



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3085 OF 2022

- 1) Hemant s/o Dharmaraj Adhe
- 2) Leela @ Baby Dharmaraj Adhe
- 3) Dharmaraj Meharban Adhe
(Application is disposed to the extent
of applicant nos. 1 to 3 vide order
dated 03.10.2022)
- 4) Deepa Ganesh Rathod,
Age 40 years, Occ. Household,
R/o. Sector 1, Near Shanti Niketan
High School, B-4, Gitanjali CHS
Plot No. 3, NEW Panvel, Raigad,
Maharashtra.
- 5) Ganesh Shahu Rathod,
Age 45 years, Occ. Service,
R/o. Sector 1, Near Shanti Niketan
High School, B-4, Gitanjali CHS
Plot No. 3, NEW Panvel, Raigad,
Maharashtra.
- 6) Manoj Dharmaraj Aadhe,
Age 38 years, Occ. Doctor.
R/o. Plot No. 10, Second Roq House
Sun City, in front of Podar International
School, Jalna.
- 7) Ravi Ramesh Rathod,
Age 34 years, Occ. Service,
R/o. Khambewadi Post, Shivali,
Dist. Jalna.
- 8) Ramesh Balasaheb Rathod,
Age 59 years, Occ. Nil,
R/o. Khambewadi Post, Shivaji
Dist. Jalna.

... Applicants

VERSUS

- 1) The State of Maharashtra
Through Police Inspector

Pundlik Nagar Police Station,
Aurangabad, Tq. & Dist. Aurangabad.

- 2) Dipali Hemant Adhe,
Age 31 years, Occ. Service,
R/o. Nawsai, Plot No. 29B,
Rajmata Jijau Coop Housing Society,
Aurangabad

... **Respondents**

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Advocate for the Applicants : Mr. Tungar Nikhilesh K.
A.G.P for the Respondent No. 1 : Mr. M. M. Nerlikar
Advocate for Respondent No. 2 : Mr. R.B. Dhakane

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

DATE : **02.01.2024**

PER COURT :

This is an application under Section 482 of the Code of Criminal Procedure filed by the husband of the respondent no. 2 and his relations for quashment of the Crime No. 236/2022 registered with Pundliknagar Police Station Aurangabad for the offences punishable under Sections 498A, 313, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Section 3 and 4 of the Dowry Prohibition Act.

2. At the time of passing of the first order, the application to the extent of applicant nos. 1 to 3 who are the husband and his parents was withdrawn.

3. The learned advocate for the respondent no. 2 tenders across the bar an affidavit in reply. It is taken on record.

4. Heard both the sides finally at the stage of admission.

5. After hearing the arguments when we express our disinclination to grant any relief to the applicant nos. 4 and 5, their learned advocate seeks leave to withdraw the application even to their extent. They are the sister of

the husband and her husband.

6. In short, we are called upon to examine the matter only qua the applicant nos. 6 to 8 who are the husband's brother, husband's maternal cousin and husband's maternal uncle respectively.

7. The learned advocate for the applicants would submit that there are no specific and precise allegations against the applicant nos. 6 to 8. They have been roped in for the obvious reason to harass all the applicants. The allegations are palpably false and concocted. The marriage had taken place on 29.01.2015. The marital life was cordial. It is only after the respondent no. 2 deserted the applicant no. 1-husband in the year 2017 and started residing with her parents she has started making allegations. The couple was involved in several court proceedings. The F.I.R. has been lodged belatedly on 29.06.2022 after lapse of enormous period after the couple started residing separately. The allegations about some incident of 2018, therefore are false and concocted. As it is the application to the extent of applicant nos. 1 to 5, who are the husband and his near relatives has been withdrawn. The allegations and the episodes narrated in the F.I.R. even if accepted at their face value do not demonstrate actual involvement of the applicant nos. 6 to 8. In fact, the applicant nos. 7 and 8 have not been residing under the same roof where the couple was residing and allowing them to face the trial would be abuse of process of law.

8. The learned A.P.P. and the learned advocate Mr. Dhakane for the respondent no 2 would oppose the application even to the extent of applicant nos. 6 to 8. They would submit that they have been specifically named in the F.I.R. albeit collectively with the other applicants. This is not a stage to scan the material collected by the investigating officer threadbare. That can happen only during trial. The prosecution deserves to be extended sufficient opportunity to substantiate the allegations which can happen only during trial and the application even to the extent of applicant nos. 6 to 8 be

rejected.

9. We have carefully perused the charge-sheet and considered the rival submissions.

10. Delay in lodging the F.I.R. in matrimonial disputes would not be of much relevance at the stage when the accused are seeking quashment of the crime and the charge-sheet. We are only concerned as to whether there is some incriminating material collected during the course of investigation disclosing actual involvement of the applicant nos. 6 to 8 in commission of the crime.

11. A careful perusal of the F.I.R. does reveal that along with the applicant nos. 1 to 5, even the applicant nos. 6 to 8 have been named therein but no specific and precise allegations have been attributed to them. Their reference in the F.I.R. together with the reference to the other applicants is clearly omnibus and vague.

12. In the F.I.R. after the preface, as to when and how the marriage had taken place it *inter alia* mentions that though the marriage was solemnized at Aurangabad, soon thereafter the couple started leading their matrimonial life at Panvel, New Mumbai, since the applicant no. 1-husband was already in the employment of a private limited company in Mumbai. The F.I.R. then describes that the applicant no. 4 who is the sister of the applicant no. 1 together with her husband-applicant no 5 were residing in the vicinity of the couple. Therefore, even the parents in law that is the applicant nos. 2 and 3 were frequenting to their place. The F.I.R. then narrates as to how during that time the applicant nos. 1 to 5 were illtreating her. Some episode involving the mother in law allegedly having occurred on 22.03.2018 is thereafter mentioned. It is alleged that the applicant nos. 1 to 5 had assaulted her on that day. However, conspicuously, these allegations are only qua the applicant nos. 1 to 5.

13. Reference to the applicant nos. 6 to 8 can be found in the F.I.R. only in respect of the happenings in the early part of the Covid pandemic from March 2020 onwards. It is alleged that due to pandemic, the couple had come back to Jalna in March 2020 and had started residing in the house of the applicant no. 6, who is the husband's brother. The F.I.R. alleges that the applicant no. 6 used to come home after consuming liquor and used to abuse and assault her. It is alleged that due to his instigation the husband started assaulting her. It is then alleged that the applicant nos. 6 to 8 together with the parents in law started instigating her husband to perform second marriage. It alleges that in August 2020 the couple migrated to Pimpri-Chanchwad. Meaning thereby that the role attributed to the applicant nos. 6 to 8 is only in respect of the alleged happenings during the period of about 3-4 months in the early part of the pandemic which started in March 2020.

14. In our considered view, the allegations are highly improbable and therefore not believable. It is highly improbable that the applicant no. 6 who is the brother of the husband could have abused and physically assaulted the respondent no.2 in presence of the husband. As far as the applicants no. 7 and 8 are concerned, they have been referred to along with the parents in law and the applicant no. 6 to have instigated the husband to perform second marriage.

15. There usual tendency experienced over a period of time in the matrimonial disputes, to involve as many relations of the husband as possible for the obvious reason to take vengeance. A reference can be made to the judgments of the Supreme Court in the matters of :

1) Preeti Gupta and another Vs. State of Jharkhand and another; 2010 A.I.R. (SC) 3363.

(2) Geeta Mehrotra and another Vs. State of U.P. and another; 2013 A.I.R. (SC) 181.

**(3) Kahkashan Kausar @ Sonam and Others Vs. State of
Bihar and others; 2022 A.I.R. (SC) 820**

The observations of the Supreme Court are apt to describe the situation in the matter in hand.

16. Bearing in mind the principles laid down in the matter of *State of Haryana and Ors V/s. Bhajan Lal and Ors.: AIR 1992 Supreme Court, 604*, it would be sheer abuse of the process of law if even the applicant nos. 6 to 8 are allowed to face the prosecution based on such vague, omnibus and highly improbable allegations.

17. The Criminal Application is partly allowed. Crime No. 236/2022 registered with Pundliknagar Police Station Aurangabad for the offences punishable under Sections 498A, 313, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Section 3 and 4 of the Dowry Prohibition Act and the consequent charge-sheet and the criminal case bearing Regular Criminal Case No. 2431/2023 pending before the XVII Judicial Magistrate First Class, Aurangabad, Dist. Aurangabad is quashed and set aside to the extent of the applicant no. 6-Manoj Dharmaraj Aadhe, applicant no. 7- Ravi Ramesh Rathod, and applicant no. 8-Ramesh Balasaheb Rathod.

18. Criminal Application is disposed of to the extent of applicant nos. 4 and 5 as withdrawn.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-