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CRWP 1155.22R.odt

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

CRIMINAL WRIT PETITION NO. 1155 OF 2022

1. Chandrakant S/o. Gangadharrao Patil (Correct name)
Chandrakant Gangadhar Patil (As per FIR correct name)
Age 70 years, Occ. Legal Practitioner,
R/o. Darshan Plaza, Flat No.A-1, Near Kamgar Chowk,
N-2, CIDCO, Aurangabad.
2. Sow. Suraksha w/o. Chandrakantrao Patil (Correct name)
Suraksha Gangadhar Patil (as per FIR correct name)
Age 60 yrs, Occ. Housewife,
R/o. Darshan Plaza, Flat No.A-1, Near Kamgar Chowk,
N-2, CIDCO, Aurangabad.
3. Vijaykumar s/o. Chandrakantrao Patil (Correct name)
Vijay Gangadhar Patil (As per FIR incorrect name)
Age 41 years, Occ. Legal Practitioner.
R/o. Darshan Plaza, Flat No.A-1, Near Kamgar Chowk,
N-2, CIDCO, Aurangabad.

.. Petitioners
(Original accused No.1 to 3)

VERSUS

1. The State of Maharashtra
through its Principal Secretary,
Law and Justice Department,
Madam Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai.
2. The State of Maharashtra
through Principal Secretary
Home Department, Mantralaya, Mumbai..
3. The High Court of Judicature at Bombay,
through its Registrar General,
High Court, Mumbai.

4. The District Superintendent of Police,
Nanded Division, Nanded.
5. The investigation Officer,
Bhagya Nagar Police Station, Nanded.
6. Durgaprasad s/o. Rajeshwarrao Deshpande,
Age 40 years Occ. Service, Serving as
Ad-hoc District Judge-1 and Additional Sessions Judge,
at Sangamnar, Dist. Ahmednagar.

.. RESPONDENTS.

Mr. N.K. Tungar, Advocate for petitioners.
Mr. A.B. Kadethankar, Advocate for respondent No.3
Mr. A.V. Lavte, APP for respondent Nos. 1,2, 4 and 5
Mr. Vishal A. Kakade, h/f Mr. Shaikh Majhar A. Jahagirdar,
Advocate for respondent No.2

with

CRIMINAL APPLICATION NO. 1922 OF 2022

1. Madhukar s/o. Sherao Kulkarni (Kumbharikar)
Age 79 years, Occ. Advocate,
R/o. Behind State Bank of India, Stadium,
Mangalwara, Parbhahi.
2. Manoj s/o. Madhukarrao Kumbharikar(Kulkarni)
Age 49 yaers, Occ. Advocate,
R/o. Behind State Bank of India, Stadium
Mangalwara, Parbhahi.
3. Sow. Renuka w/o. Manoj Kumbharikar
Age 39 years, Occ. Household,
R/o. Behind State Bank of India, Stadium
Mangalwara, Parbhahi.

.. APPLICANTS.

(Ori. Accused Nos. 4 to 6)

VERSUS

1. The State of Maharashtra
through Police Station Officer,
Bhagya Nagar Police Station, Nanded.
2. Durgaprasad s/o. Rajeshwarrao Deshpande,
Age 40 years, Occ. Judicial Officer serving as
Additional Ad-hoc, District Judge
present posted at Sangamner, Dist. Ahmednagar.
..RESPONDENTS.

Mr. N.K. Tungar, Advocate for petitioners.
Mr. A.B. Kadethankar, Advocate for respondent No.3
Mr. A.V. Lavte, APP for respondent Nos. 1,2, 4 and 5
Mr. Vishal A. Kakade, h/f Mr. Shaikh Majhar A. Jahagirdar,
Advocate for respondent No.2

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

**RESERVED ON : 11th OCTOBER, 2024.
PRONOUNCED ON : 18th NOVEMBER, 2024.**

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

1. The petitioners have approached this Court under Article 226 of the Constitution of India read with Section 482 of Cr.PC. seeking relief of quashment of FIR no. 119 of 2022 registered with Bhagyanagar Police Station, for the offences punishable under Sections 109, 120B, 34, 447, 451, 452, 384 of IPC.

2. Criminal Writ Petition No. 1155 of 2022 contains some additional prayers seeking direction against respondent No.1 to initiate inquiry against respondent No.6 for alleged misuse of post and power as a Judicial Officer with help of Police authorities to register false and

imaginary offence against the petitioners. One more prayer is made for a direction to initiate inquiry against the respondent No.5 (**Investigation Officer**) for **registering** a false and imaginary offence against the petitioners without proper inquiry as per law laid down by Hon'ble Supreme Court of India in Lalita Kumari vs. Government of UP and others.

