



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

20 CRIMINAL WRIT PETITION NO. 776 OF 2023

MOHAMMED MUSTAK MOHAMMAED RAFIK ANSARI

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for the Petitioner : Mr. Syed G R

APP for Respondents/State : Mr. A. D. Wange

Advocate for Respondent No.2 : Mr. Nirmal Ramrao G.

...

**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATED : 11TH FEBRUARY 2025

PER COURT :-

1. Present petition has been filed initially for quashing the FIR vide C. R. No. 113 of 2023 dated 05.04.2023 registered with the Jintur Police Station, Taluka Jintur, District Parbhani for the offences punishable under Sections 498-A, 354, 323, 504, 506 of the Indian Penal Code and subsequently by way of amendment for quashing the proceedings being Regular Criminal Proceeding No.168 of 2023 pending on the file of Judicial Magistrate First Class at Jintur, Taluka Jintur, District Parbhani.

2. Heard learned Advocate for the petitioner, learned A.P.P. for respondent No.1 and learned Advocate for respondent No.2-informant.

3. Learned Advocate for the petitioner submits that the petitioner is the husband of sister-in-law of respondent No.2. Perusal of the FIR and the contents of the charge sheet would show that the offence is not made out against the petitioner. As per the allegations, the petitioner was instigating the husband of respondent No.2 and thereupon the other accused persons used to harass respondent No.2. It is on record that respondent No.2 had delivered a boy on 13.01.2018 and even after the birth of son it is stated that the husband of respondent No.2 used to harass her upon the instigation by the petitioner. Thereafter, the allegations involving offence under Section 354 of IPC have been alleged. It is stated that when respondent No.2 was alone on 20.07.2020, at that time after witnessing that respondent No.2 is alone in the house the petitioner had caught hold her hand and made statements which were amounting to outraging of her modesty. All these allegations are nothing but to involve all the family members with ulterior motive, especially on the background that the petitioner is serving in the Police Department and therefore the proceedings including the FIR deserve to be quashed and set aside.

4. Learned Advocate for respondent No.2 strongly submits that it was only at the instigation by the petitioner, the informant was

subjected to cruelty. When the incident dated 20.07.2020 had happened, immediately the fact was told by respondent No.2 to her husband but he disbelieved her. He rather told the said fact to his brother and sister, as a result of which all of them had assaulted respondent No.2 and at that time respondent No.2 was pregnant of two and half months. Due to the said assault by husband with kicks, she started bleeding and thereupon after medical examination she was required to get aborted. All these acts would certainly amount to cruelty. The FIR is supported by statements of witnesses under Section 161 Cr.P.C., as well as medical documents, therefore, this is not a fit case where powers under Section 482 of Cr.P.C. would be exercised.

5. We are required to consider the relationship between the present applicant and respondent No.2. The petitioner is the husband of the sister-in-law of respondent No.2. He is serving in Police Department and as per the contents of the FIR, the sister-in-law and the present petitioner are residing with the husband of respondent No.2 and the family, after the mother-in-law of respondent No.2 expired, two years prior to the FIR. The first and foremost fact is that in this respect the approximate date and year as to when the sister-in-law and the petitioner started residing with the respondent No.2's

family/matrimonial home has not be stated. Mere use of the words 'two years' will not be sufficient and it will take the liberal meaning. The FIR has been lodged on 05.04.2023. Two years prior to that date would be in April 2021 and the alleged incident of outraging of modesty is stated to be on 20.07.2020. It is then stated that the mother-in-law had expired in Corona period but then it is certain that prior to that date i.e., 20.07.2020 the petitioner was not residing in the matrimonial home of respondent No.2 or it may be stated that prior to two years he was not residing with respondent No.2's matrimonial home. Therefore alleged acts of cruelty which are stated to be since 2017 to 2019 have not taken place when the petitioner was in the matrimonial home.

6. Further the allegations in respect of Section 498-A of the IPC as against the petitioner is concerned, it is stated that he had instigated the husband, sister-in-law, brother-in-law for subjecting respondent No.2 to cruelty. It is to be noted that the acts of instigation or words of instigation have not been stated. cursory statement in this respect cannot amount to subjecting a married woman to cruelty as contemplated under Section 498-A of the IPC.

7. Now as regards the incident dated 20.07.2020 is concerned, the fact is required to be borne in mind that the FIR is filed about three

years after the alleged incident. Even it is stated that she was required to undergo forcible abortion or constrained abortion due to the acts of harassment or cruelty by the husband. The medical papers which have been collected would show that respondent No.2 has not given any history as she has stated it now. When she had undergone the abortion on 22.07.2020 she has given a consent letter, wherein, it is stated that she is suffering pains since last one and half to two months and therefore she has got the sonography done, wherein, there was problem with the fetus. The report which has been given by Waghmare Hospital would show that the development of the fetus ought to have been ten weeks four days. It could be gathered as of development of six weeks and three days. So also the heart of the fetus had stopped. If this is the medical evidence, then it does not support her contention that due to the kicks and assault after she had narrated the incident dated 20.07.2020 had happened. The present petitioner being the relative of the husband that is husband of sister-in-law it appears that he has been roped in. It would be then unjust to ask him to face the trial with these allegations. Hence, the present case is made out for exercise of power under Section 482 of Cr.P.C.

8. Criminal Writ Petition stands allowed.

9. The proceedings in Regular Criminal Proceeding No.168 of

2023 from the file of Judicial Magistrate First Class at Jintur, Taluka Jintur, District Parbhani arising out of FIR vide C. R. No. 113 of 2023 dated 05.04.2023 for the offence punishable under Sections 498-A, 354, 323, 504, 506 of the Indian Penal Code stands quashed and set aside as against the petitioner.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

Narwade