



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL APPLICATION NO. 534 OF 2023**

1. Amol Kesharao Peshattiwar,
Aged about 37 years, Occ. Doctor
R/o Peth Ward, Bhagatsingh Chowk,
Bramhapuri, At & Post Bramhapuri-441206,
Dist. Chandrapur
2. Keshao Pandurang Peshattiwar,
Aged 68 years, Occ. Doctor
R/o Peth Ward, Bhagatsingh Chowk,
Bramhapuri, At & Post Bramhapuri-441206,
Dist. Chandrapur
3. Kusum Kesharao Peshattiwar, Aged 62
years, Occ. Housewife
R/o Peth Ward, Bhagatsingh Chowk,
Bramhapuri, At & Post Bramhapuri-441206,
Dist. Chandrapur
4. Vishal Kesharao Peshattiwar,
Aged 40 years, Occ. Business
R/o Peth Ward, Bhagatsingh Chowk,
Bramhapuri, at & Post Bramhapuri-441206,
Dist. Chandrapur
5. Chaitali Vishal Peshattiwar, Aged 36 years,
Occ. Business R/o Peth Ward, Bhagatsingh
Chowk, Bramhapuri, At & Post Bramhapuri
441 206, Dist. Chandrapur
6. Nikhil Dipakrao Bezalwar,
Aged 36 years, Occ. Business
R/o Wamanghat Road, Near State Bank of
India, Rangari Pura, Ward No. 20, Wani,
District-Yavatmal- 445304

...Applicants

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1. State of Maharashtra, through Police Station,
Awdhutwadi, District Yavatmal
2. Dr. Snehal Amol Peshattiwar,
Aged – 32 years,
C/o Kishor Mekratwar, Gurunanak Nagar,
Godhani Road, Yavatmal, Awadhootwadi,
Maharashtra

... Non-applicants

Shri Shajal Sarda Advocate h/f Shri R.M.Bhangde Advocate for the applicants.

Shri Anup Badar, APP for the non-applicant no.1.

Shri V.D.Darne, Advocate for the non-applicant no.2.

**CORAM : SMT. VIBHA KANKANWADI, AND
MRS. VRUSHALI V. JOSHI, JJ.**

Reserved on : 19th JUNE, 2024.

Pronounced on : 28th JUNE, 2024.

ORAL JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The application has been filed by invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure read with Articles 226 and 227 of the Constitution of India for quashing First Information Report (FIR) No. 22 of 2023 dated 12th January, 2023, registered with Awdhutwadi Police Station and chargesheet filed before the learned Judicial Magistrate First Class, Yavatmal for the offence punishable under Sections 498-A, 504, 506 read with Section 34 of Indian Penal Code.

3. Heard Shri Shajal Sarda, learned advocate for the applicant, Shri Anup Badar, learned Additional Public Prosecutor for the non-applicant no.1 and Shri V.D.Darne, learned advocate for the non-applicant no.2.

4. Before we consider the facts of the case, admitted facts are taken note of that non-applicant no.2 got married to applicant no.1 on 26th November, 2015. The applicant nos. 2 and 3 are the parents of the applicant no.1. Applicant no.4 is the real brother of applicant no.1. Applicant no.5 is the real sister-in-law of applicant no.1. The applicant no.6 is the cousin brother of the applicant no.1. Applicant no.1 is a Medical Practitioner, so also non-applicant no.2.

5. Learned advocate for the applicants has submitted after bringing it to the notice of this Court that the contents of the First Information Report (FIR) do not disclose any specific acts of harassment or cruelty against the informant. Unnecessarily all the family members have been roped, though it is stated that the amount of Rs.10,00,000/- was given to the applicant no.1 for his study in DGO (diploma in obstetrics and gynecology), except that there is no evidence to that effect. Only omnibus allegations have been made in view of the strained relationship. It is also alleged that the non-applicant no.2 has produced evidence to show illicit relationship of applicant no.1 with another lady. However, that cannot be the ground showing harassment. Further in the First Information Report itself, it is stated that applicant no.1 and non-applicant no.2 were residing at Aheri and conducting their hospital.

Therefore, the question of active involvement of applicant nos. 2 to 6 in the daily marital relationship of applicant no.1 and non-applicant no.2 was not to the extent that they would harass or give cruel treatment to the non-applicant no.2. It would be futile exercise for the applicants to face the trial and therefore, the First Information Report and the proceedings before the learned Judicial Magistrate First Class deserves to be quashed and set aside.

6. Per contra, learned Additional Public Prosecutor and the learned advocate for the non-applicant no.2 strongly opposed the application. Applicant no.1 has filed affidavit-in-reply which is nothing but replica of the documents along with the chargesheet. Learned advocate for the non-applicant no.2 sternly submits that it would be the matter of evidence to prove that the amount of Rs.10,00,000/- was given. Further definitely there is evidence in the former CCTV footage in respect of illicit relationship of the applicant no.1 and harassment of each of the applicants against the non-applicant has been stated specifically.

7. One more important point that has been raised by the learned advocate for the applicants that non-applicant no.2 had filed First Information Report for the offence punishable under Sections 323, 406, 498A, 504, 506 read with Section 34 of the Indian Penal Code with Aheri Police Station, District Gadchiroli on 27th September, 2020. However, when the investigation was made and supplementary statement was recorded, the non-applicant no.2 made a statement that she had given the said First Information Report in anger and now she has no grievance

against the accused persons. Even her said statement has been recorded under Section 164 of the Code of Criminal Procedure before the learned Judicial Magistrate First Class and thereupon by communication dated 23rd July, 2021, the Sub Divisional Officer Aheri filed 'C-summary' and then immediately thereafter within one and half years on 12th January, 2023 present First Information Report has been lodged with Awdhutwadi Police Station, Yavatmal. Infact, the said police station had no jurisdiction to carry out the investigation as the non-applicant no.2 was not residing in Awdhutwadi. On this ground also the falsity can be seen, if the earlier First Information Report is compared with the present one, it is having same contents and therefore second First Information Report will not lie.

8. To the above said submissions, it has been argued on behalf of the non-applicants that the non-applicant no.2 has given her address of Godhani road, Yavatmal and therefore Awdhutwadi is the police station and therefore the chargesheet is correctly filed.

9. We would like to deal with the first objection in respect of territorial jurisdiction and whether second First Information Report would lie or not. As regards territorial jurisdiction is concerned in the present First Information Report, the non-applicant no.2 has given her address as C/o Kishor Mekratwar, Gurunanak Nagar, Godhani Road, Yavatmal, Awdhutwadi. No doubt, it is not stated in the First Information Report as to when she is residing at that place. Further if her earlier First Information Report is taken note though it states that at that

time she was residing in Joshiward, Aheri, District Gadchiroli. The documents have also been collected which show that when the application under Section 12 of the Domestic Violence Act is filed before the 3rd Joint Judicial Magistrate First Class, Yavatmal and the address of the non-applicant no.2 is Godhani road, Yavatmal and it is in the year 2023. An application has been filed under Section 125 of the Code of Criminal Procedure by the non-applicant no.2 and her daughter even their address mentioned is as per the present First Information Report. The law is now settled that offence can still be registered where the wife resides and that too with an intention to reside permanently. It is so held in Rupali Devi Vs. State of Uttar Pradesh and others; (2019) 5 SCC 384. Even if it is proved that the said residence was not permanent, then only the jurisdiction would be to other Court as well as to the Police Station but that will not vitiate the proceedings and therefore that cannot be a ground for quashing the First Information Report.

10. Second point that arise other than above is as to what is the effect of “C” Summary that was filed with the Judicial Magistrate First Class, Aheri certainly the non-applicant no.2 cannot go away with the fact that she had given a statement by way of supplementary statement under Section 164 of Code of Criminal Procedure stating that she had given the earlier First Information Report under the heat of anger and due to mistaken facts. But as regards maintainability of the second First Information Report is concerned, it is to be noted that in the present First Information Report of these facts have been clarified and explanation has been given that she took back the said report, she went to reside with the

applicant no.1. She was treated properly for some days but thereafter the ill-treatment continued. In view of the said explanation, we do not consider that this would be a fit case where entire proceedings can be quashed at the *prima facie* stage, whether to accept the said explanation or not would be for the learned Judicial Magistrate First Class. For the purpose of this Court at this stage, when an explanation is given the matter ends and that cannot be a ground for exercise of the inherent powers. However, certainly the applicant nos. 2 to 6 would get benefit from the said part of the First Information Report when as against them also the earlier First Information Report was and upon the supplementary statement and statement under Section 164 of the Code of Criminal Procedure, it was posed that the said First Information Report was the outcome of misunderstanding and in the heat of anger and then “C” Summary has been accepted. The earlier acts cannot be then considered otherwise it would amount to placing them for trial in respect of same facts. If we consider the present FIR, it is stated that after the said report was taken back, the non-applicant no.2 went to the house of the applicant no.1 for cohabitation. She has not stated any other cruel acts in specific against the non-applicant nos. 2 to 6 after the “C” Summary was accepted by the learned Magistrate, Aheri and therefore as against the applicant nos. 2 to 6, the First Information Report as well as proceedings deserve to be quashed and set aside.

11. Learned advocate for the applicants has relied on Geeta Mehrotra and another Vs. State of Uttar Pradesh and another; 2012(10) SCC 741, T.T.Antony Vs. State of Kerala and others with connected

matters; 2001(6) SCC 181 and Prateek Bansal Vs. State of Rajasthan and others in Special leave Petition (Criminal) No. 2520 of 2017 decided on 19th April, 2024. As aforesaid observations taken into consideration the facts of the case, the application deserves to be allowed in respect of the applicant nos. 2 to 6. The ratio laid down in these authorities would be applicable to the limited extent only.

12. As against the applicant no.1 is concerned, it is stated that after resuming the cohabitation still on the same ground, he continued the harassment and therefore, proceedings cannot be quashed and set aside against him. Thus, the application deserves to be partly allowed.

i. Application stands partly allowed.

ii. First Information Report (FIR) No. 22 of 2023 dated 12th January, 2023 registered with Awdhutwadi Police Station, Yavatmal for the offence punishable under Sections 498-A, 504, 506 read with Section 34 of Indian Penal Code and chargesheet filed before the learned Judicial Magistrate First Class, Yavatmal stands quashed and set aside as against the applicant no. 2 Keshao Pandurang Peshattiwar, applicant no.3 Kusum Kesharao Peshattiwar, applicant no.4 Vishal Kesharao Peshattiwar, applicant no.5 Chaitali Vishal Peshattiwar and applicant no.6 Nikhil Dipakrao Bezalwar.

iii. Prayers in respect of applicant no.1 Amol Kesharao Peshattiwar for quashing FIR and chargesheet stands rejected. The learned trial Court may proceed with the case as against him.

[MRS. VRUSHALI V. JOSHI, J.] [SMT. VIBHA KANKANWADI, J.]