



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Application No. 3675 / 2022

1. Asma Kausar w/o Zakir Khan
2. Uzma Kausar w/o Zishan Sanmani
3. Reshma Begum w/o. Mohammad Imran Khan
4. Sana w/o Iqbal Baig
5. Mohammad Saleem s/o Mohammad Suleman
6. Shabana Begum w/o Mohammad Saleem
7. Rihana Begum w/o. Sayyad Pasha

...Applicants

Versus

1. The State of Maharashtra
Home Department,
Mantralaya, Mumbai – 32.
(Copy to be served on public Prosecutor
at High Court Bench at Aurangabad.)
2. Arshiya Parveen w/o. Shaikh Wasim
Age : 33 years, Occ. Household,
R/o. Peer-Burhannagar, Galli No.13,
Nanded.

...Respondents

...

Advocate for Applicants : Mr. Tabrezuddin R. Quadri h/f
Mr. M.G. Mustafa

APP for the Respondent No.1/State : Ms. S.S. Joshi

Advocate for Respondent No.2 : Mr. P.P. Uttarwar

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 12 FEBRUARY 2024

PRONOUNCED ON : 21 FEBRUARY 2024

FINAL ORDER [Per Shailesh P. Brahme, J.] :

. Heard learned Counsel for both the sides finally at the admission stage with their consent.

2. The applicants are challenging FIR bearing C.R. No.259/2020 registered with Vimantal Police Station, Nanded, Charge-Sheet No.19/2021 dated 22.01.2021 and RCC No. 14/2021 pending before the learned Judicial Magistrate, First Class, Nanded. Impugned FIR was lodged by the respondent no.2 who is the wife of accused no.1 namely Shaikh Waseem Shaikh Khaja. An offence under Sections 498A, 323, 506 of the Indian Penal Code read with Section 4 of Muslim Women (Protection of Rights on Marriage) Act, 2019 are alleged against the applicants and husband of the respondent no.2.

3. The accused no.1 Shaikh Wasim Shaikh Khaja is not before the Court in the present application. Applicant nos.1 to 4 are married sisters-in-law of the respondent no.2 residing at their matrimonial places. Whereas Applicant nos. 5 and 6 are uncle and aunt of the husband of respondent no.2. Applicant no.7 is another aunt of the husband of respondent no.2.

4. It is alleged by the respondent no.2 that marriage was performed by spending Rs.5 Lacs by her mother and brother. For initial six months, she was treated properly. Thereafter she was ill-treated by the applicants for bringing money for purchasing plot. The applicants continued to harass her after the birth of the daughter. Due to their pressure, an amount of Rs.1,50,000/- was paid by mother and brother of the respondent no.2 to the husband of the respondent no.2. A plot was purchased in the year 2018 in the name of respondent no.2. Thereafter for the expenses of construction, the respondent no.2 was being harassed. It is further alleged that on 22.02.2020, brother of the respondent no.2 was assaulted by accused/husband. On 03.08.2020, accused/husband gave *Tallaq* to the respondent no.2 and she was threatened also.

5. Learned Counsel for the applicants submits that the applicants are resident of different places and they had no occasion to stay with the respondent no.2 and her husband. The allegations are inherently improbable and they are implicated falsely to wreak vengeance. It is submitted that the complaint does not attribute a specific role to the

applicants. It is further submitted that there is no incriminating material in the charge-sheet against the applicants. No prima facie case can be made out against the applicants.

6. Learned APP and learned Advocate for the respondent no.2 would submit that FIR and the statements recorded under Section 161 attribute specific role to the applicants in demanding of money and in giving ill-treatment on various occasions. They would submit that the applicants have played active role in instigating the accused no.1 against the respondent no.2 for fulfilling demand for purchasing plot and construction of house. According to them, the statements of brother and the mother of the respondent no.2 support the prosecution case.

7. With the assistance of learned Counsel appearing for the litigating sides, we have gone through FIR, the statements of the witnesses recorded during the course of investigation and the relevant papers produced on record. Impugned complaint and the statements do specifically indicate incriminating role against

accused/husband who is not before this Court. The applicant nos. 1 to 4 are married sisters-in-law of the respondent no.2. Whereas applicant nos. 5 to 7 are uncle and aunts of the husband of the respondent no.2.

8. Impugned FIR and the statements do not spell out specific role against the applicants. The allegations against them are omnibus and quite general in nature. The relationship between the respondent no.2 and her husband has been strained. Possibility of falsely implicating the applicants to wreak vengeance cannot be ruled out. The law laid down by the Supreme Court in the matter of Geeta Mehrotra and Ors. Vs. State of U.P. and Ors., (2012) 10 SCC 741 and in the matter of Kahekashan Kaisar Khan Vs. State of Bihar, (2022) 6 SCC 599 is applicable to the case in hand.

9. Considering overall circumstances of the case, we are of the considered view that it would be an abuse of process of law to compel the applicants to face the prosecution. We find that this is a fit case to exercise jurisdiction under Section 482 of the Code of

Criminal Procedure. Considering the parameters laid down by the Supreme Court in the matter of **State of Haryana and Ors. Vs. Bhajan Lal and Ors.**, reported in AIR 1992 SC 604, we are inclined to allow the application. We, therefore, pass the following order :

ORDER

- (i) The Criminal Application is allowed.
- (ii) FIR bearing C.R. No.259/2020 registered with Vimantal Police Station, Nanded, Charge-Sheet No.19/2021 dated 22.01.2021 and RCC No. 14/2021 pending before the learned Judicial Magistrate, First Class, Nanded are quashed and set aside to the extent of applicants only.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]