



{1}

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.673 OF 2024

1. Muniroddin S/o. Mainoddin Shaikh,
Age: 45 Years, Occu- Service as Analytical
Chemist, I.T.L. Thane,
R/o. C-402, Suresh Park, Vartak Nagar,
Unnati Garden, Thane (West), Dist. -Thane
2. Shaikh Mainoddin S/o. Shaikh Jamaloddin,
Age: 80 years, Occu.- Nil,
R/o. Khizar Kirana, Vajegaon,
Tal. Nanded, Dist. Nanded.
3. Sharifabi W/o. Mainoddin Shaikh,
Age- 70 Years, Occu.- Household,
R/o. Khizar Kirana, Vajegaon,
Tal. Nanded, Dist. Nanded.

... Applicants.

VERSUS

1. The State of Maharashtra,
Through the Police Station Officer,
Jinsi Police Station, Aurangabad,
Dist. Aurangabad.
2. Nusrat Jahan @ Guddi W/o. Munirroddin Shaikh,
Age-33 Years, Occu.-Household,
R/o. Nahid Nagar, Hattasingpura,
Aurangabad
At present Galib Nagar, Dargah Road,
Parbhani, Tql. Parbhani, Dist. Parbhani.

... Respondents.

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Mr. Anant R. Devakate, Advocate for Applicants
Mr. Abhijeet M. Phule, APP for Respondent No.1 – State
Ms. Gayatri S. Kalve, Advocate h/f Mr. Mahesh V. Ghatge, Advocate for
Respondent No.2

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{2}

CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

DATED : 10 SEPTEMBER, 2025

JUDGMENT [Per Hiten S. Venegavkar, J.]:-

1. Heard both the sides.
2. **Rule.** Rule made returnable forthwith. With the consent of both the parties, application is taken up for final hearing and disposal.
3. At the outset, we must mention that upon perusing the prayer clause in the petition, which reads thus:-

“(A) The application may kindly be allowed;

(B) The proceedings of R. C. C. No. 984 of 2018 pending in the court of learned Judicial Magistrate (First Class) Court No.11, Aurangabad, Dist- Aurangabad for offence punishable under Section 498-A, 323, 504, 506 r/w. 34 of the Indian Penal Code, 1860 arising out of C. R. No.238 of 2017 registered with Jinsi Police Station, Aurangabad, Dist- Aurangabad dated 07-08-2017, may kindly be quashed and set aside;

(C) Pending the hearing and final disposal of the present application, proceedings of R. C. C. No. 984 of 2018 pending in the court of learned Judicial Magistrate (First Class) Court No.11, Aurangabad, Dist- Aurangabad for offence punishable under Section 498-A, 323, 504, 506 r/w. 34 of the Indian Penal Code, 1860, may kindly be stayed;

{3}

(D) Ad-interim relief in terms of prayer clause "C" may kindly be granted;

(E) Any other relief to which the applicants are entitled to in the peculiar facts and circumstances of the case may kindly be granted."

4. We informed the learned Advocate for the applicants that in terms of the present ruling of the Hon'ble Apex Court in the case of ***Pradnya Pranjali Kulkarni vs. State of Maharashtra and another***, [Petition(s) for Special Leave to Appeal (Cri.) No.13424 of 2025] decided by the Hon'ble Supreme Court on 3rd September 2025, the application will have to be amended so as to challenge the order of taking cognizance by the trial Court along with incorporating necessary pleadings in support of the said amendment. The learned Advocate for the petitioner argued that the prayer clause 'B' in the present application is self-sufficient so as to comply with the mandate of the Hon'ble Apex Court in the aforesaid decision. He further argued that he is challenging the entire Regular Criminal Case (R.C.C.) itself, and therefore, insisted that he be permitted to argue the petition without amendment.

5. Learned APP informed the Court that though the charge-sheet has been filed and cognizance of the offence has already been taken prior to

the filing of the present application, still, in view of the judgment of the Hon'ble Apex Court in **Pradnya Pranjal Kulkarni** (supra), necessary amendment will have to be carried out in the petition in terms of paragraph 8 of the said judgment, which reads as follows:

“8. However, from the preamble of the writ petition filed by the petitioner before the Bombay High Court, it is evident that the same sought to invoke the twin jurisdiction under Article 226 of the Constitution and Section 528 of the BNSS for having the FIR quashed. It is true that the police report (charge-sheet) had been filed on 14th May, 2025 upon completion of investigation of the FIR, but whether or not cognizance had been taken by the jurisdictional magistrate is not too clear from the impugned order extracted above. So long cognisance of the offence is not taken, a writ or order to quash the FIR/charge-sheet could be issued under Article 226; however, once a judicial order of taking cognisance intervenes, the power under Article 226 though not available to be exercised, power under Section 528, BNSS was available to be exercised to quash not only the FIR/charge-sheet but also the order taking cognisance, provided the same is placed on record along with the requisite pleadings to assail the same and a strong case for such quashing is set up. Significantly, it was reasoned by us in Neeta Singh (supra) that a judicial order not being amenable to challenge before a high court under Article 226 of the Constitution and there being no prayer either under Article 227 thereof or Section 482, Cr. PC, the Allahabad High Court was right in holding the writ petition under Article 226 to have been rendered infructuous.”

