their statements recorded under section 161 of the Code of Criminal Procedure. In fact, some allegations against some of these applicants have been levelled in the supplementary statement recorded on the next day of lodging of the FIR, without assigning any reason as to why those were not disclosed while lodging the FIR.

10. Be that as it may, the applicant no. 1 is the mother in law albeit there is an error in referring her first name; in all probability, she must have been residing with the son and must be aware about everything. In our considered view, the fact that the respondent no. 2 was cohabiting with the husband and she was subjected to ill-treatment by demanding money, attributing her with aspersion about infidelity could have been with the knowledge of the applicant no. 1. It is not expected that entire evidence could be deciphered to reveal the role attributable to her precisely. The afore-mentioned facts and circumstances are indicative of the fact that the respondent no. 2 was subjected to some ill-treatment for variety of reasons while she was

cohabiting with her husband and the applicant no. 1 - mother in law. Consequently, according to us, it would not be appropriate to quash the crime and the criminal case to the extent of the applicant no. 1.

11. However, so far as the other applicants are concerned, they are brothers in law, wife of one of the brothers in law and the sister in law, who is in fact married. Though obviously, they have been named in the FIR and even spoken about by the witnesses, all the allegations in the FIR, supplementary statements of all her maternal side relatives, namely, the parents and brothers are as vague as it could be. While attributing role to these other applicants, they have been collectively alleged to have instigated the husband to subject the respondent no. 2 to cruelty. They themselves have not been attributed with having taken part in subjecting her to cruelty. All the allegations are in respect of behaviour of the husband.

12. It would be sheer abuse of the process of law to make these other applicants face the prosecution based on such vague and omnibus statements. This is a clear case of roping in the relatives of the husband. This is a case squarely covered by the observations in the matter of ***Kahkashan Kausar V. State of Bihar; (2022) 6 SCC 599***. Application to the extent of applicants no. 2 to 6, therefore, deserves to be allowed.

13. Application is partly allowed.

14. Application to the extent of applicant no. 1 is rejected.

15. Application to the extent of applicants no. 2 to 6 is allowed.

Crime no. 326 of 2018 registered with Vivekanand Chowk Police Station, Latur for the offences punishable under section 498-A, 323, 34 of the Indian Penal Code, consequent chargesheet no. 23 of 2019 and Regular Criminal Case No. 52 of 2019 pending on the file of the jurisdictional magistrate are quashed and set aside to the extent of applicants no. 2 to 6.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/