



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 3119 OF 2023

1. Shaikh Mushtak Shaikh Rashid
Age : 51 years, Occ : Nil,
2. Sayara Bi Shaikh Mushtak
Age : 45 years, Occ : Agri.,
3. Shahrukh Shaikh Mushtak
Age : 30 years, Occ : Nil,
4. Shoeib Shaikh Mushtak
Age : 27 years, Occ : Agri.,
5. Shifa Parveen Shaikh Mushtak
Age : 17 years, Occ : Agri.,
Guardian – Shaikh Mushtak Shaikh Rashid
Age : 51 years, Occ : Nil,
All above are R/o village Paldhi Bk.,
Taluka-Dharangaon, Dist. Jalgaon.

..APPLICANTS

-VERSUS-

1. The State of Maharashtra,
Through In-charge Police Officer
Bazar Peth Police Station, Bhusawal,
Taluka – Bhusawal, District Jalgaon.
2. Tarannum Bi Shaikh Mustkim,
Age : 25 years, Occ : Household,
R/o- C/o-Shaikh Ashpak Shaikh Rashid
Muslim Colony, Near Bahare Madina Masjid
Khadka, Bhusawal,
Taluka – Bhusawal, District Jalgaon.

..RESPONDENTS

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Advocate for the applicants : Mr. J.V. Patil
APP for Respondent- State : Mr. A.V. Lavate
Advocate for Respondent No.2 : Mr. Shaikh Mohammad Naseer A.

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**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATED : 10th DECEMBER, 2024.

JUDGMENT (PER ROHIT W. JOSHI, J.) :

The present matter arises out of First Information Report dated 21/09/2021 registered with Bazar Peth Police Station, Bhusawal, Dist. Jalgaon, vide F.I.R. No.0403/2021, for the offences punishable under Sections 498-A, 494, 323, 504 and Section 34 the Indian Penal Code (IPC) at the behest of respondent No.2 along with Regular Criminal Case No.64/2022 pending on the file of learned judicial Magistrate, First Class, Bhusawal.

2. Respondent No.2 is the informant. Her relations with the applicants are as under :-

1. Applicant no.1 – father-in-law
2. Applicant No.2 – mother-in-law
3. Applicant No.3 – brother-in-law
4. Applicant No.4 – brother-in-law
5. Applicant No.5- sister-in-law

3. As per the allegations in the F.I.R., marriage of respondent No.2 was solemnized with one Shaikh Mushtim Shaikh Mushtak, son of applicant Nos.1 and 2 and brother of applicant Nos.3 to 5 on

24.01.2016. Respondent No.2 has a son named Arhan from the said marriage, who was born somewhere around the year 2018. Respondent No.2 has alleged that after period of about two months from the date of marriage, her husband and parents-in-law i.e. applicant Nos.1 and 2 asked her to get a sum of Rs.5,00,000/- from her parents for construction of a new house. She expressed inability of her parents to arrange for the said amount. On this, her husband got agitated and abused and assaulted her by slapping and inflicting fist blows. She alleges that from there onwards applicant Nos.1, 2 and 5 also did not behave properly with her. She has alleged that applicant No.2 used to always state that they have looked for another girl, who was ready to marry their son and also to bring an amount of Rs.5,00,000/- along with her. After she was pregnant, she went to her parents house for delivery and at that time, the in-laws stated that her parents should not send her back to her matrimonial house after delivery of child unless they arrange to give a sum of Rs.5,00,000/-. After delivery of the child, when she went with her parents to her matrimonial home, applicant Nos.1 and 2 and the husband refused to allow her to stay with them. However, when the parents assured that they would arrange for sum of Rs.5,00,000/-, they allowed her to enter the house. She further alleges that thereafter her husband used to often travel to Nashik, Mumbai and Pune without informing her. The husband informed respondent No.2 on 23.01.2021 that he was going

to Mumbai along with his friend and would return after around 8 days. However, he did not return for period of around 15 days. On 08.02.2021, applicant No.2 called father of respondent No.2 and asked him to take respondent No.2 along with him and that whether she would be allowed to stay in the matrimonial home or not would be decided only after her husband comes back to home.

4. Respondent No.2 states that she approached the Women Grievance Redressal Forum in this backdrop, however, the in-laws did not approach for reconciliation. In such circumstance, she has lodged the FIR.

5. During the course of hearing, we had indicated to Mr. J.V. Patil, learned Advocate for the applicants that were of the opinion that applicant Nos.1 and 2 may not have a case for quashing. Mr. Patil, learned Advocate, on instructions from his clients, made oral motion seeking to withdraw the application with respect to applicant Nos.1 and 2. We accepted the oral motion and allowed him to withdraw the application for applicant Nos.1 and 2 i.e. the parents-in-law .

6. As regards applicant Nos.3 to 5, learned Advocate for the applicants has contended that there are no allegations against them with respect to demand of dowry or harassment or on any other count,

which may amount to cruelty within the meaning of explanation (a) or (b) of Section 498-A of the IPC. He, therefore, submits that the FIR and consequent criminal prosecution is required to be quashed against applicant Nos.3 to 5.

7. As against this, Mr. A. V. Lavate, learned APP and Mr. Shaikh Mohammad Naseer, learned advocate for respondent No.2 state that applicant Nos.3 to 5 are also family members and that demand for dowry was made conjointly by all family members. They further state that allegation is specifically made against applicant No.5/sister-in-law that she did not behave properly with respondent No.2.

8. We have narrated the contents of FIR in paragraph 3 supra. On perusal of the FIR and statements of the witnesses recorded during the course of investigation, we find that no specific role with respect to demand of dowry is attributed to applicant Nos. 3 to 5 . We may also point out that applicant No.5-sister-in-law was in fact minor as on the date of filing of the criminal application. It is surprising that allegations regarding demand of dowry are made against the minor sister-in-law. The demand for dowry started somewhere around March, 2016 as per version of respondent No.2 in the FIR. At the relevant time, applicant No.5 was merely 10 years old.

9. We are of the considered opinion that respondent No.2 has unnecessarily implicated applicant Nos.3 to 5 in the matter merely because they are siblings of her estranged husband. The criminal prosecution under Section 498-A of the IPC can not be sustained against applicant Nos.3 to 5. We therefore pass the following order :-

ORDER

- (i) The application is partly allowed.
- (ii) The application in respect of applicant no.1 - Shaikh Mushtak Shaikh Rashid and applicant No.2-Sayara Bi Shaikh Mushtak stands dismissed as withdrawn.
- (iii) F.I.R. No.0403/2021 registered on 21/09/2021 against applicant No.3-Shahrukh Shaikh Mushtak, applicant No.4-Shoeib Shaikh Mushtak and applicant No.5 -Shifa Parveen Shaikh Mushtak with Bazar Peth Police Station, Bhusawal, Dist. Jalgaon, for the offences punishable under Sections 498-A, 494, 323, 504 and Section 34 the Indian Penal Code and Regular Criminal Case No.64/2022 pending on the file of learned judicial Magistrate, First Class, Bhusawal, are hereby quashed.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/