6. Having considered the submissions of learned Advocate for the applicants as well as learned APP, we agree with the learned APP that prayer clause 'B' and the pleadings in the present application are insufficient to satisfy the mandate of the Hon'ble Apex Court in the case of *Pradnya Pranjal Kulkarni* (supra). From the above paragraph quoted herein, it is clear that once the cognizance has been taken by the criminal Court before whom the case is pending, a writ under Article 226 of the Constitution of India can no longer be used to quash the FIR, charge-sheet or the cognizance order of the criminal Court. The only jurisdiction at this stage is under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) [corresponding to Section 482 of Cr.PC.] provided that the order of cognizance is placed on record and pleadings are framed accordingly. In the instant case, prayer clause 'B' does not challenge the order of cognizance in spite of the fact that the order of cognizance was passed and available on the date of filing of the application, nor are there any corresponding pleadings in the application directed to such a challenge. Accordingly, although this ground in law justifies the rejection of the application, still in the interest of justice, and also on the insistence of the Advocate for the applicants, we heard the matter on merits so as to ensure that the applicants are not prejudiced. Even after expressing our opinion and

{6}

showing our willingness to give an opportunity to the learned Advocate for the applicants to amend the application and incorporate the necessary prayers and pleadings, the learned Advocate proceeded with the arguments on the merits of the matter.

7. The application in the present form is preferred under Section 482 of the Code of Criminal Procedure (Cr.P.C.), seeking quashing of criminal proceedings bearing R.C.C. No. 984 of 2018 pending on the file of the learned Judicial Magistrate, First Class, Court No. 11, Aurangabad. The said proceedings arises out of C.R. No. 238 of 2017, registered with Jinsi Police Station, Aurangabad, for offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code (IPC). The applicants in the present application are husband, father-in-law and mother-in-law of the second respondent.

8. In order to appreciate the facts of the present case, the perusal of the FIR shows that the marriage between applicant No.1 and the second respondent (informant) was solemnized on 07.11.2010 at Parbhani as per Muslim rites and rituals. Two children were born out of the wedlock, a daughter named Mysha and the son, who is named Ali Rushan. According to the informant, she was treated well for about one year post-marriage. Thereafter, she was subjected to persistent cruelty.

{7}

Her case, as reflected in the FIR and in her statements recorded during the investigation, is that the applicants began demanding a sum of Rs.25,00,000/- from her father, who is a Police Officer, for the purchase of a flat either in Pune or in Aurangabad. She has stated that she was threatened with the consequences of filing false complaints of corruption with the Anti Corruption Bureau against her father if the demand is not satisfied. She has stated that she was threatened with the consequences of filing false complainants of corruption with Anti Corruption Bureau against her father if the demand is not satisfied. The informant give specific narration of the incident that took place on 17.08.2016 alleging that her sister-in-law Shama Momin and other relatives had visited her matrimonial house during which the informant was abused in filthy language. When the informant complained about the same to her husband, he allegedly assaulted her and also threatened to kill her. It is alleged that applicant No.3 i.e. mother-in-law also participated in the said assault by stuffing a cloth in her mouth so as to prevent her from shouting. Later that evening, the informant was again assaulted by applicant No.1 with *chapples* and also attempted to throttle her. Parents of respondent No.2 arrived in the nick of time, intervened and respondent No.2 was taken to Jinsi Police Station, Aurangabad. The informant was forwarded for medical treatment, which was then submitted to the police along with her complaint.

{8}

However, nothing proceeded further. The informant stayed with her parents for about 15 days, but had to return to her matrimonial house for the sake of her daughter's schooling as she did not want that her daughter's school and education to suffer.

9. The informant further alleged that after she had returned to her matrimonial house, her mobile phone was snatched and she was locked inside the house on false allegations of infidelity. Her character was assassinated in front of neighbours and defamatory WhatsApp messages were created and circulated to malign her reputation in the society. The said fake WhatsApp messages were also forwarded to the informant's father. On 30.08.2016, applicant No.1 again tried to throttle her with the active assistance of other applicants and it was only due to the cries of her children she was saved. The informant, thereafter, was forcibly taken away at Vajegaon in Nanded District and was confined. On 01.09.2016, when the parents and brothers came to know from a neighbour that the informant had been taken to Nanded, they visited her. The informant narrated the entire incident and returned with her parents to her parental house. The informant then decided to register a complaint, which came to be registered as the first information report vide C.R. No.238 of 2017, which is under challenge in the present proceedings.

10. During the investigation, the police recorded statements of the informant's parents and brothers, all of them have corroborated the incident described in the FIR. Most importantly, the statement of minor daughter Mysa was also recorded by the Investigating Officer, who has clearly stated that her father used to beat her mother with *chapples* and threatened to kill her and that her grandmother had stuffed the cloth in her mouth. The Investigating Officer, during the investigation, has seized the mobile phones alleged to have been used for creating false WhatsApp messages. He has also seized the medical papers dated 20.03.2018, showing injuries on the back, face, and hip of the informant.

11. We have heard the learned Advocate for the applicants, who vehemently argued that allegations are false and concocted. He argued that the informant was pampered by her parents and was of quarrelsome behaviour. She had left the matrimonial house on her own accord. He tried to emphasize and press on the point of delay of almost one year between the incident of August 2016 and registration of FIR in August 2017, which according to him is fatal to the prosecution. He argued that applicants No.2 and 3 are aged and reside separately at Nanded, having no concern with the day-to-day life of applicant No.1

and respondent No.2. Thus, he tried to submit that the allegations are inherently improbable and do not make out the ingredients of the offences alleged. According to the learned Advocate for the applicants, the present case is a clear abuse of the process of law and, therefore, deserves to be quashed and set aside.

12. Learned APP as well as learned Advocate for the informant opposes the application and argued that the contents of the FIR discloses a continuing course of harassment and cruelty, both physical and mental, and that the delay stands explained in the context of matrimonial disputes where the victims tries to protect the marriage and children, and their education. Learned prosecutor took us through the medical evidence and the statement of the minor child and argued that there is a strong *prima facie* case made out, and therefore, this Court ought not to exercise its inherent jurisdiction to quash a legitimate prosecution of the applicants.

13. Having considered the rival submission, this Court is mindful of the settled position of law governing the exercise of powers under Section 482 of Cr.PC. The Hon'ble Supreme Court of India in ***State of Haryana and others vs. Bhajanlal and others***, 1992 Supplementary (1) SCC 335 and ***Neeharika Infrastructure vs. State of Maharashtra***, (2021)

{11}

19 SCC 401, has consistently held that the inherent powers to quash a criminal proceedings are to be exercised sparingly and with circumspection. The Court does not conduct a meticulous examination of evidence collected during the investigation or enter into disputed questions of fact. The FIR is to be taken at its face value and Court must see whether it discloses the commission of a cognizable offence.

14. The allegations in the present FIR and the statements recorded during the investigation, if taken as true, clearly attract the provisions of Section 498-A of IPC. Cruelty within the meaning of Section 498-A includes willful conduct, which is likely to drive the woman to suicide or cause grave injury or danger to life, limb or health, whether mental or physical, and harassment with a view to coerce her or her relatives to meet any unlawful demand of property. The consistent demand of Rs.25,00,000/-, the repeated assaults accompanied by attempts to throttle the informant, and the deliberate acts of defamation on social media, all narrated with dates and details, prima facie constitute cruelty. The allegations of physical assaults on 07.08.2016 and 30.08.2016, supported by medical evidence and the statement of a child witness, clearly disclose the ingredients of Section 323, 504 and 506 of IPC.

15. The submission of the learned Advocate for the applicants that there is unexplained delay in lodging the FIR cannot be accepted. In matrimonial matters, delay in setting the criminal law in motion is not uncommon as the woman often makes efforts to reconcile and to secure the welfare of her children. The FIR itself narrates the attempts of compromise, and the informant returned the matrimonial home for her daughter's education. The law is well settled that mere delay, when satisfactorily explained, does not vitiate the prosecution, particularly in cases involving offences of cruelty within the matrimonial home.

16. Equally, untenable is the contention that applicants No.2 and 3 cannot be prosecuted as they are residing separately. The informant has made categorical and specific allegations of their active participation in the acts of cruelty and assault. Whether those allegations will ultimately be proved is a matter for trial. At this stage, when the statements of the witnesses, including that of the minor daughter narrate their involvement, this Court cannot embark on a mini trial to assess their correctness and veracity. The plea that allegations are absurd and inherently improbable is also without merits. The details of dates, places and acts mentioned in the FIR and subsequently finds corroboration in the charge-sheet are not of the nature which can be brushed aside as fanciful or inherently unbelievable. The Hon'ble Apex

Court has repeatedly cautioned that while considering the provisions for quashing, the Court is not to weigh the evidence on record but only to see whether the allegations, if accepted as they are to make out the offence which has been alleged.

17. We are thus satisfied with the material collected during the investigation, including the medical certificates and the statements of the witnesses, disclose the commissioning of offences punishable under Sections 498-A, 323, 504 and 506 r/w Section 34 of IPC. The ground urged in the application and the arguments advanced by the learned Advocate for the applicants are more in the nature of their defence, which must be tested in the trial. The case does not fall within any of the categories enunciated in *Bhajanlal* (supra) warranting exercise of inherent powers to quash the proceedings before us.

18. For the aforesaid reasons, we proceed to pass the following order:

ORDER

- (i) Rule discharged.
- (ii) Criminal Application stands dismissed.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE