



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

CRIMINAL APPLICATION NO. 3406 OF 2019

1. Gajanan S/o. Sambhaji Phunde
2. Vithabai W/o. Sambhaji Phunde
3. Sambhaji S/o. Nanaji Phunde
4. Sujit S/o. Sambhaji Phunde
5. Ajit S/o. Sambhaji Phunde
6. Kalpita W/o. Sujit Phunde
7. Prabodhini W/o. Ajit PhundeApplicants

Versus

1. The State of Maharashtra
2. Amruta @ Dnyaneshwari W/o. Gajanan PhundeRespondents

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Advocate for Applicants : Mrs. Manjushree V. Narwade
and Mr. V.P. Narwade

APP for Respondent No. 1 : Mr. M.M. Nerlikar

Advocate for Respondent No. 2 : Mr. A.G. Ambetkar

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

DATE : 03 APRIL 2024

FINAL ORDER (PER : SHAILESH P. BRAHME, J.) :

1. Heard both the sides finally at the admission stage.

2. After hearing for a while when we expressed our disinclination to grant any relief to applicant nos. 1 to 3, their learned counsel, on instructions, seeks permission to withdraw the application to their extent. Hence, application stands disposed of as withdrawn to the extent of applicant nos. 1 to 3.

3. Applicants are seeking quashment of First Information Report in C.R. No. 486 of 2019 of Pathardi Police station, for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code and consequential proceedings of RCC No. 123 of 2021 pending before the learned Judicial Magistrate First Class, Pathardi, District Ahmednagar.

4. Respondent no. 2 – Informant lodged report on 02.09.2019 with Pathardi Police Station against applicants alleging that her marriage was solemnized with applicant no. 1 on 12.02.2012. Initially, she resided at Narayandoh. After six months she shifted to Pune where applicant no. 1 was serving in a college. Applicants caused ill-treatment as they were not satisfied with the wedding ceremony. They used to abuse her. She was demanded dowry of Rs. 10 Lakh for purchasing a flat at Pune. Applicants persisted their demand of dowry and informant was physically and mentally ill-treated. It is further alleged that she was assaulted and abused on 15.12.2016 and was driven out of the house.

5. Offence lodged by respondent no. 2 was investigated and chargesheet was filed. It culminated in RCC No. 123 of 2021. Applicant no. 1 is husband, applicant nos. 2 and 3 are father-in-law and mother-in-law of informant. Applicant no. 4 and 5 are brothers-in-law of the informant. Applicant no. 6 is wife of applicant no. 4 and applicant no. 7 is wife of applicant no. 5.

6. Learned counsel for the applicants Mrs. Manjushree V. Narwade submits that informant resided at Narayandoh for six months only and thereafter, shifted to Pune. As per her own version for initial one year there was no harassment and the life was normal. She would submit that the first information report is inconsistent with the pleadings of the informant in Criminal Application. It is further submitted that applicant nos. 4 to 7 were residing separately and had no occasion to share common shelter. The allegations are concocted and made with oblique motive. The tendency of the informant to falsely implicate all the relations is apparent on record. Hence, it is submitted that it would be abuse of process of law to proceed against the applicants.

7. Learned APP Mr. M.M. Nerlikar appearing for respondent no. 1 and learned Advocate Mr. A.G. Ambetkar appearing for respondent no. 2 oppose the submissions of learned counsel for the applicants. They would submit that specific role has been attributed to each applicant in the compliant which is corroborated by statements recorded during the

investigation. They would further submit that there is cogent material to indicate that dowry of Rs. 10 Lakh was demanded from the informant and in pursuance of that ill-treatment was caused. They would further submit that unless there is a full fledged trial, the role played by the applicants cannot be ascertained.

8. We have considered rival submissions of the parties. We have gone through the relevant papers of investigation. It reveals from the record that after marriage informant resided at Narayandoh for six months. Thereafter, they shifted to Pune as the applicant no. 1 was in service in a college at Pune. After marriage, she resided at Narayandoh along with father-in-law and mother-in-law and her husband used to reside at Pune as he was in service. She reported that first harassment was caused at Narayandoh. Thereafter she shifted to Pune and further harassment continued for demand of Rs. 10 Lakh for purchasing a flat. We find that applicant nos. 1 to 3 have played incriminating role when informant was at Narayandoh and thereafter when she was at Pune.

9. First Information Report and the statements of the witnesses indicate that allegations against applicant nos. 4 to 7 are omnibus and vague. There are no material particulars for the instances of the harassment occurred at Pune. Besides that learned counsel for the applicant has pointed out inconsistency in the allegations made in complaint and Criminal Application No. 94 of 2019 filed by the

informant before the Judicial Magistrate First Class, Pathardi. FIR shows that demand of Rs. 10 Lakh for purchasing flat at Pune, whereas, paragraph no. 10 of the Criminal Application shows demand for purchasing flat at Ahmednagar.

10. The allegations stated in paragraph no. 12 of self same application are absent in FIR. The material on record indicates that informant has roped in other members of the family who are actually not involved in causing any ill-treatment. In view of law laid down by Supreme Court in the matter of *Geeta Mehrotra and others Versus State of Uttar Pradesh and others*, (2012) 10 SCC 741 and *Kahkashan Kausar Versus State of Bihar*, (2022) 6 SCC 599, we are of the opinion that applicant nos. 4 to 7 could not have been implicated in the offence. It would be abuse of process of law to proceed against applicant nos. 4 to 7. We therefore, pass the following order :

ORDER

- i. Criminal Application is allowed to the extent of applicant nos. 4 to 7.
- ii. First Information Report bearing C.R. No. 486 of 2019 of Pathardi Police station, registered with Pathardi Police Station, for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of the

Indian Penal Code and consequential proceedings of RCC No. 123 of 2021 pending before Judicial Magistrate First Class, Pathardi, District Ahmednagar, are quashed and set aside to the extent of applicant nos. 4 to 7.

iii. Criminal Application is disposed of.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]