



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4592 OF 2024

- 1) Dr. Irfan S/o Hamid Khan,
Age-36 years, Occu: Medical Practice,
R/o-Peerburhan Nagar, Nanded,
- 2) Hamid Khan S/o Mehboob Khan,
Age-65 years, Occu:Business,
R/o-Peerburhan Nagar, Nanded,
- 1) Zakiya Begum Hamid Khan,
Age-62 years, Occu:Housewife,
R/o-Peerburhan Nagar, Nanded

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Vimantal Police Station, Nanded,
- 2) Dr. Farheen W/o Irfan Khan,
Age-32, Occu:Now Service,
C/o-Police Station, Vimantal, Nanded

...RESPONDENTS

...
Mr. Suresh M. Kulkarni Advocate for Applicants.
Mr. A.D. Wange, A.P.P. for Resp. No.1.
...

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

DATE : 11th DECEMBER, 2024

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

1. Present application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashing the proceedings in R.C.C. No.296 of 2022 pending before the learned 4th Judicial Magistrate First Class, Nanded arising out of the First Information Report (for short "the FIR") vide Crime No.22 of 2019 registered with Vimantal Police Station, Nanded for the offence punishable under Sections 498-A, 494, 504, 506 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate for the applicants and learned APP for respondent No.1. It is not even necessary to issue notice to respondent No.2.

3. Learned Advocate for the applicants has taken us through the FIR and the contents of the charge-sheet and he submits that the allegations against the applicants are general in nature. Their earlier application i.e. Criminal Application No.479 of 2019 was for the quashment of the FIR only and stood withdrawn under the orders of this Court on 12th January 2022, however, now since the charge-sheet is filed, they have approached this Court once again. The contents of the charge-sheet are nothing

but reproduction of the allegations of respondent No.2. Respondent No.2 had even invoked the jurisdiction of the Magistrate under the provisions of the Protection of Women from Domestic Violence Act. The act of respondent No.2 to file different proceedings would demonstrate that she is taking help of different provisions just to harass the applicants.

4. At the outset, we would like to say that for a proceedings for quashment of the FIR as well as the charge-sheet under Section 482 of the Code of Criminal Procedure, what is required to be seen is the prima facie material, whether it is making out the ingredients of the offence. Now after the withdrawal of the application by the present applicants which they had filed prior to the filing of the charge-sheet, what has been collected is the additional evidence. In fact the contents of the FIR i.e. the allegations by respondent No.2 had remained as it is. She is the person who alleged to have suffered the harassment at the hands of the applicants and therefore, what would have been added in the charge-sheet is the statements of those persons to whom she would have narrated the ill-treatment or any person who had witnessed the ill-treatment. With this background if we consider the allegations against all the applicants, then certainly

there are specific allegations against applicant No.1 - the husband and then as regards applicant Nos.2 and 3, who are the parents of the husband, respondent No.2 has stated that they along with other accused (against whom it appears that the earlier application stood allowed) had made demand of the amount and then harassed her by giving ill-treatment. The ill-treatment is stated to be in the form of insult, abuses. It is also to be noted that respondent No.2 had completed the education in M.B.B.S. and therefore, taking into consideration the educational background also, if she was insulted, then that may amount to mental harassment. Of course this is our prima facie opinion which is subject to be proved at the time of final hearing. The demand is stated to be of Rs.15,00,000/- for the purpose of opening a hospital for the husband, who is also medical practitioner. It is stated in the FIR that in the meantime, respondent No.2 has given birth to daughter and when she along with her daughter and parents went to matrimonial home on 22nd January 2019, present applicant Nos.2 and 3 refused to take her in the house and told that applicant No.1 has performed second marriage and it is arranged by them [आम्ही इरफानचे दुसरे लग्न केले असून]. It is now, the subject matter of the trial that

performance of the second marriage would amount to mental harassment or not.

5. Another important fact to be noted is that in the meantime respondent No.2 had filed application under Section 12 the Protection of Women from Domestic Violence Act, bearing Criminal Application No. 36 of 2019, which came to be decided by the learned Judicial Magistrate First Class, Nanded (8th Court), on 25th January 2023, wherein it is held that the present applicants have committed domestic violence against present respondent No.2 and her daughter. Learned Advocate for the applicants is submitting that the said decision is under challenge before the appellate authority. Though it is pending, yet, prima facie, a competent Court has come to the said conclusion.

6. Under said circumstance, case is not made out for exercise of powers under Section 482 of the Code of Criminal Procedure and therefore, the Application stands dismissed as the threshold.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE