



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.481 OF 2024

1. Rijayuddin Umar Malik
2. Afsana Rijayuddin Malik,
3. Farhin Rijayuddin Malik,
4. Sherin Rijayuddin Malik,
5. Sharmin Rijayuddin Malik,
6. Meraj Umar Malik,
7. Gulista Meraj Malil,
8. Furkan Umar Malik,
9. Salma Furkan Malik,
10. Muhammed Umar Malik.Applicants

Vs.

1. The Sr. Police Inspector,
V. B. Nagar Police Station,
2. The State of Maharashtra,
3. Insha Irfan Malik.Respondents

Mr. Mateen Shaikh with Mr. Sharif Shaikh, Mr. Ansar Tamboli, Mr. Jammu Shaikh, Mr. Muzammil Shaikh, Mr. Razique Shaikh, Mr. Arshad Shaikh, Ms. Muskan Shaikh, Mr. Shahid Nadeem & Ms. Afrin Khan, for the Applicants.

Smt. Mahalakshmi Ganapathy, for Respondents No.1 and 2-State.
Mr. Sharikh M. Khan, for Respondent No.3.

**CORAM : SARANG V. KOTWAL AND
DR. NEELA GOKHALE, JJ.**

DATE : 16th OCTOBER 2024.

P.C.:-

- 1) This is an Application for quashing of the C.R.No.73 of 2023 registered with Vinoba Bhave Nagar Police Station culminating

in criminal proceeding bearing C.C.No.PW/191/2024 for offences punishable under Sections 498-A, 377, 406 and 506 read with 34 of the Indian Penal Code.

2) Heard Mr. Shaikh learned Advocate for Applicants, Smt. Ganapathy, learned APP for State and Mr. Khan learned counsel for Respondent No.3. With consent of the parties, the Application is decided finally at this Stage.

3) The Respondent No.3 was married to one Irfan. The relationship of the Applicants is mentioned with reference to Irfan. The Applicant No.1 is brother of Irfan. The Applicant No.2 is wife and the Applicants No.3,4 and 5 are daughters of the Applicant No.1. Applicant No. 6 is Irfan's another brother. The Applicant No.7 is wife of the Applicant No.6. Applicant No.8 is one more brother of Irfan. Applicant No.9 is wife of the Applicant No.8 and Applicant No.10 is the father of Irfan. The F.I.R. is lodged by the Respondent No.3. The F.I.R. mentions that she was earlier married to her first husband in the year 2017. She had a daughter from that marriage. Thereafter, there was divorce between the Informant and her first husband. She started residing with her parents along with her daughter. She was working at Success Classes at Kurla. She got acquainted with Irfan. They

developed love relationship. Her own parents were not agreeable for the marriage between Informant and the Irfan. But in spite of that, they got married at Bandra on 2nd August 2019. She started residing with Irfan in a room at Kurla. She had left her daughter to stay with her parents. Irfan used to treat the Informant well in the initial few days. She got pregnant, but Irfan convinced her to go for abortion. There are allegations that the Informant was telling Irfan to inform his own family members, but he avoided telling them about their marriage and he used to scold the Informant. He was not telling his family members about their marriage. Therefore, the Informant herself sent their *nikahnama* to whatsapp number of Applicant No.1 and Applicant No.8. Both of them inquired with Irfan. Because of this, Irfan got angry and scolded her.

4) The F.I.R. mentions an omnibus averment that all the Applicants used to call her telephonically and used to abuse her. They used to humiliate her with reference to her character. They use to tell her to leave Irfan. It is her case that they use to call her on whatsapp, send messages on whatsapp and also delete those messages.

5) The F.I.R. thereafter mentions that Irfan stopped giving her money for daily expenses. When she complained to the Applicant

No.1 being elder brother of Irfan, he ignored her and told her that there was no relation with Irfan as far as they were concerned. The F.I.R. thereafter mentions various N.Cs. lodged by her. It is her case that after a few days, she was detected with breast cancer, but Irfan did not support her. Instead, he constantly harassed her because of which she left Irfan and started residing with her parents since August 2022. There were some efforts for counseling, but those were unsuccessful. There was an allegation as to how Irfan harassed her physically.

6) Ultimately, she lodged the F.I.R. The investigation was carried out. The statements were recorded and the chargesheet was filed. The chargesheet contains statements of the Informant's father, brothers Mohsin, Amir and Wasim and statement of the Medical Officer, who had treated her.

7) Learned counsel for the Applicants submitted that the Applicants No.1 to 5 were residing in Delhi. The Applicant No.6,7 and 10 were residing at Uttar Pradesh and Applicants No.8 and 9 were residing at Delhi. They had never visited Mumbai in their life time. There are no specific allegations against either of them. There were general and vague statements made by the Informant against them.

Irfan got married with Informant without their knowledge and there was no question of Applicants being responsible for the harassment caused by Irfan to the Informant.

8) Learned APP relied on the reference to the Applicants' names in the F.I.R. Learned counsel for the Respondent No.3 submitted that all the Applicants are named in the F.I.R. and only because of their instigation, Irfan was ill-treating the First Informant. He submitted that she is suffering from breast cancer and none of the Applicants and Irfan are looking after her. He further submitted that before the instigation by the Applicants the relationship between the Informant and Irfan were normal and after the instigation their relationship became sour.

9) We have considered these submissions.

10) Learned counsel for the Applicants has rightly relied on the statements of the Informant's brothers. Those witnesses have stated that Irfan had helped her brothers Amir, Mohsin and Wasim financially when they were in need of money. All of them have stated that the Informant and Irfan both were short tempered. They used to fight with each other. The major issue between them was about not informing the family members of Irfan about their marriage. The

family members of the Informant tried to make peace between them, but they were unsuccessful and she started residing with her parents. None of these statements remotely blame the present Applicants. Even the Informant's father has only made a reference that Irfan's relatives were instigating him to harass the Informant. However, he does not have any personal information. Therefore, only vague allegations against the present Applicants are made in the FIR lodged by the Respondent No. 3. As mentioned earlier, there are vague, general and omnibus statements against all the Applicants together that they used to call her and used to abuse her and that they used to humiliate her regarding her character and also that they used to tell her to leave Irfan. There are no specific allegations separately against any of the Applicants. Beyond that, there is absolutely no statement in the FIR or in the entire chargesheet against the Applicants. It is not her case that any of these Applicants has ever visited Mumbai and stayed with her and Irfan. In this context, reference can be made to a judgment of the Hon'ble Supreme Court passed in the case of *Abhishek v. State of Madhya Pradesh*.¹ The relevant paragraph in this judgment is paragraph 13, which reads as under:

“13. Instances of a husband's family members

¹ AIR 2023 SC 4209.

filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in Kahkashan Kausar alias Sonam and others vs. State of Bihar and others [(2022) 6 SCC 599], this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict

severe scars upon the accused and such an exercise ought to be discouraged.”

11) The observations of the Supreme Court made in this judgment are squarely applicable to the facts of the present case. We find that there is hardly any material against the Applicants warranting the trial against them. From the facts, it is clear that the trial against them would be clear abuse of process of law. Therefore, we are inclined to allow this Application and to quash the proceedings.

12) It is made clear that these observations are made only with reference to prayer for quashing of the proceedings against the present Applicants. The other remedies which may be available to the Respondent No. 3 in accordance with law shall not be affected by this order. Hence, the following order:

ORDER

- (i) Criminal proceeding bearing C.C.No.PW/191/2024 arising out C.R.No.73 of 2023 registered with Vinoba Bhave Nagar Police Station for offences punishable under Sections 498-A, 377, 406 and 506 read with 34 of the Indian Penal Code are quashed and set aside against the present Applicants only.

(ii) The Application is disposed of.

(DR. NEELA GOKHALE, J.)

(SARANG V. KOTWAL, J.)