3. Respondent No.6 lodged FIR dated 11.9.2022 with Bhagya Nagar Police station alleging that accused persons hatched conspiracy with a view to earn benefit of maintenance amount through his wife Sarika, who is a psychiatric patient. He alleges that in the month of June, 2019, he has been transferred as Ad-hoc District Judge Nanded. Since July, 2021, he has been posted at Biloli. It is alleged that in 2007, he married with Sarika and blessed with two children from said matrimonial relationship. His wife is a Schizophrenic patient and under supervision of experts. However, taking disadvantage of the situation, her parents, brother and relatives are creating obstacles in providing medical aid to his wife with intention to take undue benefit of her poor mental **health** and extract financial and other consequential benefits from the informant. In 2023, an offence was registered against them with Police Station, Washim. However, settlement was arrived by before Hon'ble High Court. Despite previous settlement, the accused persons are persistent in taking disadvantage of the Schizophrenic condition of his wife and instigates her to file various proceedings for maintenance. Now are residing in his flat at Biloli, knowing well that he has entered in to agreement for sale with Renapurkar Builders and possession is to be handed over to purchaser. Although he has been transferred to Sangamner, accused persons are creating obstacles in taking his children

to the School at Sangamner and blackmailing him through his wife.

4. On 10.4.2022 at about 7.00 a.m., accused persons entered in his house with criminal intention. When he visited home at Biloli so as to meet his wife and children, the accused persons prevented his wife from opening the door and restrained him from entering in the house. Thereafter, he gave call to police. Smt. Vathore Madam, API arrived on the spot alongwith her co-officers and requested his wife to open the door. She was prevented by accused persons from doing so. The accused persons are creating hurdles in transfer of the flat. They are prosecuting various proceedings by instigating his wife against him. They are also preventing him from taking out important documents kept in Flat. They have illegally entered in the house with criminal intent and instigated his wife to raise false allegations and file proceeding against him with intention to earn benefit through maintenance amount.

5. On the basis of aforesaid report Crime No. 0119 of 2022 has been registered with police station, Bhagyanagar Nanded, against in all six accused persons. The investigation progressed and charge sheet has been filed. Eventually, RCC No. 366 of 2023 is registered and pending before JMFC, Nanded. The applicants in Criminal W.P No. 1155 of 2022 are parents and brother of Sarika-wife of the informant and applicants in Criminal W.P NO. 1922 of 2022 are distant relatives i.e. in-laws of sister of Sarika.

6. Mr. N.K. Tungar, learned advocate for the petitioners invites our attention to the list of civil and criminal cases arising out of matrimonial dispute between respondent No.6 and his wife. Mr. Tungar

would submit that respondent No.6 has consistently ill-treated his wife under the pretext that she is a schizophrenic patient. The applicants in Criminal W.P. No. 1155 of 2022 being parents and brother of Sarika, were staying with her in a flat at Nanded. The respondent No.6, with ill-motive to evict Sarika from the flat, executed an agreement of sale with a Builder. Since applicant Nos. 1 and 2 were residing with Sarika, they are made as accused and even the other applicants, who are unconcerned with dispute have been implicated as accused persons. Mr. Tungar would invite attention of this Court to the contents of FIR and statements of witnesses recorded during the course of investigation, to contend that none of the ingredient of the alleged offences would attract in the facts of the case. In fact, the registration of FIR itself is illegal. The proceeding ought to have been dropped by police authorities, however, they proceeded to register false complaint owing to the power and position of respondent No.6 being a Judicial Officer.

7. Mr. Tungar would further submit that no court has passed any order or decree granting maintenance in favour of Sarika. Therefore, the allegations that the petitioners had ill-eye on the maintenance amount is fallacious. He would further submit that the registration of FIR and consequential proceeding is sheer abuse of process of law, hence needs to be contained.

8. Per contra, Mr. A.V. Lavte, learned APP and Mr. Vishal Kakade, learned advocate for respondent No.2 justifies the registration of FIR and consequential proceedings.

