



(This order is corrected as per speaking to minutes order dated 22.10.2024.)
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3833 OF 2024

1. Wahaj S/o. Nawabuddin Kazi,
Age: 43 years, Occ. Labour,
R/o. Green valley, Rouzabag,
Plot No. 3, F Building, Aurangabad.
 2. Shaikh Shamsuddin S/o. Shaikh Badruddin,
Age: 65 years, Occ. Labour,
R/o. Kazi building, Mahatma Phule Bazar,
Nagpur.
 3. Navid S/o. Nawabuddin Kazi,
Age: 41 years, Occ. Business,
R/o. Plot No. 14, C-3, CIDCO,
N-8, Aurangabad.
- ..Applicants

Versus

1. The State of Maharashtra
Home Department,
Mantralaya, Mumbai-32.
Through Satara Police Station
 2. Shabana Begum Wahajuddin Kazi,
Age: 40 years, Occ. Teacher,
R/o. Silk Mills Colony,
near Janta Cloth collection, Aurangabad.
- ..Respondents

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Mr. Quadri Tabrezuddin, Advocate for Applicants.
Mr. A. R. Kale, APP for Respondent-State.

...

**WITH
CRIMINAL APPLICATION NO. 2533 OF 2023**

Ateka Mohammadi Osmani
w/o Wahajoddin Kazi,
Age: 42 years, Occu.: Service,
R/o. Flat No.3, F – Building,
Green Valley, Rauza bagh, Aurangabad.

..Applicant

Versus

1. The State of Maharashtra
Through Police Station, Satara, Aurangabad.
2. Shabana Begum w/o Wahjoddin Kazi,
Age: 40 years, Occ: Anganwadi Teacher,
R/o. Opp. Janta Cloth Collection,
Silkmills Colony, Aurangabad. ..Respondents
(No.2-Orig. Complainant)

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Mr. Imran Khan Guftar Khan Durrani, Advocate for Applicant.
Mr. A. R. Kale, APP for Respondent-State.
Mr. D. G. Kamble, Advocate for Respondent No.2 (Appointed).

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CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 18th OCTOBER, 2024.

P.C.

1. The present applications have been filed under Section 482 of the Criminal Procedure Code for quashment of the proceeding bearing RCC No.2759/2023 pending before the learned Judicial Magistrate First Class, Aurangabad arising out of FIR vide Crime No.176/2023 registered with Satara Police Station, Dist. Aurangabad for offences punishable under Sections 498-A, 504, 506 r/w 34 of the Indian Penal Code and Sections 3 and 4 of the Muslim Women (Protection of Rights on Divorce) Act.
2. Heard Mr. Quadri, learned Advocate for the applicants in Appln/3833/2024, Mr. Durrani, learned Advocate for the applicant in Appln/2533/2023, Mr. Kale, learned APP for the respondent-State and Mr. Kamble, learned Advocate appointed to represent respondent no.2.
3. The applicant in Criminal Application No.2533/2023 is first wife of husband of respondent no.2 and applicants in Criminal Application No.3833/2024 are husband of respondent no.2, uncle and brother of husband.

4. Perusal of FIR would show that respondent no.2 was widow and she is having son from her deceased husband. Thereafter, she got married to husband-Wahaj on 27.05.2016. In the FIR itself she says that her husband i.e. applicant no.1 had put condition that she could not disclose marriage to anybody. She then says that as her husband was not coming to her house from 04.10.2022, she went to first wife i.e. applicant in Criminal Application No.2533/2023. Thereafter, there was quarrel between the informant and first wife. It was also disclosed that husband had told the fact of second marriage to first wife and, therefore, there were dispute between them also and then informant states that other applicants in Criminal Application No.3833/2024 instigated husband, who had then given Talaq by typing it on phone on 07.01.2023. She then says that she met younger brother of husband around 07.15 pm on 15.01.2023 and asked her as to why they had disclosed the marriage. The first wife is not agreeing and, therefore, informant should give Talaq to husband. The husband came there and uttered word Talaq thrice. The first and foremost fact to be noted is that respondent no.2 has not stated that she was residing with other applicants since the date of marriage. The FIR is too cryptic. Further as regards the Muslim Women (Protection of Rights on Marriage) Act is concerned, it prohibits triple Talaq. There cannot be Talaq on two occasions, as it is tried to be posed i.e. on 07.01.2023 and 15.01.2023. Further in the FIR itself she says that when she made complaint with Woman Redressal Forum on 08.05.2023, the husband accepted that he was ready to cohabit with the informant, then she says that, therefore, she brought husband to home and then says that he stayed with her for one hour. Then again she says that she had contacted brother-in-law, who promise that he would send husband to her. Thereupon, it appears that husband had joined company, but then she says that

he was harassing her and were saying that she should give him Talaq. All these recitals would show that story is different and there cannot be more Talaq than once.

5. No active role has been attributed to the first wife and uncle. Whatever role or acts were attributed to applicant nos.3-brother-in-law cannot be termed as cruelty as defined in Section 498-A of the Indian Penal Code. Therefore, FIR appears to be filed with malafide intention, when infact she was also party to the alleged crime of not disclosing marriage and it appears that, she was serving with Anganwadi. She cannot be equated with illiterate lady. It has not been mentioned as to why she herself as well as husband had decided not to make the marriage public and, therefore, we take this to be a fit case where we should exercise our powers under Section 482 of the Criminal Procedure Code. Hence, we proceed to pass following order:

ORDER

- a. Criminal Applications are allowed.
- b. The proceeding bearing RCC No.2759/2023 pending before the learned Judicial Magistrate First Class, Aurangabad arising out of FIR vide Crime No.176/2023 registered against applicants in both the cases with Satara Police Station, Dist. Aurangabad for offences punishable under Sections 498-A, 504, 506 r/w 34 of the Indian Penal Code and Sections 3 and 4 of the Muslim Women (Protection of Rights on Divorce) Act is hereby quashed and set aside.
- c. Criminal Applications are disposed of.
- d. Since, learned Advocate for respondent no.2 has been appointed through Legal Aid, the High Court Legal Services Sub-

Committee, Aurangabad to quantify and disburse amount to the learned Advocate for respondent no.2.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Devendra/October-2024