



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4248 OF 2023

- 1) Sushma w/o Yashpal Dawalpure,
Age 38 years, Occ. Homemaker
R/o. Manthale Nagar Latur, Tq &
Dist. Latur.
- 2) Yashpal s/o Nagnath Dawalpure,
Age 40 years, Occ. Service,
R/o. Manthale Nagar Latur, Tq &
Dist. Latur.
- 3) Varsha w/o Dayanand Kangule,
Age 34 years, Occ. Homemaker
R/o. Jam Tq. Mukhed, Dist. Nanded.
- 4) Dayanand s/o Dnyanoba Kangule,
Age 40 years, Occ. Service,
R/o. Jam Tq. Mukhed, Dist. Nanded. ... **Applicants**

VERSUS

- 1) The State of Maharashtra
- 2) Manisha w/o Ganesh Kanure,
Age 26 years, Occ. Nil.
R/o. At present residint at Ekta Nagar,
Vasrani, Tq. Nanded, Dist. Nanded ... **Respondents**

...

WITH

CRIMINAL APPLICATION NO. 4256 OF 2023

Sumitra Bapurao Kanure ... **Applicant**

VERSUS

- 1 The State of Maharashtra
- 2) Manisha w/o Ganesh Kanure,
Age 26 years, Occ. Nil.
R/o. At present residint at Ekta Nagar,
Vasrani, Tq. Nanded, Dist. Nanded ... **Respondents**

...

Advocates for Applicants : Mr. Ajinkya Reddy and U.L. Telgaonkar
A.P.P. for Respondent No. 1 : Mr. V. K. Kotecha

Advocate for Respondent No. 2 : Mr. Amit A. Mukhedkar

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

**RESERVED ON : 08.04.2024
PRONOUNCED ON : 18.04.2024**

ORDER : (PER : MANGESH S. PATIL, J.)

By way of these two separate applications by different accused from Crime No. 666/2023, registered with Nanded Rural Police Station, District Nanded, for the offences punishable under Sections 498A, 504, 506 read with Section 34 of the Indian Penal Code and the criminal case bearing Regular Criminal Case No. 1303/2023, pending before the Judicial Magistrate First Class, Nanded are seeking quashment of the crime and the criminal case by invoking the powers of this Court under Section 482 of the Code of Criminal Procedure.

2. At the joint request of the parties, we have heard both the sides at the stage of admission.

3. As can be gathered, the husband of the respondent no. 2 is not before us. Criminal Application No. 4248/2023 has been filed by two married sisters of the husband and their respective husbands, whereas Criminal Application No. 4256/2023 has been filed by the mother of the husband.

4. Shortly stated the allegations, as can be discerned from the charge-sheet are to the effect that the couple was married on 28.04.2017 and was blessed with two children. However, since December 2021 her husband and mother in law started questioning her character. Even the sisters in law and their husbands were of the same view. She and her children were not given food. She was abused and mentally harassed. The husband dropped her at the parental home on 12.12.2022 with one of the two sons and took away

the other one. Thereafter the husband and all his relatives started insisting her to bring an amount of Rs. 10 lakh for purchasing a home. Subsequently, the husband even took away the other son. Thereafter, telephonically the husband insisted her to bring money and else refused to allow her to resume cohabitation. She was even threatened. She then lodged the F.I.R. on 14.09.2023.

5. The learned advocate for the applicants would submit that the applicants are not concerned with the alleged ill-treatment meted out to the respondent no. 2. The allegations are basically against the husband. The F.I.R. has been lodged as an after thought, after the husband filed a divorce proceeding. The allegations against these applicants are vague and general in nature. Going by the probabilities, it is unlikely that all of a sudden after five years of marriage a dispute could arise. The applicants are residents of different villages and were not residing under the same roof together with the couple. It would be abuse of the process of law to allow the applicants to face the prosecution. The case is squarely covered by **State of Haryana and Ors V/s. Bhajan Lal and Ors.: AIR 1992 Supreme Court, 604.**

6. Per contra, the learned A.P.P. and the learned advocate for the respondent no. 2 would strongly oppose the applications. They would refer to the decision in the matter of **Renu Kumari Vs. Sanjay Kumar and ors.; 2008 (4) Scale 294.** They would submit that in exercise of the powers under Section 482 of the Code of Criminal Procedure this Court cannot undertake scrutiny of the material collected by the investigating officer so as to conduct a mini trial. The power has to be used sparingly and in rare matters. The very fact that even after the couple could beget couple of children the matrimonial discord has occurred is demonstrative of the fact that all was not well. At this juncture there is nothing to disbelieve the allegations in the F.I.R. The prosecution deserves to be extended an opportunity to substantiate the charge by leading cogent and convincing

evidence. There are precise and specific allegations against the applicants who have been named in the F.I.R. and the applications be rejected.

7. Bearing in mind the inherent limitations on the powers of this Court under Section 482 of the Code of Criminal Procedure as laid down in the matter of **Renu Kumari (supra)**, a threadbare scrutiny of the material collected by the investigating officer cannot be undertaken. In other words there cannot be a mini trial resorted to by this Court much less to examine if the material annexed to the charge-sheet and the evidence likely to be placed before the trial court would ultimately result in conviction or otherwise. That is not the purport of such inquiry.

8. Simultaneously, there are catena of decisions of the Supreme Court particularly in the matters of offences registered pursuant to a matrimonial dispute and even noticing the usual tendency to rope in as many relatives of the husband as possible for the obvious reasons to wreak vengeance. One can conveniently refer to the decisions in the matters of :

1) **Preeti Gupta and Anr. V/s. State of Jharkhand and Anr. [(2010) 7 Supreme Court Cases 667],**

2) **Geeta Mahrotra & Anr V/s. State of U.P. & Anr. [2013 (AIR) (SC) 181],**

3) **Kahkashan Kausar alias Sonam and others Vs. State of Bihar; (2022) 6 SCC 599**

Obviously, the present enquiry is addressed to ascertain if the fact situation is covered by the instances quoted in the matter of **Bhajan Lal (supra)** which have been referred to and relied upon even in the matter of **Renu Kumari (supra)**. With this preface, let us turn to the facts of the material in hand.

9. Obviously, an F.I.R. cannot be expected to be an encyclopedia. It would merely give a broad line. It is meant to set the criminal law in motion. The actual investigation takes place thereafter. Consequently, merely by pointing out some discrepancy or vagueness in the F.I.R., one

cannot reach to a conclusion to ascertain if the crime should be quashed. It becomes imperative, therefore, to examine the material collected by the investigating officer and forming part of the charge-sheet to understand the nature of the allegations.

10. The F.I.R. expressly mentions that the couple was married on 28.04.2017 but the actual matrimonial dispute began in December 2021, after the couple was blessed with two sons. It is the version in the F.I.R. as well as the statements of the witnesses that thereafter the husband and his relatives, all the applicants started suspecting her chastity and on that count she was being abused and mentally harassed and even a demand for money was raised for purchasing a house. The F.I.R. and the statements of the witnesses further mention that on 12.12.2022 the husband dropped the respondent no. 2 at the parental home with one of the two sons and took away the other son and even subsequently he took away the other son as well. It is further alleged that since thereafter the husband started insisting for payment of money as a condition for allowing the respondent no. 2 to resume cohabitation.

11. The parents of the respondent no. 2, her paternal uncle, her maternal uncle, a friend of her father in their statements recorded under Section 161 of the Code of Criminal Procedure have substantiated the allegations. Over and above, the parents have stated that in March 2023, when her father informed the husband that he is bringing her to resume cohabitation at the matrimonial home and the rest accompanied him, they were not permitted to enter into the house. Even the respondent no. 2 was not allowed to meet the children. These applicants hurled abuses and demanded money as a condition for allowing the respondent no. 2 to resume cohabitation and also threatened them.

12. Obviously, the mother of the husband must have been cohabiting with the couple under the same roof. His sisters being married, in all

probability they must have been residing separately albeit they could be on visiting terms and must have frequented to the house of the couple. However, the allegations against the married sisters and their husbands, in our considered view, are vague and omnibus and have been levelled objectively as is the usual tendency in such matters even noticed by the Supreme Court. If the couple could lead happy married life for about five years and the dispute has started only thereafter, it is most unlikely that these married sisters and their husbands could have played any role. There is no independent material to substantiate the allegations about the role being attributed to them. In all probability, they must have been implicated to wreak vengeance. It would be abuse of the process of law to make them face the prosecution. One cannot give weightage to the fact that their names appear in the F.I.R. and in the statements of the witnesses.

13. Simultaneously, it cannot be inferred that merely because the F.I.R. has been lodged after the husband filed a petition for divorce to discard the F.I.R. outrightly. One cannot lose sight of the fact that such married woman, having two children like the respondent no. 2 who are intending to resume matrimonial ties would not readily resort to the process of law so that it should not be a triggering factor for closing the doors of the matrimonial home permanently.

14. In view of such state of affairs, in our considered view, the application of the mother in law cannot be entertained. However, the application of the married sisters of the husband and their husbands deserves to be allowed.

15. The Criminal Application No. 4248/2023 is allowed. Crime No. 666/2023, registered with Nanded Rural Police Station, District Nanded, for the offences punishable under Sections 498A, 504, 506 read with Section 34 of the Indian Penal Code and the criminal case bearing Regular Criminal Case No. 1303/2023, pending before the Judicial Magistrate First Class,

Nanded are quashed and set aside as against the applicants.

16. The Criminal Application No. 4256/2023 is rejected.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-