



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4952 OF 2024

1. Sagar Dattatray Yadav,
(Husband of the Informant)
Age : 35 Years, Occ. Service
2. Dattatray Laxman Yadav,
(Father-in-law of Informant)
Age : 65 Years, Occ. Retired
3. Bharati Dattatray Yadav,
(Mother-in-law of Informant)
Age : 58 Years, Occ. Household

All above are R/o S.R./16, B. 503
Silver Park Phase-I, Ambegaon, Bk.,
Pune.

4. Ashwini Umesh Dalvi
(sister-in-law of Informant)
Age : 37 years, Occ. Household
R/o. Kirloskar Wadi, Dudhodi,
Taluka Palus, District Sangali

.. Applicants

VERSUS

1. The State of Maharashtra,
Through In-charge Police Officer,
Chalisgaon (City) Police Station,
Tal. Chalisgaon, Dist. Jalgaon
2. Shrisha Sagar Yadav,
Age : 29 Years, Occ. Nil,
R/o. C/o Bapu Shriram Shinde,
Hanuman Wadi, Station Road,
Chalisgaon Tq. Chalisgaon,
Dist. Jalgaon

.. Respondents

...

Advocate for the applicants: Mr. Jitendra Vuhat Patil
A.PP for Respondent/State : Mrs. P. R. Baraswadkar

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

DATED : DECEMBER 17, 2024

ORDER:-

1. Heard. Learned Advocate for the applicants, who has taken us through First Information Report and the annextures. All the accused persons seek quashment of the proceedings bearing Regular Criminal Case No. 269 of 2024 pending before the learned Judicial Magistrate, First Class, Chalisgaon Taluka Chalisgaon, District Jalgaon arising out of FIR vide Crime No. 305 of 2024 registered with Chalisgaon (City) Police Station, Taluka Chalisgaon, District Jalgaon dated 16.07.2024 for the offences punishable under Section 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

2. At the out set we would like to say that we would be considering the matter within the scope of Section 482 of the Code of Criminal Procedure and therefore, the contents of the FIR are taken into consideration. There are specific allegations against the husband and parents-in-law, who are residing together and as regard married sister-in-law is concerned, it is then stated that she had taken away the son of respondent No.2/informant who appears to be on the day of the said incident below two years of age. Certainly in the past also we have observed and we are now also observing that taking away the minor child from the custody of mother would amount to ill-

treatment/ cruelty as contemplated under Section 498-A of the I.P.C. i.e. causing mental harassment and the contents of the First Information Report are then supported by the statements of the witnesses under Section 161 of the Code of Criminal Procedure. This is the *prima facie* opinion of this Court.

3. It appears that the applicants are heavily relying upon the contents of the notice dated 01.12.2023, given by the informant wherein she had called upon the husband to execute the sale deed in respect of a plot at Chalisgaon within eight days and it is also stated that in case of failure, she would lodge the FIR for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code. The last paragraph of said notice cannot be taken into isolation. The notice will have to be read in its entirety which contain the allegations regarding ill-treatment also.

4. The second document which the applicants wants to rely is the petition filed under Section 13(B) of the Hindu Marriage Act by applicant No.1 and respondent No.2. By the said petition, they had agreed to take mutual divorce and the terms are stated to be mentioned in the said petition. Important point to be noted is that thereafter when matter is before the concerned Competent Court i.e. Family Court, Pune at that time it appears that applicant No.1 himself had refused to execute the deed before the Sub Registrar Chalisgaon

as it is so stated. The wife i.e. present respondent No.2 had withdrawn the consent for the mutual divorce and therefore by a separate order passed on 01.03.2024 by the Principal Judge, Family Court Pune the said petition was disposed of as withdrawn.

5. Now the alleged terms in the petition of divorce by mutual consent, whether can be taken as admission will be a question of fact. In any manner every admission given by a party to a proceeding is capable of being explained cannot be taken into consideration at the stage of *prima facie* scrutiny under Section 482 of the Code of Criminal Procedure and therefore, we are of the opinion that no case is made out to exercise powers of this Court under Sections 482 of the Code of Criminal Procedure as there is *prima facie* case against the applicants.

6. Application stands dismissed at the threshold.

(ROHIT W. JOSHI)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Y.S. Kulkarni