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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2226 OF 2022

1. Adil Kalandar Shaikh,
Age 29 years, Occ. Medical representative
2. Soheli Kalandar Shaikh
Age 27 years, Oc. Private service
(Husband).
3. Ayesha Kalandar Shaikh,
Age 44 years, Occ. Household,
(Mother in law).
4. Kalandar Karim Shaikh,
Age 53 years, Occ. Business,
All R/o. Mogalpura, Jamkhed,
Dist. Ahmednagar
(father in law).

.. APPLICANTS.

VERSUS

1. The State of Maharashtra
through Jamkhed Police Station,
Tq. Jamkhed, Dist. Ahmednagar.
2. Sadaf Soheli Shaikh,
Age 20 years, Occ. Household.
R/o. Mogalpura, Jamkhed,
Dist. Ahmednagar
At present Noorani Colony, Jamkhed,
Tq. Jamkhed, dist. Ahmednagar.

.. RESPONDENTS.

Mr. G.R. Syed, Advocate for applicants.
Mr. S.A. Gaikwad, APP for respondent No.1 State
Mr. S.E. Shekade, Advocate for respondent No.2.

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

DATE : 3rd SEPTEMBER, 2024.

JUDGMENT [PER S.G. CHAPALGAONKAR, J]:-

1. The applicants have approached this court under Section 482 of Cr.P.C. praying to quash the FIR in crime No. 191 of 2022 registered with Police Station, Jamkhed for the offences punishable under sections 307, 323, 504, 506 r/w 34 of IPC and consequential criminal proceeding.

2. The respondent No.2 herein informed Police Station, Jamkhed that she resides alongwith her husband Soheli, brother in law – Adil, father in law – Kalandar Shaikh and mother in law, Aayesha. Her husband is in private service at Ahmednagar and visits once or twice in a week. Owing to dispute with her in-laws she started residing with her parents. The matrimonial proceedings was pending in the Court at Jamkhed. She was served with notice of restitution of conjugal rights by her husband. Therefore, on 30.3.2022, she came back to the matrimonial home. On 29.7.2022, while she was having telephonic conversation with her parents, the applicants scolded her. She explained that she was just asking about health of her parents. However, the applicants started abusing her. Her husband Soheli raised assault by fist and kick blows. Thereafter, they threatened to cut her into pieces. Mother in law Ayesha asked the father in law to bring the sword. Accordingly, father in law Kalandar handed over sword to brother in law – Adil. Then, Adil swung the sword with intention to kill her. But, she could escape and run away alongwith her daughter. As such, she came

back her maternal home. Since she was under threats, she could not timely lodge the FIR.

3. On the basis of aforesaid information, crime No.191 of 2022 came to be registered with Police Station, Jamkhed for offences punishable under Sections 307, 323, 504, 506 r/w. 34 of IPC against the applicants. The investigation progressed and finally charge sheet has been filed in the court of JMFC, Jamkhed, which has culminated into Regular Criminal Case which is now pending for trial.

4. Mr. G.R. Syed, learned advocate for the applicants vehemently submits that applicants have been falsely implicated. A palpably false and concocted story has been cooked by respondent No.2 only after she was served with notice for restitution of conjugal rights. He would point out that the matter was posted in Lok Adalat dated 12.3.2022. However, same could not be settled and on adjourned date, respondent No.2 sought time to file say. She was all along residing at her maternal home. However, by making false stipulations that she resumed cohabitation on 30.3.2022 further story is cooked.

5. Mr. Syed would further submit that respondent No.2 was not willing to reside in the matrimonial home. Her father holds good political influence and using the same, a belated complaint has been lodged. There is no explanation for delay in lodging the FIR. The so called incident dated 29.4.2022 is reported to police station on 3.5.2022. He would submit that the applicants Nos. 2 to 4 have been dragged in criminal proceeding only because of matrimonial dispute with applicant NO.1. He would therefore urge to quash and set aside the FIR and

consequential criminal proceeding against the applicants.

6. Per contra, Mr. S.A. Gaikwad with Mr. S.E. Shekade, learned advocate for respondent No.2 vehemently opposes the prayers in the application. They would submit that the FIR clearly stipulates individual role of each of applicants in commission of offence. Falsity of the allegations can not be gone into at this stage. It would be a matter of trial. They would further submit that charge sheet is filed. The contents of the charge sheet depict that there is recovery of weapon of offence. The statements of neighbors support the version of the respondent NO.2. She was seen running from home immediately after the incident. The witness Aslam Shabir Shaikh stated that accused Adil was seen while holding sword and other accused persons were standing when the respondent No.2 was running with her daughter towards Beed corner. As such, they urge to reject the application.

7. We have considered the submissions advanced by learned advocates appearing for respective parties. We have carefully scrutinized the contents of charge sheet. Prima facie, there is a matrimonial dispute between applicant No.1 and respondent No.2. Applicant No. 1 has issued notice of restitution of conjugal rights to respondent No.2 who is residing with her parents. Thereafter, he filed proceeding for restitution of conjugal rights. The matter was referred for mediation before Lok Adalat. The attempt was made to settle the dispute. However, it could not be settled. The Roznama of RCC No. 263 of 2021 shows that application was moved on behalf of respondent No.2 for grant of time to file reply and matter was pending for said purpose. The Roznama depicts that on 12.3.2022 matter could not be settled in Lok Adalat hence it was posted

for reply on 28.3.2022.

8. In this background, Mr. G.R. Syed, learned advocate appearing for the applicants submits that the contents of the FIR are palpably false. Respondent No.2 has falsely stated that on 29.3.2022 she resumed cohabitation in the matrimonial home. It is difficult for us to go into the aforesaid disputed questions while dealing with application under Section 482 of Cr.PC. Normally it would be a matter of trial, particularly, when the statements of witnesses recorded during the course of investigation and made part of the charge sheet supports the case of the respondent No.2. However, without going into the aforesaid aspects, we have carefully examined the contents of the FIR so as to find out individual role of the applicants and if any offence is made out against them. On careful scrutiny of the FIR and contents of the charge sheet, it can be observed that respondent No. 2 asserts allegations against husband, mother in law, and brother in law as regards the assault and ill-treatment to her. So far as incident dated 29.4.2022 is concerned, she alleges that her husband assaulted her by fist and kick blows, her mother in law asked her to get the sword kept under the bed. Brother in law Adil swung sword with intention to kill her. If such allegations in the FIR are considered, some role is attributed against accused Nos. 1 to 3 only. On overall consideration of contents of FIR and Charge Sheet we do not find any material to discern the role of applicant No.4 in commission of offence. As such, we are of the firm view that there is no reason to continue the prosecution as against applicant No.4. Hence, we are inclined to exercise our powers under Section 482 of Cr.PC. to the extent of applicant No.4 and quash and set aside the FIR and consequential proceeding against applicant No.4. Hence, we proceed to pass the

following order. :-

O R D E R

[i] Criminal application is partly allowed;

{ii] The FIR in crime No. 191 of 2022 registered with police station, Jamkhed, for the offences under sections 307, 323, 504, 506 r/w 34 of IPC and consequential criminal proceeding is quashed as against applicant No.4 i.e. Kalandar Karim Shaikh R/o. Mogalpura, Jamkhed, Dist. Ahmednagar.

[iii] Application stands disposed of accordingly.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-