9. We have considered the submissions advanced by learned

advocates for respective parties. List of litigation between respondent No.6 and his wife Sarika shows that in all 23 criminal and civil matters have been instituted by them against each other, which includes, criminal cases under Section 498-A, proceeding under the Protection of Women from Domestic Violence Act, the proceedings for maintenance by wife, proceeding for divorce by respondent No.6, and FIRs for various offences. Previously, by intervention of this Court, the proceedings were disposed of in the light of settlement between the parties. However, it appears that litigation still persists.

10. Prima facie, this Court is of the view that the chequered matrimonial dispute is taking toll of process of law. It is difficult to find out who is at fault; but, fact remains that the machinery of Police and Courts has been exerted by the parties. Be that as it may.

11. So far as the present writ petitions are concerned, we are inclined to consider only prayer as regards quashment of the FIR and consequential criminal proceedings, without touching to other prayers which are based on disputed questions of fact. On the basis of material before us, it would be difficult to record definite finding that respondent No.6 misused his position or Respondent No. 5 registered offence under his influence. It can not be ignored that some incidence occurred at relevant time but parties are canvassing same as per own angle.

12. The gist of contents of FIR depict that it pertains to incidence dated 10.4.2022. The informant alleges that when he had been to his home at Nanded, his wife Sarika did not open door. Petitioner nos. 1 and 2 were inside the house alongwith her. He alleges that petitioner Nos. 1

and 2 prevented Sarika from opening the door. His entry was restricted. Since his important documents and precious articles were inside the house, he attempted to take aid of the police to secure entry in the house. However, because of the instigation of respondent Nos. 1 and 2, his wife did not open the door. The applicants took disadvantage of poor mental health of Sarika, illegally entered in his flat with intention to create obstacle in the transfer of the flat as agreed by him to the builder. **Informant** further alleges that accused persons are instigating his wife to lodge false reports against him to exploit financial benefits.

13. During the course of investigation, the statement of API Bharti Kanba Vathore, Assistant Police Inspector, Bhagyanagar Police Station, is recorded, wherein, she stated that wife of respondent No.6 told that she has invited her parents and they are residing with her in response to her invitation. The said statement shows Sarika did not open door as she had apprehension of life and limb. The petitioner Nos. 1 and 2 were present in the house. From the statement of the Police Officer, it is not discernible that petitioners had any way obstructed entry of respondent No.6 in the house. Pertinently, Sarika is not made accused in the FIR. From the contents of FIR and charge sheet, presence of the petitioner No.3 (in Criminal W.P. NO. 1155 of 2022) or petitioners in W.P. No. 1922 of 2022 is not discernible at the time of incident.

14. Apparently, the charge sheet is filed for the offences under Sections 341, 342, 384, 451, 452, 109 r/w. 34 of IPC. From the plain reading of the FIR and allegations therein, we do not find that ingredients to make out case for aforesaid offences are present in this case.

Section 339 of IPC defines wrongful restraint which requires that person, who has a right to proceed is wrongfully restrained so as to prevent that person from proceeding in any direction. As observed in aforesaid paragraphs, it is discernible that Sarika who is wife of respondent No.6 did not open the door or restricted entry of respondent No.6 in the house. No role of applicants can be seen in such act of Sarika. Section 340 defines wrongful confinement. Statement of Sarika shows that she was residing in a flat alongwith her parents and children on her own volition and there is nothing to show that respondent No.6 was confined by any of the accused persons.

15. Further to make out an offence under Section 451, there has to be house trespass in order to commit the offence. Section 452 provides for punishment for house trespass after preparation for hurt, assault or wrongful restraint. The allegations in the FIR or evidence collected during the course of investigation nowhere suggest that entry of petitioner Nos. 1 and 2 in the house was with criminal intent. In fact, they being parents of Sarika i.e. wife of respondent No.6, they were invited by her and residing at her pleasure. In that view of the matter, we are of the considered view that no offence can be made out against the applicants in the facts and circumstances of the case. Criminal proceeding in such matters would be an abuse of process of law. Hence, we allow the writ petitions, proceed to pass the following order :-

ORDER

- [I]** Criminal Writ petition No. 1155 of 2022 is partly allowed.
- [II]** Criminal Application No. 1922 of 2022 is partly allowed

[III] The First Information Report in Crime No. 0119 of 2022 dated 11.04.2022 registered with the Bhagya Nagar Police Station, Nanded under Section 109, 120-B, 34, 447, 451, 452, 384 of Indian Penal Code, 1860 is hereby quashed and set aside alongwith consequential criminal proceeding in Regular Criminal Case No. 366 of 2023 pending before 5th Judicial Magistrate First Class, Nanded

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-