



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLN. (APL) NO. 932 OF 2024

Mohammad Irfan s/o Abdul Kalam and others

-Vs.-

The State of Mah., thr. PSO, PS Yashodhara Nagar, Nagpur and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's Orders.
or directions and Registrar's orders.

Mr.S.K.Sabahat Ullah, Adv. for the applicants.
Mr.M.K.Pathan, APP for the respondent-State.
Mr.M.L.Chandrikapure, Adv.for respondent No.2.

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

DATE : 23RD JULY, 2024

The present application has been filed for quashing of First Information Report (FIR) vide Crime No.119 of 2020 and the proceedings i.e. Sessions Trial No.208 of 2022 against the applicants, which is now pending before the learned Sessions Judge, Nagpur for the offence punishable under sections 498-A and 313 read with section 34 of the Indian Penal Code (IPC), section 4 of the Muslim Women (Protection of Rights on Marriage) Act and section 4 of Dowry Prohibition Act.

2. Heard the learned Advocates for the parties.

3. Respondent No.2 is the wife of applicant No.1. It appears that they have filed proceedings before the Family Court, Nagpur, i.e. Petition No. E-8 of 2019, wherein settlement has taken place before the Marriage Counsellor, which is then reduced into writing. As regards the present proceedings are

concerned, respondent No.2 agreed that she will not take objection for the quashment of the FIR and the proceedings. There are other terms those have been entered into.

4. When the said terms of settlement were produced before this Court on 04/07/2024, this Court directed the parties to appear before the learned Registrar (Judicial) for verification. Accordingly, they remained present and report has been submitted by the Registrar (Judicial) regarding the identity of the parties and statement that was voluntarily made that the settlement that has been arrived at is voluntary. In view of the said report, there is no hurdle in quashing the FIR in respect of section 498-A read with section 34 of the Indian Penal Code as well as section 4 of the Muslim Women (Rights of Protection on Marriage) Act and section 4 of the Dowry Prohibition Act.

5. As regards section 313 of the Indian Penal Code is concerned, it is to be noted that it is an offence exclusively triable by the Court of Sessions and therefore, the concerned Magistrate had committed the case to the Court of Sessions. The said offence being antisocial, care has to be taken when the prayer for quashment of the offence under the said section is made and therefore, we have gone through the contents of the charge-sheet. As per the FIR, those allegations about the offence under section 313 of the IPC are against the husband. It is then stated that on 14/09/2018, he had given threats to kill and brought medicine for abortion and forcibly given the informant consumed the same, as a result of which, on 15/09/2018 (it appears wrongly typed as 15/09/2019 in the FIR) she got aborted. She then says that because of the same, she fell ill and then the husband had sent her to her brother's place for

treatment. After taking the treatment, she came back and then the husband took her to a hospital on 09/10/2018 for sonography. The name of the hospital is given as Yashoda Hospital, Indora Chowk, Nagpur. If we consider the documents, those have been collected from the said hospital, then it appears that respondent No.2 had gone to hospital on 05/09/2018 with the complaint of vaginal bleeding. There is a statement of Dr.Sonal Wasnik from the said hospital, who says that when respondent No.2 had come to her hospital along with the husband on 09/10/2018, the sonography was done and in the sonography, it was found that there were residues of the fetus and it was not complete abortion. She explained the report to the informant and her husband, but then they both left without taking any treatment. Supplementary statement was then again recorded of the same doctor, who has then confirmed that the informant had come to her hospital on 05/09/2018 with a complaint of vaginal bleeding, at that time she had given medicine to stop the bleeding. But in both the statements the doctor had stated that she cannot give any reason as to why there was abortion. The charge-sheet further does not show that there was investigation on the point from where the alleged medicines were procured.

6. Even on the *prima facie* things, we can see that if the husband had taken her to hospital for treatment on 05/09/2018, when she was having vaginal bleeding and then could give treatment to her, it is hard to believe that he would have then forcibly caused the abortion by procuring some medicine. Thus, we do not find a concrete evidence so that the sessions trial can stand, henceforth for the offence punishable

under section 313 of the IPC and in view of the settlement, it would be a futile exercise to ask the applicants to face the trial. Therefore, on both the counts, i.e. settlement as well as in respect of offence under section 313 of the IPC, we allow the application. The FIR vide Crime No.119 of 2020 and the proceedings vide Sessions Trial No.208 of 2022 filed by Yashodhara Nagar Police Station, Nagpur before the learned Sessions Judge, Nagpur for the offence punishable under sections 498-A and 313 read with section 34 of the Indian Penal Code (IPC), section 4 of the Muslim Women (Protection of Rights on Marriage) Act and section 4 of Dowry Prohibition Act stand quashed and set aside.

7. Pending application, if any, stands disposed of.

(MRS.VRUSHALI V. JOSHI, J) (SMT.VIBHA KANKANWADI, J)