



er (correction has been carried out in view of speaking to minutes order dated 29.01.2024)

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

CRIMINAL APPLICATION NO. 2527 OF 2023

1. Balaji s/o Dattatray Kamale

2. Dattatray s/o Ramrao Kamale

3. Ramji s/o Dattatray Kamale

...Applicants

Versus

1. The State of Maharashtra

Through the Secretary Department of Home,
Mantralaya, Mumbai.

2. The Police Inspector,

Police Station Ahmedpur,

Tq. Ahmedpur, Dist. Latur.

3. Sheetal w/o Balaji Kamale

...Respondents

...

Advocate for Applicants : Mr. A.R. Rathod

APP for the Respondents/State : Mr. V.K. Kotecha

Advocate for Respondent No.3 : Mr. B.B. Bhise

...

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

DATE : 19 JANUARY 2024

FINAL ORDER [*Per Shailesh P. Brahme, J.*] :

. Heard both the sides finally.

2. The applicants have invoked jurisdiction of this Court under Section 482 of the Criminal Procedure Code by challenging First Information Report (FIR) bearing C.R. No.191/2023 registered with Ahmedpur Police Station and Charge-sheet No.301/2023 in RCC No.421/2023 pending before the Judicial Magistrate First Class, Ahmedpur.

3. The applicant no.1 is the husband of respondent no.3. The applicant no.2 is his father and applicant no.3 is his brother. There is a matrimonial discord between the applicant no.1 and respondent no.3. The applicant no.1 is stated to have issued notice to the respondent no.3 expressing intention to dissolve marriage. The respondent no.3 is staying with her parents alongwith a son for one year preceding registration of impugned FIR.

4. It is a matter of record that the respondent no.3 has filed FIR bearing C.R. No.381/2022 registered with Chakur Police Station for the offences punishable under Sections 498A, 323, 504 read with 34 of the Indian Penal Code against the applicants and others. By judgment and order dated 28.02.2023, the complaint to the extent of applicant no.3 to 6 in Criminal Application No.3737/2022 was quashed by the High Court. A copy of the order dated 28.02.2023 is

placed on record. The applicant no.1 has filed Hindu Marriage Petition No.78/2022 before the Civil Judge, Senior Division, Ahmedpur for dissolution of marriage against the respondent no.3 which is pending.

5. In the given scenario, the respondent no.3 has filed complaint under challenge alleging that on 07.04.2023, she had been to her matrimonial home on being requested by the applicant no.1 to attend engagement function of the applicant no.3. The relatives of the parties are stated to have gathered for the function. The respondent no.3 was not being allowed to enter house and was abused by the applicants and others. The applicant no.2/father-in-law is alleged to have attempted to set her ablaze. She somehow rushed to the bathroom and extinguished the fire. Then the applicant no.1 hit her on head by a stick.

6. The learned Counsel for the applicants submits that the incident in question is imaginary and concocted. During the course of investigation, the statements of the eye-witnesses are recorded which disclose that the alleged instance of assault and attempt to set her ablaze never took place. The applicants have

been falsely implicated in the offence in question. The injury certificate does not corroborate the version of the respondent no.3. It is further submitted that since the applicant no.1 had already filed the proceedings for dissolution of marriage, there was no question of requesting the respondent no.3 to attend the function. It is highly improbable.

7. The learned APP and the learned Counsel for the respondent no.3 vehemently oppose the submissions of the learned Counsel for the applicants. They would submit that the seizure panchnama of the clothes and pen-drive containing CCTV footage have been recovered. The presence of the respondent no.3 at the relevant time has been established. They would further submit that the so called eye-witnesses are relatives and they are interested witnesses. It is further submitted that considering the strained relations, there was a motive to eliminate the respondent no.3.

8. Learned Counsel for the respondent no.3 would submit that the statement under Section 164 of the respondent no.3 has been recorded which clearly makes out a case for offences under Sections 307, 324, 504, 506 read with 34 of IPC. The statements of

the father and the brother corroborate her version. They would urge to dismiss the application.

9. We have considered the submissions of the parties. We have gone through the papers of investigation. There is no dispute that the respondent no.3 has been residing separately for last one year preceding FIR. The applicant no.1 has filed Hindu Marriage Petition No.78/2022 for dissolution of marriage. The respondent no.3 has also filed complaint bearing C.R. No.381/2022 under Sections 498A, 323, 504 read with 34 of IPC against the applicants and others. By order of High Court dated 28.02.2023, offence bearing C.R. No.381/2022 has been quashed to the extent of few accused therein. These events indicate that relationship between applicant no.1 and respondent no.3 has been strained.

10. The complaint of the respondent no.3 proceeds with version that applicant no.1 issued a notice for dissolution of marriage. On 02.04.2023, the couple met at the bus-station of Shirur Tajband. It is further stated that he requested her to attend engagement ceremony of the applicant no.3 to be held on 07.04.2023. Thereafter the incident occurred on 07.04.2023 as has been narrated in the complaint. There is absolutely no material on record to indicate

that there was any conversation between the couple on 02.04.2023 and on the request of applicant no.1, the respondent no.3 attended the function on 07.04.2023.

11. We cannot be oblivious of the fact that the relations between respondent no.3 and applicants are strained. The matrimonial dispute has come to fore. It is inherently improbable that he would have invited estranged wife and she would oblige the applicant no.1 in attending the function on 07.04.2023. We have not been shown any material to indicate that despite the matrimonial dispute there was some compromise and respondent no.3 had been to the place of the applicants.

12. Learned Counsel for the applicants has invited our attention to the statements of eight witnesses namely, Rajkumar; Mahesh; Narayan; Nandkumar; Maruti; Dashrath; Gopal and Santosh. They are consistent in their statements disclosing that the respondent no.3 had been to the place of the applicants, but she was not permitted to enter the house and she was asked to go away as their dispute had reached the Court. It further reveals that after waiting for some time, she went away. These witnesses do not refer to the overt act as alleged in the complaint, much less any physical

contact by the applicants with her. We find force in the submissions of learned Counsel for the applicants that the statements make the allegations in the complaint improbable.

13. It further transpires from the police papers that injury certificate shows two simple injuries on the person of the respondent no.3. This is incompatible with the version of respondent no.3 in the complaint. The respondents have vehemently submitted that the CCTV footage is collected during the course of investigation. A reliance is placed on seizure panchnama of the clothes and pen-drive containing CCTV footage. It is not made clear by learned APP that what is the source of pen-drive/CCTV footage. We have not been shown the relevant statement or material collected during the investigation disclosing the place of installation of CCTV camera and source of its recording. Thus the seizure panchnama prepared during the course of investigation also does not lead us anywhere. Rather the visuals singly corroborate statements of the witnesses about she having reached the entrance waited for some time and then left the place.

14. The contents of FIR taken as they are, are inherently

improbable. We are of the considered view that no case is made out for commission of offences under Sections 307, 324, 504, 506 read with 34 of IPC. The present case falls within the parameters laid down by the Supreme Court in the case of **State of Haryana and Ors. Vs. Bhajan Lal and Ors.**, AIR 1992 SC 604. We, therefore, pass following order.

ORDER

- (i) The application is allowed.
- (ii) The FIR bearing C.R. No.191/2023 registered with Ahmedpur Police Station Latur and Charge-sheet No.301/2023 in RCC No. 421/2023 are quashed and set aside.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]