



(1)

34criapln4753.24

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4753 OF 2024

1. Pasha S/o. Hasham Shaikh [Husband]
Age-40 years, Occu-Advocate,
R/o. Telgaon Naka, Idgah Nagar,
Beed, Tq. & Dist. Beed
2. Salim S/o. Hasham Shaikh [Brother-in-law]
Age-47 years, Occu-Labour,
R/o. As Above
3. Muzamil S/o. Hasham Shaikh [Brother-in-law]
Age-45 years, Occu-Labour
R/o. As above
4. Iqbal S/o. Hasham Shaikh [Brother-in-law]
Age-42 years, Occu-Labour
R/o. As above
5. Asma S/o. Pasha Shaikh [wife of applicant No.1]
Age-32 yers, Occu-Household,
R/o. As above

...APPLICANTS

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Shivaji Nagar Police Station,
Tq. & Dist. Beed
2. Shaikh Najiya Shaikh Pasha [Wife]
Age-35 years, Occu-Household,
R/o. Near Jama Majid, Mominpura,
Tq. & Dist. Beed

...RESPONDENTS

Mr. A. R. Gaikwad, Advocate for the applicants
Mr. V. V. Jahagirdar, APP for the respondents/State
Mrs. A. A. Lomte, Advocate for the respondent No. 2

CORAM : RAJNISH R. VYAS, J.

DATE : 06th APRIL, 2026

PER COURT :

1. This is an application preferred under Section 482 of the Cr. P. C. at the instance of all the accused named in FIR bearing No. 304 of 2024 dated 11-10-2024 registered with the Peth Police Station Dist. Beed for commission of offences punishable under Sections 406, 504, 498-A 323 read with Section 34 of the Indian Penal Code at the instance of complainant. In all five accused were named in the FIR. Applicant No.1-Pasha S/o. Hasham Shaikh [Husband], applicant No.2-Salim S/o. Hasham Shaikh [Brother-in-law], applicant No.3-Muzamil S/o. Hasham Shaikh [Brother-in-law], applicant No. 4-Iqbal S/o. Hasham Shaikh [Brother-in-law], applicant No.5-Asma S/o. Pasha Shaikh [wife of applicant No.1]

2. The learned Advocate for the applicants submitted that the FIR is striking example of abuse of process of law. He submitted that non-applicant No.2 is in habit of lodging various complaints against the present applicants and on 05-07-2020, she lodged the complaint against the present applicants which resulted into registration of the FIR bearing No. 182/2021 dated 05-07-2020 with Peth Police Station for commission of offences punishable under

Sections 376 & 506 of the IPC. In the said FIR it was alleged by the non-applicant No.2 against the present applicant No.1 that under the garb of the marriage she was subjected to forcible sexual intercourse for two years. He submitted that though this FIR was lodged on 05-07-2020, in the FIR impugned, the non-applicant No. 2 has contended that her marriage was performed on 29-09-2016 with the applicant No.1. He, thus, submitted that in the FIR No.182/2020 she had not disclosed that the marriage was in fact performed on 29-09-2016. He submitted that though same cannot be determinative factor for quashment of the present proceedings but it shows the conduct of the non-applicant No.2. He further invited my attention to the order passed by the Division Bench of this court on 19-12-2022 in Criminal Application No. 2423/2020, which was filed by the applicant-husband challenging the registration of the FIR No 182/2020. By pointing out the said order, he submitted that the FIR No. 182/2020 is already quashed by the Hon'ble Division Bench of this court by order dated 19-12-2022.

3. He further submitted that the non-applicant No.2 has also preferred the proceedings dated 15-12-2017 under the Protection of Women from the Domestic Violence Act before the Judicial Magistrate First Class, Beed in which the applicant-husband was joined as party respondent against whom several reliefs were

claimed. He further submitted that the proceedings under the Protection of Women from Domestic Violence Act were registered as DV No. 1548/2017 and on 03-05-2018 Non-applicant No. 2 had filed a pursis in the said proceedings stating that husband was treating with her properly, therefore, she does not wish to proceed with the proceedings. He then contended that in view of the said pursis on 04-05-2018 the Judicial Magistrate First Class, Beed had disposed off the proceedings as withdrawn.

4. He further invited my attention to the criminal application No. 1160/2018 filed before the Judicial Magistrate First Class, Beed by non-applicant No.2 on 11-10-2018 praying for issuance of direction under Section 156(3) of the Cr. P. C. for registration of offences. According to the learned Advocate for the applicants even in this proceeding on 16-01-2019 non-applicant No.2 had filed a pursis and stated that she does not wish to continue the aforesaid proceedings because of some technical and legal difficulties/hurdles. He then contended that aforesaid proceeding was ordered to be disposed off as withdrawn and taking recourse to the Section 257 of the Cr. P. C. by the Judicial Magistrate First Class, Beed on 16-01-2019.

5. The learned Advocate for the applicants has contended that husband of non-applicant No. 2 had also field FIR No. 52/2020

dated 19-02-2020 for commission of offences punishable under Sections 420, 465, 466, 468 read with Section 34 of the4 IPC with Peth Police Station, Dist. Beed in which non-applicant No. 2 is shown as accused No. 1. In that FIR total four accused were mentioned. He submitted that gist of the allegations made in the FIR No. 52/2020 was regarding preparation of false marriage certificate /Siyanama by non-applicant No.2 and others. The contention of the learned Advocate for the applicants is that criminal law which is set in motion against the present applicants is nothing but striking example of abuse of power.

6. He submitted that on 19-02-2024 the FIR No. 34/2024 was registered at the instance of the non-applicant No. 2 with Peth Police Station, Beed in all against 11 accused and applicant No. 1 /husband was shown as accused No.11 therein. The FIR No. 34/2024 was for commission of offences punishable under Sections 326,327,324,354,354-B,452,323,504,506,143,147,148,149 of the IPC and Section 25 of the Arms Act and Sections 37(1) and 135 of the Maharashtra Police Act. He, therefore, submitted that criminal law was set in motion not with a view to punish the accused but to pressurize the innocent. He, therefore, prayed for quashment of the prosecution.

7. Per contra, learned Advocate for the non-applicant No.2

has contended that various documents filed on record cannot be a material which is required to be looked into at the time of quashment of the FIR, the subject matter of the present proceeding. She submitted that commenting anything on the lodging of the FIR would affect out come therein. She submitted that so far as present applicants are concerned, specific roles are assigned to them in the FIR and therefore, FIR may not be quashed.

8. The learned APP has contended that charge-sheet is already filed and therefore, all the defenses are available to the applicants. He submitted that just because various cases are lodged by the parties against each other that would not mean that FIR impugned in the present application is false. He thus, prayed for dismissal of the present application.

9. With the help of the respective counsels for the parties, I have gone through the record of the case. According to the FIR the marriage of the present non-applicant No.2 was solemnized with the applicant No. 1 as per Muslim rites and ceremony on 29-09-2016. It was alleged in the FIR that after marriage she started residing with in-laws. Non-applicant No. 2 had disclosed that she had given divorce to her earlier husband at which time she had also informed that from the first husband she was blessed with a daughter and four sons and had taken divorce from her husband.

10. It was alleged in the FIR that initially for a period of two months she was treated properly by husband and in-laws. But, thereafter, her brother-in-law did not permit her to stay at the house and thus, husband of non-applicant No. 2 had taken her to village Georai. They resided there for 3 months then shifted to Hyderabad where they stayed one and half month. According to the FIR out of the marriage she was not blessed with any issues and in the year 2018 first wife of the applicant No.1 Asma came there to reside with the applicant No.1. At that time applicant No. 1 had asked her to stay at Telgaon with applicant No.1's brother. Applicant No. 1 thereafter started residing with the non-applicant No.2 and the first wife on alternate days. Non-applicant No. 2 then questioned as to why it was falsely stated to her that applicant No. 1 had given divorce to the first wife.

11. The applicant No. 1 had told non-applicant No. 2 that if she wish to reside she can and on that ground she was abused and assaulted by means of fist and blows. Since the non-applicant No. 2 was still desirous to reside she continued her relationship and stayed with the applicant No.1. So far as brother-in-law, the first wife of the applicant and other in-laws are concerned it is alleged that they suspected the character of non-applicant No.2 and used to say that she should desert applicant No.1 and on that ground she was abused

and assaulted. They also asked the non-applicant No.2 to leave the applicant No. 1 and threatened her.

12. It was alleged in the FIR that she had lodged the complaint against her in-laws and husband for physical and mental harassment due to which on 01-09-2018 she was driven out of the house. She had also filed maintenance proceeding against the husband and in-laws and on that count on 16-02-2024 she was also beaten, which incident was narrated by her to police by lodging the complaint. At that time, in-laws and husband had incurred expenses for preferring the bail applications and that count demand of Rs.2 lakhs towards expenses was made for allowing non-applicant No.2 to reside with them.

13. Non-applicant No. 2 was asked to bring the amount from her mother, which was denied by the non-applicant No. 2 by saying that her mother was not in a position to pay the amount. On that count also she was beaten. Non-applicant No. 2 submitted that since the year 2018 she is residing separately with her children. She further stated that she had initially lodged the complaint with the Women Grievance Redressal Forum at Beed where the compromise could not take place between them.

14. At this stage, it is necessary to mention here that even

according to the version of the non-applicant No. 2 she was driven out and residing separately since the year 2018 whereas the FIR is lodged on 11-10-2024. There is absolutely no explanation as to why for six years the FIR was not lodged. Though it is not the law that in all cases delay in lodging the FIR would be fatal but considering the various proceedings filed by the applicant No. 1 and non-applicant No. 2 against each other delay would be vital factor.

15. Fact cannot be ignored that on 05-07-2020 the offences under Sections 376 and 506 were registered against the applicant No. 1 at the behest of the non-applicant No. 2 in which, she had stated that under the pretext of performing the marriage, she was subjected to forcible sexual intercourse, whereas in the impugned FIR, she has submitted that her marriage was solemnized with applicant No.1 on 29-09-2016. The different version advanced by the non-applicant No. 2 in different proceeding prima facie show that a criminal law was not set in motion with bonafide intention.

16. The FIR No. 182/2020 which was lodged at the instance of the non-applicant No. 2 for commission of offences punishable under Sections 376 and 506 of the IPC was quashed by the Hon'ble Division Bench of this court in Criminal Application No. 2423/2020 on 19-12-2022. The conduct of the applicants in preferring the application No.1548/2017 before the court of Chief Judicial

Magistrate, Beed under the provision of Protection of Women From Domestic Violence Act and filing pursis for withdrawal of the same on 03-05-2018 is also one of the factors which shows that from 15-12-2017 till 03-05-2018 non-applicant No.2 was treated properly.

17. Further act of non-applicant No.2 in filing the application No.1160/2018 before the Chief Judicial Magistrate, Beed praying for issuance of direction under Section 156 (3) of the Cr. P. C. for registration of the offences punishable under Sections 323, 504, 506, 507, 418, 498-A of the IPC on 11-10-2018 and filing pursis dated 16-01-2018 by advancing reason that some technical and legal difficulties had arisen, prima facie shows that criminal law was not set in motion with bonafide intention.

18. FIR No. 34/2024 lodged by the non-applicant No.2 against the applicant No. 1 who is shown as accused No. 11 in these proceeding also shows that both the parties have taken recourse to the criminal law for settling their private dispute. It further cannot be ignored that allegations made against the applicants are also general and vague.

19. At this stage, it is necessary to mention here that the Hon'ble Apex Court in the case of Mohammad Wajid And ors Vs State of UP reported in AIR 2023 SC 3784 in para 30 of the said judgment

has observed as :

“30. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under [Section 482](#) of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under [Article 226](#) of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under [Section 482](#) of the CrPC or [Article 226](#) of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

20. If the aforesaid observations are perused, it would be crystal clear that if the holistic view of the matter is taken then there is unexplained delay of six years in lodging the FIR. It cannot be ignored that prosecution initiated at the instance of non-applicant No. 2 against the applicant No. 1 for serious offences under Section 376 and 420 of the IPC is quashed by the Hon'ble Division Bench of this court.

21. In that view of the matter and considering the allegations made in the FIR, I am of the view that prosecution has failed to make out the prima facie case. So far as contention of the learned Advocate for informed and the APP, the applicants can take recourse to the discharge application. Suffice it to say that powers under Section 482 of the Cr. P. C. though are required to be exercised in exceptional situation, the case in hand shows that exceptional case is made out and in the interest of justice following order is passed:

ORDER

a] The application is allowed in terms of prayer clauses-[B] & [B-1] to the extent of present applicant Nos.1 to 5.

b] The application is disposed off.

[RAJNISH R. VYAS, J.]