



THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 3381 OF 2023

1. Vanita w/o. Maroti Itbare,
(Husband's Mother)
Age: 47 years, Occu.: Service,
R/o. Khandoba Chowk,
Shiv Road, Taroda Naka,
Radhakrishna Niwas, Nanded,
Tq. and Dist. Nanded.
2. Maroti s/o. Narayan Itbare,
(Husband's Father)
Age: 57 years, Occu.: Service.,
R/o. As above.
3. Rajesh @ Sidharth s/o. Maroti Itbare,
(Husband's Brother)
Age: 33 years, Occu.: Private Job,
R/o. As above.
4. Shreyash s/o. Maroti Itbare,
(Husband's Brother)
Age : 23 years, Occu.: Education.,
R/o. As above.

... Applicants

VERSUS

1. The State of Maharashtra,
Through Police Station Ardhapur,
Dist. Nanded.
2. Sarika w/o. Sandesh Itbare,
Age: 24 years, Occu.: Household,
R/o. C/o. Pralhad Kadam,
Saptagiri Niwas, Patil Nagar,
Basmath, Tq. Basmath,
Dist. Hingoli.

... Respondents

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Mr. Bharat N. Gadegaonkar, Advocate for Petitioner.

Smt. R. P. Gour, APP for Respondent No.1 / State.

Mr. S. S. Jangada, Advocate for Respondent No.2.

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

DATE : 06th May, 2025.

PER COURT:

. Present application has been filed initially for quashment of the FIR vide C.R. No.77 of 2023, dated 25th February, 2023, registered with Bhagya Nagar Police Station, District Nanded, and later on, by way of amendment for quashment of the proceedings in Sessions Case No.128 of 2024, pending before the learned Sessions Judge, Nanded, for the offence punishable under Sections 307, 323, 324, 498-A, 504 and 506 read with 34 of the Indian Penal Code.

2 Heard the learned counsel for the applicants, learned APP for respondent No.1 / State as well as the learned counsel for respondent No.2. In order to cut short, we would like to say that they all have argued strongly supporting their respective contentions.

3 What is not in dispute is that respondent No.2 got married to the son of applicant Nos.1 and 2 on 21st February, 2022. Husband / Sandesh is not before us. However, applicant Nos.1 and 2 are his parents and applicant Nos.3 and 4 are his brothers.

4 The learned counsel for the applicants has taken us through the contents of the charge-sheet, including the FIR and submits that even in the FIR, respondent No.2 has admitted that after some months from the marriage, respondent No.2 and her husband had shifted to Vasmat, which is the parental place of respondent No.2. However, earlier to that, she has stated that initial four months of good treatment, she was allegedly harassed by the husband and all the applicants on the ground that the husband intends to start a shop and for that purpose, she should bring money from her parents. The allegations in respect of that, is vague. No amount, which was allegedly demanded has been stated. Nor the acts of harassment have been stated. Only words are used "physical and mental harassment". According to respondent No.2, her elder brother had given an amount of Rs.6,00,000/- to Sandesh for opening a plumbing and sanitary ware shop at Vasmat. She then states that her husband sold the entire material from the shop and closed it. Thereafter, all the accused persons started harassing her by demanding amount of

Rs.10,00,000/- for running a new sanitary ware shop at Nanded. Then she has quoted the incident dated 23rd February, 2023. It is the exaggerated version. At the most, she appears to have tried to bring the case under Section 498-A of the IPC, but then wanted to give the colour of Section 307 of the IPC. The applicants have been unnecessarily roped, when the husband and wife were residing separately and the applicants were not interfering with the marital life of their son and respondent No.2. The statements of witnesses are on the same line and stereotype. The statements of neighbouring witnesses do not support the entire story. Under such circumstance, it would be unjust to ask the applicants to face the trial.

5 Per contra, the learned APP as well as the learned counsel for respondent No.2 objected the application and submitted that there is ample evidence against the applicants. At different point of time, the applicants had harassed respondent No.2 mentally and physically. Even in respect of the incident dated 23rd February, 2023 when the spot *Panchanama* was executed, then certain articles were seized. The clothes of witnesses Shivaji and Kailas were having blood stains. The learned counsel for respondent No.2 has taken us through the statements of the witnesses also and submits that the neighbouring persons in their statements i.e. witness Ram Dongre

and Madhav Bakwad have stated that around 10:30 pm on 23rd February, 2023, they had heard the voice of quarrel and therefore, after coming out of their houses, they had seen the applicants and husband were quarreling with respondent No.2 and assaulting her. Therefore, certainly the incident has taken place and therefore, this is not a fit case where the Court should exercise powers under Section 482 of the Cr.P.C.

6 Before we proceed further, a fact is required to be brought on record that on 17th April, 2025, a statement was made on behalf of the applicants that respondent No.2 has resumed her cohabitation with original accused No.1 / husband – Sandesh since last almost two years. Then the learned counsel for respondent No.2 sought time to take instructions. Today, he states that he has taken the instructions from respondent No.2 and confirms that she has resumed the cohabitation with the husband / original accused No.1. But he says that respondent No.2 wants to proceed with the matter and is not willing to give no objection for quashment of the proceedings. Certainly, this act on the part of respondent No.2 of resuming the cohabitation with the husband is required to be considered as a fact and not more than that, as she has not stated that the matter has been compromised with the applicants. Unless there would have

been a compromise between herself and the husband, she would not have resumed the cohabitation. Since the husband is not before this Court, we cannot get the intention of the informant whether she wants to proceed against the husband also even after resuming cohabitation. Only to continue the matter as against the applicants, then in that case, will have to be viewed in a way that she wants to settle the score now.

7 Now, on merits, it is required to be seen that the marriage had taken place on 21st February, 2022 and it is stated that she was treated properly for about four months. Thereafter, the amount was demanded for opening a shop by her husband and for that purpose, she was harassed mentally and physically. Now, while describing this, she has not stated as to how much amount was demanded and what were those acts of harassment, mental and physical, which can be said to be the acts of cruelty as defined under Section 498-A of the IPC. She then states that as her brother had supplied an amount of Rs.6,00,000/-, her husband had opened a plumbing and sanitary ware shop at Vasmat. She has not stated as to whether herself and husband had shifted to Vasmat at that time. But at the same time, she has also stated that her husband used to go to Vasmat daily up and down from Nanded and she continued to reside with the present

applicants. If there was shifting from Nanded to Vasmat by herself and her husband, then the date, month or year has not been given. She has also stated that the husband closed the shop after selling the entire material from the shop. When this had happened, she has not stated. Then she states that thereafter, the applicants started demanding an amount of Rs.10,00,000/- for opening a new sanitary ware shop at Nanded. Again the description is lacking, regarding the acts of harassment. Thereafter, she proceeds to narrate the incident dated 23rd February, 2023 and it appears that at that time, she was in Nanded in her matrimonial home. Initial dispute was between herself and the husband and then she states that she came downwards and told the applicants about the fact that her husband was assaulting her. Then the demand was put by the present applicants of amount of Rs.10,00,000/- for the purpose of opening a shop. She then states that when the accused persons started abusing, she gave a phone call to her elder brother Shivaji and asked him to come immediately. She has then tried to assign the role to every accused as to what they have done and especially in respect of applicant Shreyas it is stated that he had brought petrol in a bottle. It was then stated to be poured by Shreyas and Sandesh on her person. Threat was given to kill her by setting her to fire and then she says that the elder brother went to bring match box. At that time, she was rescued by her both the

brothers and when they were taking her out of the house, at that time, her father-in-law and brother-in-law Shreyas had manhandled her, resulting in her long *Kurti* getting torn. Sandesh had assaulted her brother Kailas by means of rod. She has stated that her father-in-law had given blows on her chest. Immediately, thereafter, in a car they went to Vasmata and admitted themselves in Satpute Hospital.

8 Perusal of the FIR would show that as against the present applicants, the informant wanted to say that the husband and applicant No.4 had tried to ablaze her by pouring petrol on her person, thereby the prosecution intends to say that Section 307 of the IPC is attracted. If we perused the statements of the witnesses, would give a slightly different version. Witnesses Shivaji and Madhav would give a picture that unless Shreyas has poured petrol upon the person of the informant and they have tried to say that original accused No.1 / Sandesh had instigated Shreyas. Here, in this case, all the witnesses have not stated like the informant, as to when Sandesh and informant had returned to Nanded. All of them have attempted to say that around 10:45 pm phone call from respondent No.2 was received and they reached the matrimonial home at 11:20 pm. The FIR is silent as to what acts were done between 10:45 pm to 11:20 pm. If we consider the FIR, it gives a picture that around 09:00 pm after the

dinner was over, the informant was resting in her bedroom and when the husband went, he started asking as to whether she is pretending and then he slapped her. Immediately, thereafter, she came downwards and the incident is stated to have taken place. So, the informant wanted to paint a picture that the incident had started from 09:00 pm itself, whereas the witnesses have stated that they received phone call around 10:45 pm and they reached the matrimonial home at 11:20 pm. Interestingly, the neighbours' statements Ram Dongre and Madhav Bakwad try to paint a picture that they had witnessed the incident around 10:30 pm, wherein they had also seen the relatives of the informant i.e. including the injured brother of respondent No.2 at that time, when in fact, even as per the statement of injured, they had reached the spot at 11:20 pm i.e. from Vasmat to Nanded.

9 The other material in the charge-sheet is the seizure of the articles from the applicants' house, which include the clothes of the informant and her two brothers. In the description in the spot *Panchanama* as well as in the letter issued to the Deputy Director of FSL, Nanded, there is absolutely no mention about the smell of petrol on those clothes. Therefore, taking into consideration all these aspects, the incident as alleged in respect of Section 307 of the IPC appears to be improbable and an exaggerated version.

10 As regards Section 498-A of the IPC is concerned, the incidences prior to 23rd February, 2023 would show that there is either demand of a particular amount is not stated or the particular acts amounting to cruelty have not been described. Then, it is not stated when they returned or whether they were continuing to stay in the matrimonial home. Even on 23rd February, 2023, it appears that everything was normal till 09:00 pm and then when she was complaining against the husband, suddenly, the applicants would start demanding the amount and abusing. This is also improbable and appears to be with some *mala-fide* intention. As regards the assault on the brother invoking Section 324 of the IPC is concerned, it is against the husband, who is not before this Court and therefore, what remains are the sections, which are non-cognizable and therefore, this is a fit case where we should exercise our powers under Sections 482 of the Cr.P.C. in favour of the applicants. Hence, we proceed to pass the following order:-

ORDER

- I. The application stands allowed.
- II. The proceedings in Sessions Case No.128 of 2024, pending before the learned Sessions Judge, Nanded,

arising out of FIR vide C.R. No.77 of 2023, dated 25th February, 2023, registered with Bhagya Nagar Police Station, District Nanded, for the offence punishable under Sections 307, 323, 324, 498-A, 504 and 506 read with 34 of the Indian Penal Code, stands quashed and set aside as against the applicants.

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[SANJAY A. DESHMUKH, J.] [SMT. VIBHA KANKANWADI, J.]