



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3474 OF 2023

- 1) Dnyaneshwar S/o Bhikan Thakre,
Age-38 years, Occu:Labour,
R/o-Dabhadi, Tq-Malegaon,
Dist-Nashik,
(husband)
- 2) Kaushalyabai w/o Bhikan Thakre,
Age-78 years, Occu:Household,
R/o-Dabhadi, Tq-Malegaon,
Dist-Nashik,
(husband's mother),
- 3) Lalita w/o Pandit Bagul,
Age-36 years, Occu:Household,
R/o-Mahadevache Bambrud,
Tq-Pachora, Dist-Jalgaon,
(Husband's sister),
- 4) Pandit S/o Bhikan Thakre,
Age-42 years, Occu:Service,
R/o-Near Shani Mandir, Lam Road,
Deolali Camp, Dist-Nashik,
(Husband's brother)
- 5) Chotu @ Somnath S/o Shivram Kakde,
Age-45 years, Occu:Agri.,
R/o-Jamda, Tq-Chalisgaon,
Dist-Jalgaon.
(Husband's sister's husband)

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,

- 2) Savita W/o Dnyaneshwar Thakre,
Age-31 years, Occu:Household,
R/o-Mahadevache Bambrud,
Taluka-Pachora, District-Jalgaon,
At present R/o-Sindhi Colony,
Chalisgaon, Tq-Chalisgaon,
Dist-Jalgaon.

...RESPONDENTS

...
Mr. S.R. Bagal Advocate for Applicants.
Mr. V.K. Kotecha, A.P.P. for Respondent No.1.
Respondent No.2 served.

...
**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 10th OCTOBER, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present application has been filed by the original accused persons under Section 482 of the Code of Criminal Procedure for quashing the proceedings in R.C.C. No.48 of 2023 pending before the learned Judicial Magistrate First Class, Chalisgaon, arising out of Crime No.310 of 2022 registered on 27th July 2022 with Chalisgaon City Police Station, District-Jalgaon for the offence punishable under Sections 498-A, 406, 323, 504, 506 read with Section 34 of the Indian Penal Code.
2. Heard learned Advocate Mr. Bagal appearing for the applicants and learned APP Mr. Kotecha appearing for respondent

- State.

3. Perusal of the First Information Report (for short "the FIR") would show that respondent No.2 got married to applicant No.1 on 5th May 2011. Then she says that she was treated properly for about two months only. She says that since then applicant No.1 started demanding amount of Rs.1,00,000/- for purchase of shop. When she told that due to poor financial condition her father is unable to arrange the amount, her husband used to assault her and drive her out of the house. Then the mother-in-law used to say that she should bring the amount otherwise she would be driven out of the house. The informant says that thereafter her mother had brought her to her place i.e. Chalisgaon and thereafter daughter was born to her on 21st April 2012. Applicant No.1 went to see the daughter and thereafter stayed with the informant, daughter in the house of mother of respondent No.2. She was then taken to village Dabhadi by the husband in 2013. Then she says that when she went to matrimonial home, she was harassed by the accused persons. After residing for about 8 to 9 months she was driven out of the house by the husband and mother-in-law by taking her gold ornaments. She stayed at her mother's place for about three

years. In 2017 she was taken by husband to Dabhadi where they were residing. Then again she went to her mother's house after a year by saying that her husband and mother-in-law were harassing her. She went along with the husband on 22nd March 2021 and then she says that amount of Rs.1,00,000/- was demanded and then ultimately she was driven out of the house. The statements of the witnesses are on the same line. What we can get is the husband i.e. applicant No.1 was in fact supporting her actions but the differences arose. Documents on record also show that she had filed R.C.C. No.47 of 2017 under Section 498-A, 323, 504, 506 of the Indian Penal Code on 22nd April 2016 before the learned Judicial Magistrate First Class, Chalisgaon. The said matter was sent for investigation by the learned Judicial Magistrate First Class under Section 202(1) of the Code to Criminal Procedure for inquiry. Process came to be issued against the accused by order dated 13th February 2017. The question, therefore, is as to why the present FIR came to be filed on 27th July 2022 by suppressing the fact that already private complaint has been filed and process has been issued. Further it appears that applicant No.1 had filed Hindu Marriage Petition No.284 of 2014 with Joint Civil Judge Senior Division, Malegaon, District-Nashik under Section 9 of Hindu Marriage Act.

The said petition was decreed on 25th September 2014 and informant was asked to resume cohabitation within two months. This fact is also then suppressed as to why she has not resumed the cohabitation.

4. Though against applicant No.1 the charge-sheet has been filed under Section 299 of the Code of Criminal Procedure, we could find in the charge-sheet three entries stating that he was searched. The investigating officer has not explained in the charge-sheet that applicant No.1 was concealing his presence and therefore his arrest was necessary. The investigating officer has not approached the concerned Magistrate to seek arrest of applicant No.1 and therefore, filing of charge-sheet under Section 299 of the Code of Criminal Procedure is not hurdle in the present case for exercising our powers under Section 482 of the Code of Criminal Procedure in favour of applicant No.1 as the case is made out for quashing the FIR and the charge-sheet. No role has been attributed to other accused persons. Hence the Application deserves to be allowed. Therefore, we pass following order:-

ORDER

(I) The Application stands allowed.

(II) Proceedings in R.C.C. No.48 of 2023 pending before the learned Judicial Magistrate First Class, Chalisgaon, arising out of Crime No.310 of 2022 registered on 27th July 2022 with Chalisgaon City Police Station, District-Jalgaon for the offence punishable under Sections 498-A, 406, 323, 504, 506 read with Section 34 of the Indian Penal Code, stands quashed and set aside as against applicant Nos. 1 to 5 i.e. - 1) Dnyaneshwar S/o Bhikan Thakre, 2) Kaushalyabai w/o Bhikan Thakre, 3) Lalita w/o Pandit Bagul, 4) Pandit S/o Bhikan Thakre and 5) Chotu @ Somnath S/o Shivram Kakde.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/OCT24