



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

CRIMINAL APPLICATION NO.3154 OF 2022

1. Devendra s/o Satish Kurhe
2. Kalpana w/o Satish Kurhe
3. Satish s/o Laxman Kurhe
4. Rohit s/o Satish Kurhe
5. Hrushikes s/o Satish Kurhe

... APPLICANTS

VERSUS

1. The State of Maharashtra
through Paithan Police Station
in Crime No.269/2022
2. Kirti w/o Devendra Kurhe

... RESPONDENTS

...

Advocate for Applicants : Mr. V.B. Kulkarni

Addl.PP for respondent/State : Mr. M.M. Nerlikar

Advocate for respondent No.2 : Mr. Sushant B. Choudhari

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**CORAM : MANGESH S. PATIL &
R.M. JOSHI, JJ.**

DATED : 05.02.2024

ORDER (MANGESH S. PATIL, J.) :

By invoking the powers under Section 482 of the Code of Criminal Procedure the applicants are seeking quashment of Crime registered at the instance of respondent No.2 who happens to be wife of applicant No.1, bearing FIR No.269/2022 registered with Paithan Police Station, Dist. Aurangabad for the offence punishable under Section 498A, 323,504, 506 read with Section 34 of the Indian Penal Code, the subsequent charge-sheet and the RCC No.503/2022 pending before the Judicial Magistrate First Class, Paithan.

2. After hearing both the sides when we express our disinclination to grant any relief to applicant Nos.1 to 3 who are the husband and his parents, their learned advocate, on instructions, seeks leave to withdraw the application to their extent. The applicant Nos.4 and 5 are the brothers of the applicant No.1 - husband.

3. The allegations in the FIR are to the effect that the marriage between the applicant No.1 and the respondent No.2 was solemnized on 24.12.2020. However, after the marriage, the applicants started insulting her. When her parents tried to convince the parents-in-law they did not budge. When with the consent of the husband she started working as a dentist with a senior doctor, her parents-in-law started attributing aspersions touching her character. They started instigating her husband who used to subject her to ill-treatment.

4. It is then alleged that when the couple had gone to celebrate honeymoon in the month of February 2021 she realized that he was suffering from ailment and was unable to indulge in sex. He could not establish sexual relation till March 2021. When she narrated this to the rest of the applicants, they got annoyed and subjected her to ill-treatment. Though she made her husband to have medical treatment there was no positive result and instead he subjected her to ill-treatment physical as well as mental. All attempts to reconcile failed and the FIR was lodged on 29.07.2022.

5. The learned advocate for the applicants would submit that as far as applicants Nos.4 and 5 are concerned who are the brothers of the husband there are no specific and precise allegations. Mere allegations of their involvement would not suffice. There is no material to reveal their complicity. Investigation has already been over still nothing incriminating could be collected against these brothers-in-law. All the allegations are touching the consummation of marriage, with which the brothers-in-law would not have any connection. It would be sheer abuse of the process of law if they are made to face the prosecution without there being iota of material.

6. The learned APP and the learned advocate for respondent No.2 would oppose the application even to the extent of applicant Nos.4 and 5 brothers-in-law. They would submit that there are allegations about even they having taunted the respondent No.2 and having helped in subjecting her to cruelty. They would submit that the FIR is not supposed to be an encyclopedia. An opportunity deserves to be extended to the prosecution to lead cogent evidence to substantiate the charge and the application be rejected.

7. To repeat, we are merely concerned with sustainability of the prosecution as against the applicant Nos.4 and 5 who are the brothers-in-law of the respondent No.2, since application to the extent of other applicants has been sought to be withdrawn.

8. Accepting the allegations in the FIR as well as the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure including the complaint lodged by the respondent No.2 with the Women's Grievance Cell dated 23.05.2022, the basic allegations apparently are against the husband and the parents-in-law. His inability to consummate the marriage seems to be the triggering factor. Though there is reference to some role by the brothers-in-law, even accepting the allegations at their face value, they have not been alleged to have played any active role in subjecting the respondent No.2 to physical or mental cruelty. In fact, going by the dates mentioned in the FIR, the couple could lead marital life barely for six to seven months during which time already the couple was involved in some disagreement in respect of the treatment to be undertaken by the husband for his alleged inability to consummate the marriage. One cannot comprehend as to how brothers-in-law could have any role to play in such a dispute between the couple.

9. The only allegations against the applicant Nos.4 and 5 is to the effect that the applicant Nos.4 and 5 would exhort the other applicants in subjecting respondent No.2 to cruelty. Apart from such exhortation there are no allegations about they having subjected her to any ill-treatment or to have taken active part in subjecting her to cruelty. In spite of absence of concrete material to attribute any role to the applicant Nos.4 and 5 they have been apparently dragged into the

controversy. As has been observed in the matter of **Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors.; 2022 ALL SCR (Cri) 433** and **Kumari Geeta Mehrotra and Anr. Vs. State of U.P. and Anr.; AIR 2013 SC 181**, it appears that the applicant Nos.4 and 5 have been implicated with some ulterior motive to harass all the applicants. It is a case squarely covered by **State of Haryana and Ors. V/s Ch. Bhajan Lal and Ors.; (1992) SCC (Cri) 426**.

10. The Application is partly allowed. The Crime bearing FIR No.269/2022 registered with Paithan Police Station, Dist. Aurangabad for the offence punishable under Section 498A, 323,504, 506 read with Section 34 of the Indian Penal Code, the subsequent charge-sheet and the RCC No.503/2022 pending before the Judicial Magistrate First Class, Paithan against the applicant Nos.4 and 5 are quashed and set aside.

11. The Application to the extent of applicant Nos.1 to 3 is dismissed as withdrawn.

[R.M. JOSHI]
JUDGE

[MANGESH S. PATIL]
JUDGE