



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

CRIMINAL APPLICATION NO. 3684 OF 2024

Chetan S/o Ganpat Waghare,
Age : 33 Years, Occ. Private Job,
R/o. CL-7-53-01,
12th Scheme, Cidco, Near Morya Mangal
Karyalay, Shivaji Nagar, Aurangabad
At present R/o. Green Square, "B" Wing,
Flat No.704, Moshi PCMC Pune ..Applicant

VERSUS

1. The State of Maharashtra
Through Pundlik Nagar Police Station
2. Manjusha W/o Chetan Waghare
(Manjush D/o Devanand Sahare)
Age : 26 Years, Occ. Private Job,
R/o. C/o. Devanand Anand Sahare,
Jai Bhawani Nagar, Lane No.1,
Behind Ambedkar Statute,
Aurangabad. .. Respondents

....

Advocate for the applicant : Mr. Nitin Telgaonkar
A.P.P. for Respondent No.1 State : Mrs. P.R. Baraswadkar
Advocate for Respondent No.2 : Mr. S. P. Salgare

....

**CORAM : SMT. VIBHA KANKANWADI AND
R. W. JOSHI, J.J.**

DATED : NOVEMBER 28, 2024

ORDER:-

1. The present application has been filed for quashing the
proceeding of Sessions Case No. 188 of 2024 pending with
Sessions Judge, Aurangabad arising out of FIR vide Crime No.

19 of 2022 dated 19.01.2022 registered with Pundlik Nagar Police Station, Aurangabad for the offences punishable under Sections 498-A, 323, 315, 504, 506 read with Section 34 of the Indian Penal Code.

2. It is not out of place to mention here that the present applicant had filed Criminal Application No. 1665 of 2022 and it stood disposed of as withdrawn as against him on 14.09.2022. However, as regards the present application, there is change in the circumstances. When the earlier application was filed, the charge sheet was not filed. However, now charge sheet is filed and even the case has been committed to the Court of the Sessions and therefore, there will not be bar for entertaining the present application, which is under Section 482 of the Code of Criminal Procedure.

3. Respondent No.2 has appeared suo moto with an Advocate and filed affidavit in reply. In her affidavit in reply she has stated that the dispute between herself and the applicant has been settled. They have agreed to take divorce by mutual consent and agreed that they would withdraw cases filed against each other. The applicant as well as respondent No.2 are present before this Court and both of them reiterated

that the said settlement has been arrived between them. The applicant appears to have filed FIR vide Crime No. No. 418 of 2021 on 18.10.2021 with the same police station for the offences punishable under Sections 420, 318, 201, 506 read with Section 34 of the Indian Penal Code and then the charge sheet is filed bearing No. 12 of 2023. Now the applicant, by this settlement, appears to have agreed to withdraw the said First Information Report or in other words he will not have any objection for quashment of the said First Information Report if appropriate steps are taken by respondent No.2.

4. It is not in dispute that the applicant and respondent No.2 got married on 07.03.2021 and now they have decided to take divorce by mutual consent as the dispute between them has been resolved. In the normal course, certainly there would not have been any objection for quashing the First Information Report and the proceeding if it would have been simply for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code. Even now as regards those offences are concerned, the powers under Section 482 of the Code of Criminal Procedure can be allowed to be exercised. There is concern as regards offence under Section 315 of the Indian Penal Code. Definitely, it is serious

offence and therefore, we had considered the material on record. In the FIR, respondent No.2 has stated that she was driven out of the house by demanding the amount and in presence of her father the present applicant had kicked her on stomach when he had the knowledge that she was pregnant at that time. She states that she went to parental home and after two to three days she realized that there was miscarriage and in specific words she said as her mental condition was not proper, she had not taken treatment in any hospital. Similar is the statement of her father and others. That means, except the words there is no evidence regarding miscarriage. The entire charge sheet does not contain any expert opinion as to whether such miscarriage is possible. With this weak evidence, it would be unjust to ask the applicant to face the trial for the offence punishable under Section 315 of the Indian Penal Code. Therefore, in all the powers under Section 482 of the Code of Criminal Procedure deserve to be exercised.

5. Before parting, taking into consideration the facts and the manner in which the dispute appears to have been handled, it can be considered that the police machinery as well as judicial forum has been utilized for settling the score and therefore we take this case as exception and impose cost.

With these observations following order is passed :-

ORDER

- (I) The application is allowed.
- (II) The proceeding in Sessions Case No. 188 of 2024 pending before the learned Sessions Judge Aurangabad arising out of FIR vide Crime Register No. 19 of 2022 registered on 19.01.2022 with Pundliknagar Police Station for the offence punishable under Sections 498-A, 323, 315, 504 read with Section 34 of Indian Penal Code stands quashed and set aside as against applicant Chetan S/o Ganpat Waghare.
- (III) Applicant as well as respondent No.2 to deposit amount of Rs. 5,000/- (Rupees Five Thousand) each with the High Court Legal Services Authority, Bench at Aurangabad within a period of one week from today.
- (IV) Deposit of cost is condition precedent. In case of failure to deposit the cost on the part of either of them, would revive the proceedings.

(R.W. JOSHI)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Y.S. Kulkarni