



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 23 OF 2023

1. Rushikant S/o Bhagwan Awasarmal,
Age : 45 Years, Occ. Business,
R/o. Sanjay Park, Viman Darshan,
New Air Port Road, Vimannagar,
Pune.
2. Santosh S/o Bhagwan Awasarmal,
(In F.I.R mentioned as
Sunny @ Santosh Bhagwan Awasarmal)
Age : 48 Years, Occ. Job Working,
R/o. 230-B, 4/2 Viman Darshan,
Sanjay Park, Lane No.6, S-5 Indian
Group, Pune City,
Pune.
3. Dipali Prakash Ghavghave,
Age : 37 Years, Occ. Housewife,
R/o. 230-B, 4/2, Viman Darshan,
Sanjay Park, Lane No.6,
S-5 India Group, Pune City,
Pune.

.. Applicants

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Bhingar Campus,
Ahmednagar.
2. Komal W/o Rushikant Awasarmal,
Age : 28 Years, Occ. Household,
R/o. Shriram Colony, Alamgir Road,
Bhingar, Ahmednagar,

.. Respondents

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Advocate for the Applicants : Mr. P.M. Nagargoje
A.P.P for Respondent/State : Mr. V. K. Kotecha

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

DATED : DECEMBER 05, 2024

JUDGMENT (Per Rohit W. Joshi, J.):-

1. The present application under section 482 of the Code of Criminal Procedure is filed, inter alia, praying to quash FIR No.130 of 2021 dated 03.04.2021 registered against the applicants with Police Station Bhingar Campus, Tahsil and District Ahmednagar for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code and Regular Criminal Case No.1016 of 2021 registered pursuant to the said FIR which is pending for adjudication in the Court of learned Judicial Magistrate, First Class, Ahmednagar.

2. Applicant No.1 is husband and applicant No.2 is brother-in-law of respondent No.2. Applicant No.3 is wife of applicant No.2.

3. The marriage of applicant No.1 and respondent No.2 was solemnized on 07.04.2019. As per respondent No.2, she was treated well by the applicants for a period of around three months after the marriage. Thereafter, in the night intervening 11th and 12th June 2019, the applicants expelled respondent No.2 from the house at around 2.30 a.m, since they were upset with a Video Clip which respondent No.2 had uploaded as her WhatsApp status. According to the applicants, the said status was inappropriate and had the effect of lowering reputation of the family. Respondent No.2 alleges that thereafter, on 21.09.2019 her husband, applicant No.1 asked her to

forgive him and suggested that they would stay separate from applicant Nos. 2 and 3. On this, respondent No.2 agreed to cohabit with applicant No.1 and they started residing separately from applicant Nos. 2 and 3. Respondent No.2 has further alleged that thereafter applicant No.1 raised a demand of Rs. 5,00,000/- for starting of business which respondent No.2 fulfilled by obtaining loan against ornaments gifted to her by her parents. She further states that the hotel business started by her husband started running into losses since the very initiation, and therefore, out of frustration applicant No.1 used to harass her mentally almost every day and particularly on 28.10.2019, while she was chatting with someone on her mobile he had physically assaulted her by inflicting fist blows and kicks. She alleges that she had attempted to commit suicide and was admitted at Asia Colombia Hospital Kharadi. Thereafter applicant Nos.1/husband again met her and the couple started to stay together. Respondent No.2 states that she became pregnant thereafter, however, surprisingly after learning about the pregnancy applicant No.1 abandoned her and avoided to keep contact. She delivered a male child on 21.07.2020. However, even thereafter the applicant No.1 did bother to meet her.

4. As against applicant Nos. 2 and 3 the first allegation as stated above is with respect to the incident dated 11.06.2019, which they had forcibly expelled respondent no.2 from the residential house being upset with her WhatsApp status. The second allegation against

applicant No.2 is that on 19.01.2021 he had called respondent No.2 over her cell phone alleging that his brother had left the house only because of respondent No.2 and if any untoward incident happens he would cause serious harm to her.

5. After hearing the respective Advocates appearing for the parties, we had expressed disinclination to entertain application on behalf of applicant No.1. On such disinclination being expressed, Shri. P. M. Nagargoje, learned the counsel for the applicants made a statement on instructions that he would not press the application for the applicant No.1/husband. We allowed withdrawal of the application on behalf of applicant No.1 on such oral motion made by the learned counsel representing him in the matter.

6. As regards applicant Nos. 2 and 3, learned Advocate Mr. Nagargoje has submitted that there are only two allegations against applicant No.2, firstly being that he along with his brother and wife, applicant No.3 had forcibly driven respondent No.2 from the residential house being upset with WhatsApp status and secondly after applicant No.1 had left the house, he had threatened to beat up and seriously harm respondent No.2. As against applicant No.3, the only allegation in respect with the incident dated 11.06.2019. It will be pertinent to mention here that the allegation of demand of dowry against applicant No.1 pertains to a period when applicant No.1 and respondent No.2 were residing separate from applicant Nos. 2 and 3.

Likewise attempt to commit suicide also relates to period when the applicant no.1 and respondent no.2 were not living with the applicant nos.2 and 3. Both these allegations against the applicant nos. 2 and 3 do not make out the ingredients of cruelty as prescribed under Explanations (a) and (b) to Section 498-A of the Indian Penal Code. Since no offence is made out under section 498-A, which is the only cognizable provision, we are of the considered opinion that the FIR and the Regular Criminal Case are liable to be quashed as against applicant Nos. 2 and 3. Hence, we pass the following order.

ORDER

- (I) The application is partly allowed.
- (II) The application is dismissed as withdrawn with respect to applicant No. 1.
- (II) FIR No.130 of 2021 dated 03.04.2021 registered with Police Station Bhingar Campus, Tahsil and District Ahmednagar for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code and Regular Criminal Case No.1016 of 2021 pending on the file of learned learned Judicial Magistrate, First Class, Ahmednagar are hereby quashed against applicant nos.2 and 3 namely Santosh S/o Bhagwan Awasarmal,Dipali Prakash Ghavghave.

(ROHIT .W. JOSHI)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE