



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 196 OF 2024

1. Mr. Mohd. Sakib Naseem Ansari,
Age. 34 years, Occu: Service,
2. Mr. Naseem Ramzan Ali Ansari
Age 63 years, Occu: Nil,
3. Mrs. Fatima Naseem Ahmed,
Age 53 years, Occu: Housewife,
4. Mr. Mohd. Khalid Naseem Ansari,
Age 29 years, Occu: Service

All are residing at Room No.402,
Rose Apartment, Plot No.107/108,
Near S. S. College, Sector 44,
Seawoods Darave, Navi Mumbai
Nerul Node-3, Thane-400706.

.....Applicants

Vs.

1. The State Of Maharashtra,
Through Mumbra Police Station
(Copy to be served upon Police Prosecutor
High Court of Judicature of Bombay).
2. Mrs. Shumaila Sakib Ansari
@ Shumaila Idris Ansari,
Aged 29 yers, Occu: Housewife,
R/o. 803, Samad Arcade,
Near Kaka Nagar Road, Amrut Nagar,
Mumbra, Dist. Thane.

.....Respondents

Mr. I. A. Khan with Mr. M. A. Khan, for the Applicants.
Mr. A. S. Shalgaonkar APP, for Respondent No.1-State.
Mr. Abdul H. Kotwala, i/b., Mr. Khan Abdul Wahab, for Respondent No.2.
Mr. Parshuram Londhe, API, Mumbra Police Station is present.

CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.
RESERVED ON : 25th JUNE, 2024.
PRONOUNCED ON : 9th JULY, 2024.

JUDGMENT :- (Per Dr. Neela Gokhale, J.)

- 1) The Applicants seek quashing of FIR dated 12th October 2023 bearing No.1065 of 2023 registered in the Mumbra Police Station at Thane for offenses punishable under Sections 323, 498(A), 504 read with Section 34 of the Indian Penal Code (IPC) by the Respondent No.2 herein (Original Complainant).
- 2) The Applicant No.1 is husband of the Complainant. The Applicant Nos.2, 3 and 4 are the father-in-law, mother-in-law and brother-in-law of the Complainant respectively. Mr. I. A. Khan represents the Applicants while Mr. A. S. Shalgaonkar, learned APP appears for the State. Mr. Abdul Kotwala appears for the Respondent No.2.
- 3) The trajectory of these proceedings indicate that the Complainant had filed an Application bearing Cri.M.A.No.1162 of 2022 before the 2nd Joint Civil Judge Junior Division and Judicial Magistrate First Class, First Court, Thane under Section 156(3) of the Code of Criminal Procedure, 1973 (Code) seeking direction to register a FIR against the Applicants herein for the offenses punishable under Sections 498(A), 307, 344, 452, 406 and 506 of the IPC, Section 72 of the Information Technology Act, 2000 (IT Act) and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

4) The learned trial Court observing that the complaint was replete with all trifling incidents between the Applicants and the Complainant, thus not justifying investigation by the police, rejected the Application and reserved liberty to the Applicant therein to proceed under Section 200 of the Code.

5) Aggrieved by the rejection of her Application, Complainant filed Revision Application No.279 of 2022 under Section 397 of the Code before the Session Court, Thane. The learned Additional Sessions Judge by her Order dated 6th May 2023 dismissed the Application agreeing with the view of the trial Court and further noting the liberty granted to the Complainant to proceed under Section 200 of the Code. Thereafter, the Complainant filed Criminal Writ Petition No.2709 of 2023 before this Court assailing the Order dated 6th May 2023 passed by the Additional Sessions Judge, Thane. This Court by its Order dated 13th September 2023 disposed of the Petition observing that, the instances of cruelty alleged by the Complainant necessarily would not lead to commission of a cognizable offense and that is the specific reason why the Magistrate refused to direct investigation under Section 156(3) of the Code. This Court also noted that it is now open for the Complainant to file a complaint under Section 200 of the Code and upon its verification, summons shall be issued to the Applicants herein and the law will take its own course.

6) It is after the Order of this Court leaving it open for the Complainant to file a complaint under Section 200 of the Code, that she has filed the present F.I.R. A careful reading of the F.I.R. reveals that the complainant has concealed material facts regarding the earlier litigation including the pivotal fact that her option to an alternate legal recourse of filing a complaint under Section 200 of Cr.PC. is left open by this Court. Considering the successive orders passed by the trial Court, Sessions Court as well as the learned Single Judge of this Court and more particularly, the act of the complainant in concealing material fact in the F.I.R., we are inclined to exercise out jurisdiction under Article 226 of the Constitution of India to quash the crime alleged against Applicants. Since this Court by its order dated 13th September 2023 had granted liberty to the Complainant to initiate action under Section 200 of the Code, the filing of the impugned F.I.R. is nothing but an abuse of the process of law and the same/it deserves to be quashed.

7) Application is accordingly allowed in terms of prayer clause(d).

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)