



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

CRIMINAL APPLICATION NO.2376 OF 2023

1.

2.

3.

..APPLICANTS

-VERSUS-

1. The State of Maharashtra
Through : Police Inspector,
Police Station, Ambad,
Tq.Ambad, Dist. Jalna

2.

..RESPONDENTS

...
Advocate for Applicants : Mr. Milind K. Deshpande
APP for Respondent- State : Mr.G.A. Kulkarni
Advocate for Respondent No.2 : Mr.Hrishikesh V. Tunkar

...
**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W.JOSHI, JJ.**

RESERVED ON : 27 NOVEMBER, 2024

PRONOUNCED ON : 11th DECEMBER, 2024.

JUDGMENT (PER ROHIT W. JOSHI, J.) :

1. Present criminal application is preferred under section 482 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as "the Cr.P.C." for brevity), challenging F.I.R. bearing Crime No.769/2022 registered with Ambad Police Station, Ambad, Dist. Jalna on 10.11.2022 against the present applicants and one Ravi Raosaheb Waghmare, for the offence punishable under Sections 323, 498-A, 504 and 506 read with section 34 of the Indian Penal Code along with final report No.376/2022 dated 27.12.2022 filed by the said Police Station under Section 173 of the Cr.P.C. as also Regular Criminal Case No.276/2022 pending on the file of the learned Judicial Magistrate, First Class at Ambad registered pursuant to the said final report.

2. Respondent No.2 – informant has lodged the above FIR on 10.11.2022. Applicant Nos.1 to 3 are mother-in-law, father-in-law and sister-in-law respectively of the informant. The husband of the informant is not party to the present application.

3. It is case of the informant that her marriage with Ravi Waghmare, son of applicant Nos.1 and 2, was solemnized on 30.05.2019. She has daughter from the said marriage, which was around 2 years old on the date of lodging of FIR. The allegation in the FIR is that husband-Ravi used to demand a sum of Rs.10,00,000/-

from the parents of respondent No.2 - informant for purchasing a Car and since the said amount could not be arranged, he used to abuse and beat her. It is alleged that applicant Nos.1 to 3 also used to abuse her raising demand for money. In her supplementary statement dated 11.11.2022, respondent No.2-informant has stated that on 01.05.2022, the applicants and her husband-Ravi abused her again reiterating the demand for Rs.10,00,000/- and expelled her from the house. She states that the applicants and her husband-Ravi did not allow her to take her daughter Abha along with her. Respondent No.2-informant thus states that she has constantly subjected to harassment and cruelty, since her parents did not fulfill their demand of dowry of Rs.10,00,000/-. The statements of her parents and brothers are also recorded. It will also be pertinent to mention here that statement of one Kuldeep Jadhav, who is relative of the applicants, is also recorded. He states that respondent No.2-informant had apprised him about the mental torture and harassment meted out to her by the applicants and her husband-Ravi for demand of Rs.10,00,000/-.

4. It will be pertinent to mention here that respondent No.2-informant had filed a proceeding under Section 97 of the Cr.P.C. before the learned Judicial Magistrate, First Class, Ambad, being Criminal Misc. Application No.240/2022, seeking search warrant and custody of her daughter. Ravi, the husband and applicant Nos.1 and 2 herein

were arrayed as non-applicants in the said matter. Pursuant to the order passed by the learned Magistrate, daughter Abha was produced in the Court, however, the learned Magistrate held that the daughter was not wrongly confined by Ravi, who was her father and, therefore, the application under Section 97 of the Cr.P.C. was not maintainable, and as such, the Magistrate was pleased to reject the said application on 29.06.2022 granting liberty to respondent No.2-informant to seek recourse to proper remedy under law for custody of her daughter. Respondent No.2-informant has thereafter filed proceeding under Section 25 of the Guardians and Wards Act, 1890, being Misc. Civil Application No.14/2022, which came to be allowed by the learned Additional District Judge, vide order dated 28.08.2023. However, the said order is not complied with and the daughter is still in the custody of Ravi, husband of respondent No.2-informant. During the course of hearing held on 18.11.2024, we had inquired with the learned Advocate for the applicants about whereabouts of Ravi, who is son of applicant Nos.1 and 2 and brother of applicant No.3. Learned Advocate informed on instructions that the applicants were not aware about whereabouts of Ravi. On a specific query, they replied that they had also not filed any missing report on the count that their son Ravi was not traceable. The order granting custody passed by the learned Additional Sessions Judge is still not complied with.

5. It is hard to believe that the applicants are not aware about whereabouts of their son and have still not taken any steps to find him. It appears that as a matter of strategy, husband-Ravi is not coming before the Court in order to keep custody of his daughter Abha in defiance to the order of custody passed by the Competent Court. His parents and sister have filed the present application seeking quashing of FIR and criminal proceedings on the ground that there is no material against them in order to make out a case under Section 498-A of the IPC. It is difficult to digest that they are not aware about address and whereabouts of Ravi. It is apparent that they are deliberately not divulging the necessary details.

6. As regards the merits of the matter, Shri Milind Deshpande, learned Advocate for the applicants is strenuously argued that the allegations in the FIR regarding demand of dowry, harassment and cruelty are vague in nature and lacking any material particular. He contends that respondent No.2 – informant has falsely implicated them in the offence. He would go on to submit that in the investigation also no material has been gathered against them to remotely suggest their involvement in the offence. Learned advocate, therefore, submits that this is a fit case for exercising our powers under Section 482 of the Cr.P.C. in order to quash FIR and criminal case.

7. As against this, Shri G.A. Kulkarni, learned APP and Mr.H.V. Tungar, learned Advocate for respondent No.2 submit that clear and definite allegations have been levelled in the FIR and as also in the supplementary statement made by respondent No.2-informant. They further claimed that the statements of the witnesses particularly that of Kuldeep Jadhav, who is relative of the applicants, would clearly demonstrate that there is substance in the allegations levelled by respondent No.2 against the applicants. They further go on to submit that the veracity or otherwise of the allegations cannot be judged while adjudicating the present application, and that, for the purposes of the present application all the allegations in the FIR and statements of the witnesses will have to be assumed to be correct. Apart from this, learned Advocate for respondent No.2 has strenuously argued that the power under Section 482 of the Cr.P.C. is discretionary power, and that having regard to the conduct of the applicants and Ravi, the husband of respondent No.2 – informant, in not handing over custody of daughter Abha in defiance of the order of custody passed by the Competent Court, disentitles them to invoke our jurisdiction under Section 482 of the Cr.P.C. and as such, the application is liable to be rejected without going to merits of the matter.

8. We have perused the FIR and charge-sheet with documents appended thereto with the able assistance of learned

respective Advocates appearing in the matter.

9. We are of the opinion that the parties, who do not have regards for judicial orders passed by the Competent Court of law, are not entitled to invoke our jurisdiction under Section 482 of the Cr.P.C. The Hon'ble Supreme Court in the case of ***Padal Venkata Rama Reddy Alias Ramu Vs. Kovvuri Satyanarayana Reddy and others*** reported in ***(2011) 12 SCC 431***, has held that jurisdiction under section 482 of the Cr.P.C. is a matter of discretion and as such the High Court can refuse to exercise powers under the said provision having regard to conduct of applicant/s before it.

10. We could have rejected the present application solely on the count that the applicants have not handed over custody of the daughter to respondent No.2 despite the order dated 28.08.2023 passed by the Additional Sessions Judge in Misc. Civil Application No.14/2022. However, having regard to the age of applicant Nos.1 and 2 and statement that applicant No.3 is a specially abled person, we propose to deal with the matter on merits.

11. At the outset, we would like to state that at the stage of deciding as to whether criminal prosecution should be continued or nipped in the bud, we are constrained to take allegations in the FIR so

also the statements made by the witnesses before the Police Authorities on their face value. We can interfere only on the face of the allegations and statements of the witnesses, essential ingredients of the offence are not made out. We cannot conduct a mini trial and look into veracity of the contents of FIR and statements.

12. Respondent No.2 has narrated that her husband – Ravi and applicants, who are her parents-in-law and sister-in-law used to constantly harass her on account of her failure to collect money from her parents as demanded by them. There is a specific allegation that they used to demand a sum of Rs.10,00,000/- from her for purchasing a car. The statements of witnesses i.e. parents of respondent No.2 and her brothers are recorded, which support her version with respect to demand of dowry and harassment meted out to her on account of failure to fulfill the demand. In her supplementary statement dated 11.11.2022, respondent No.2 has specifically stated that on 01.05.2022, she was driven out of her matrimonial house by the husband and all three applicants by stating that unless she brings amount of Rs.10,00,000/-, she will not be allowed to return her matrimonial house. She has also stated that husband and applicants also forcibly retained custody of her daughter while expelling her from residential house. Most importantly the version of respondent No.2 and her parents and brothers find corroboration in the statement of

Kuldeep Jadhav, who is relative of the applicants. In view of the above statement, it is difficult to disbelieve the version of respondent No.2 and prosecution witnesses at this stage.

13. As mentioned above, the daughter of respondent No.2, who is now only around four years old is kept away from her. A judicial order passed by the Competent Court of law is also not being obeyed. Although, the daughter is with husband, we have already recorded above that the applicants herein are assisting his husband in the sense that his whereabouts are not being disclosed. Keeping a young child of four years old away from her mother in defiance of Court order also amounts to mental harassment amounting to cruelty in as much as it would certainly cause grave injury to mental health of respondent No.2, mother of the child. Such act of the in-laws amounts to cruelty within the meaning of Explanation (a) to Section 498-A of IPC. We further record that the said mental harassment is continuing from day to day till date. It is a continuing wrong.

14. We are therefore of the opinion that this is not a fit case for exercising our inherent jurisdiction vested under Section 482 of the Cr.P.C. in order to quash the criminal prosecution against the applicants.

15. Learned Advocate for the applicants has submitted that applicant No.3 is a specially abled person suffering from mental disorder. Our attention is drawn to documents filed on record, which show that she is suffering from schizophrenia. Schizophrenia affects behavior of patient intermittently for certain duration of time. It is not a constant medical condition. In the event, the applicants deem it fit, they may take recourse to provisions of Chapter XXV of the Cr.P.C. in the proceedings before learned Magistrate with respect to the alleged ailment of applicant No.3. We do not deem it appropriate to quash proceedings against her on the ground that she is allegedly suffering from schizophrenia. Accordingly, we pass the following order :-

ORDER

(i) The criminal application is dismissed.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE