



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1351 OF 2023

Vijay Sidheswar Swami and ors. ..Applicants
vs.
The State of Maharashtra and anr. ..Respondents

Mr. V. R. Shinde, Advocate for the Applicants.
Ms. P. N. Dabholkar, APP for State.
Mr. Vishwanath Patil a/w. Ms. Nidhi Chauhan, Mr. Akshay Naidu,
Advocates for Respondent No.2.
Mr. Rajesh P. Tathe, ASI, Vijapur Naka Police Station.

CORAM : RAVINDRA V. GHUGE &
RAJESH S. PATIL, JJ.

DATE : 3rd JANUARY 2025.

P.C. :-

1. The Applicants have put forth prayer Clauses (a), (b),
(c) and (e) as under (reproduced verbatim) :-

(a) May pleased to quash FIR no. 440/2023 registered against all above applicant's u/s. 489a, 417, 506 and 34 of Indian Penal Code in Vijapur Naka police station in Solapur city.

(b) May please to issue direction to Vijapur Naka Police Station stay investigation and not to file Charge sheet of FIR (C.R.) No.440/2023 Register in Vijapur Naka police station u/s 498a, 417, 506 and 43 of IPC till deciding of present application.

(c) May please to grant permission to argue any new point at the time of final argument of present application and alter, add, change or amend in main application.

Ad-interim relief in terms of prayer clause (b) may kindly be granted.

(e) Chargesheet and R.C.C.No.352/21 (proceeding) connected with C. R. No. 440/23 Vijapurnaka police station may kindly quashed.

2. Applicant No.1 is the husband of the Complainant/Informant. Applicant Nos. 2 and 3 are the parents-in-law. Applicant No.4 is the younger biological brother of the husband. These four persons stay together under a common roof. Applicant No.5 is the maternal uncle of the husband. Applicant No.6 is the wife of Applicant No.5 (her name is wrongly mentioned as ‘Surekha Someshwar Swami’, it should actually be ‘Surekha Rajshekhar Swami’). Applicant No.7 is the younger biological brother of Applicant No.5 and the maternal uncle of the husband. Applicant No.8 is the wife of Applicant No.7.

3. We have heard the learned Advocates for the respective sides and the learned APP on behalf of Respondent Nos.1 and 3. With their assistance, we have gone through the Petition paper-book.

4. Insofar as Applicant Nos. 5 to 8 are concerned, the FIR No. 440 of 2023 registered with the Vijapur Naka Police Station,

Solapur (City), would indicate that they had desired that the Complainant should marry Applicant No.1. There are statements in the FIR to support the theory that these persons were keen that the alliance between Applicant No.1 and the Complainant/wife should be solemnized in a marriage. The grievance of the Complainant is that Applicant No.1, is unable to develop physical relations with a wife and suffers from a medical condition, and this condition was known to these uncles and their wives (Applicant Nos.5 to 8).

5. Having considered the submissions of the learned Advocates for the respective sides, we are of the view that whether the husband was unable to develop physical relations and whether he has a deficiency by which he is unable to cohabit, is a condition which normally is known to the person himself. This information does not travel beyond the home. Sometimes, nearest relatives are also unable to know or notice. It is not the case of the Complainant that she was compelled and coerced by Applicant Nos.5 to 8 to get married to Applicant No.1. The contention is that they were keen that the marriage be solemnized between them.

6. The FIR indicates grave allegations against Applicant

Nos.1 to 4. In several words, the Complainant has narrated the alleged atrocities committed by Applicant Nos. 1 to 4, which compelled her to approach the Police Station. One of the contentions of the Complainant is that though the Complainant was residing in the marital home for a period of about two years, there was no cohabitation between Applicant No.1 and the Complainant. It is the allegation of the Complainant that Applicant No.1 avoided and could not develop physical relations with her.

7. In view of these allegations of alleged physical torture, harassment, demand for dowry and the husband being unable to develop physical relations, we are circumspect whether the circumstances set out in the FIR would really indicate that Applicant Nos. 5 to 8 had the knowledge of his condition. Moreover, Applicant Nos. 5 to 8 reside at Solapur. It is contended that they were only instrumental in introducing the proposal of Applicant No.1 to the Complainant.

8. Taking into account the above factors, we find this Application needs to be entertained to the extent of Applicant Nos. 5 to 8. As such, the **Criminal Application is partly allowed** and FIR

No. 440 of 2023, stands quashed to the extent of Applicant Nos.5 to 8.

9. Insofar as Applicant Nos. 1 to 4 are concerned, there are grave and serious allegations against these four persons. The offence registered is triable and if proved, is punishable in the light of Section 498-A, 417, 504 read with 34 of the Indian Penal Code.

10. In the light of the above, we have referred to the following judgments:-

- (i) *Rajeev Kourav Versus Baisahab and others, (2020) 3 SCC 317;*
- (ii) *Kaptan Singh Versus State of Uttar Pradesh and others, (2021) 9 SCC 35;*
- (iii) *State of Odisha Versus Pratima Mohanty and others, (2022) 16 SCC 703.*

11. The law is crystallized that the High Court cannot indulge in a fact finding exercise while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure. This Court is not expected to assess whether any offence can be proved in the trial

and whether there are any chances of the accused getting an acquittal. If an offence is made out in the allegations in the FIR, all other attending circumstances can be considered by the trial Court. If this Court finds that an offence made out against a particular accused would require a trial, this Court is not expected to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.

12. In view of the above, this **Criminal Application is partly rejected** to the extent of Applicant Nos.1 to 4.

(RAJESH S. PATIL, J.)

(RAVINDRA V. GHUGE, J.)