



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

CRIMINAL APPLICATION NO.2610 OF 2023

1. Dilip s/o Bhikaji Nimbalkar,
 2. Mathura w/o Bhikaji Nimbalkar,
 3. Bhikaji s/o Shamrao Nimbalkar,
 4. Sandip s/o Bhikaji Nimbalkar,
 5. Kavita w/o Sandip Nimbalkar,
 6. Pushpa w/o Kondiba Kanade,
 7. Amol s/o Narayan Gawli
- ... **APPLICANTS**

VERSUS

1. The State of Maharashtra
 2. Sandhya w/o Dilip Nimbalkar
@ Sadhana d/o Keshav Dige
- ... **RESPONDENTS**

...

Advocate for Applicant : Mr. Shritej Surve h/f. Mr. Kshitij Surve

A.P.P. for respondent/State : Mr. V.K. Kotecha

Advocate for respondent No.2 : Mr. Gopal D. Kale

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

Date : 26.04.2024

ORDER (PER : MANGESH S. PATIL, J.) :

This is an application under Section 482 of the Code of Criminal Procedure by the husband of the respondent No.2 and his relatives for quashment of Crime No.81/2023 registered with M.I.D.C. Latur Police Station, District Latur for the offence punishable under Section 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code and the Regular Criminal Case No.680/2023 pending on the file of the Jurisdictional Magistrate at Latur.

2. At the joint request of the parties, we have heard the matter finally at the stage of admission.
3. The application to the extent of applicant No.1 – husband was withdrawn and disposed of on 12.09.2023.
4. Learned advocate for the applicants, on instructions, submits that even the applicant No.3 is no more.
5. The applicant No.2 is the mother of the husband, applicant No.4 is the brother of the husband, applicant No.5 is the wife of the applicant No.4, applicant No.6 is the paternal aunt of the husband and applicant No.7 is stated to be a mediator. We are now required to consider sustainability of the prosecution to the extent of applicant Nos.2 and 4 to 7.
6. The sum and substance of the allegations as can be discerned from the charge-sheet is to the effect that the marriage between the applicant No.1 and respondent No.2 was solemnized on 20.05.2021. After the marriage she started cohabiting with him in the matrimonial home at Santhacruz old Goa. She was maintained properly for a period of five months of the marriage. However, thereafter the husband doubting her fidelity and started abusing and beating her under the influence of liquor. He used to drink and even compelled her to drink. She was kept starving. He was doing so on the instigation by these other applicants. He also started instigating her to bring money and was ultimately driven out of the matrimonial home on 28.12.2021 and came

back to the parental home.

7. The FIR then alleges that when she attempted to resume cohabitation by going to the matrimonial home on 13.11.2022 she was not allowed to enter into the house. The applicants declared that the applicant No.1 would seek divorce and if she wanted to return to the matrimonial home, bring the money and was thus driven out. She lodged the complaint with the Women Grievance Cell on 28.09.2022. Hence she lodged the FIR on 07.02.2023.

8. Learned advocate for the applicant would take us through the papers and would submit that the deceased had resided in the matrimonial home barely for some time but has ensured obliquely to implicate all the family members of the husband. Primary allegations are only against the husband who had already withdrawn the application. There is nothing incriminating against the rest of the applicants. The allegations are vague and omnibus. The case is squarely covered by **Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors.; (2022) 6 SCC 599**. He would further submit that the applicant No.7 admittedly is not even related to the husband and still has been implicated under Section 498-A. It would be abuse of the process of the law to make these other applicants to face the prosecution in the light of **State of Haryana V/s Bhajan Lal; 1992 Supp (1) SCC 335**.

9. Per contra, the learned APP and the learned advocate for respondent would oppose the application. They would submit that FIR

cannot be expected to be an encyclopedia. There are specific and precise allegations about these other applicants having instigated the husband who in turn used to assault respondent No.2. The prosecution deserves to be extended an opportunity to prove the charges by leading cogent evidence and the prosecution should not be thwarted at the threshold.

10. Having heard both the sides and having perused the papers, true it is that the purpose of lodging an FIR is merely to set the criminal law in motion and it cannot be expected that it should cover all the facts and circumstances particularly in the matrimonial disputes in respect of the allegations regarding cruelty which as defined under Section 498-A would be in the form of culmination of several incidents during the period the couple resided together. However, when the investigation has been carried out and has resulted in filing a charge-sheet, there should be some material which takes the case further. Something which is not there in the FIR could be revealed to substantiate the broad allegations about subjugation of respondent No.2 to cruelty. Statements of the parents of respondent No.2, brother and other near relatives recorded under Section 161 of the Code of Criminal Procedure and which form part of the charge-sheet would clearly demonstrate that these are merely in tune with the FIR and do not add anything to it. Like the FIR, all the statements are vague and omnibus. Though allegations can certainly be attributed to the husband, as far as these rest of the applicants are concerned, they have been referred to conjointly and making an omnibus

allegation about all of them having instigated the husband in subjecting respondent No.2 to cruelty.

11. It is abundantly clear that the marriage had taken place on 20.05.2021 and the respondent No.2 was allegedly driven out on 28.12.2021 which is a period of seven months. The FIR as well as the statements specifically mention that she was maintained properly for first five months. Meaning thereby that the period of alleged ill-treatment was barely two months. If such is the state of affairs, it was but obvious that the FIR as well as these witnesses could not have been able to pinpoint any specific episode, wherein, any of these other applicants had taken active part in subjecting respondent No.2 to cruelty. If this is so, in our considered view, the fact situation is squarely covered by **Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors.;**(2022) 6 SCC 599, **Kumari Geeta Mehrotra and Anr. Vs. State of U.P. and Anr.;** AIR 2013 SC 181 and **Preeti Gupta and Anr. V. State of Jharkhand and Anr.;** AIR 2010 SC 3363. The very fact that not only all the relatives of the husband are being implicated but even a stranger like the applicant No.7 who has been described as a mediator for settling the marriage has been roped in. This clearly demonstrates that these other applicants are being implicated in all probability to wreak vengeance. Not to repeat, the husband has already withdrawn the application and would face the prosecution against whom there are precise and specific allegations, however, it would be abuse of the process of law to make these other applicants face

the prosecution.

12. The Application is allowed. The Crime No.81/2023 registered with M.I.D.C. Latur Police Station, District Latur for the offence punishable under Section 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code and the Regular Criminal Case No.680/2023 pending on the file of the jurisdictional magistrate at Latur to the extent of applicant Nos.2 and 4 to 7 are quashed and set aside.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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