

(2024) 01 BOM CK 0029

In the Bombay High Court

Case No : Criminal Application No. 1298 Of 2023

Sharad And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 09-01-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 34, 323, 498A, 504, 507

Citation : (2024) 01 BOM CK 0029

Hon'ble Judges : Mangesh S. Patil, J; Shailesh P. Brahme, J

Bench : Division Bench

Advocate : Vijay B. Kale, Govind A. Kulkarni, Rajesh H. Mewara

Final Decision : Allowed

Judgement

Shailesh P. Brahme, J

1. Heard learned counsel for both the sides finally.
2. The applicants are invoking the jurisdiction under Section 482 of Criminal Procedure Code challenging F.I.R bearing Crime No. 0158/2023 registered with MIDC Waluj Police Station, Aurangabad Dist. Aurangabad and R.C.C No. 1074/2023 pending before Judicial Magistrate First Class, Aurangabad for offence under Section 498 (A), 323, 504, 507 read with Section 34 of IPC.
3. The application to the extent of applicant No. 1/husband stands withdrawn. The respondent no. 2 / wife lodged First Information Report (F.I.R) bearing Crime No. 0158/2023 with MIDC Waluj Police Station, Aurangabad against the applicants. The charge-sheet was filed. First information report is culminated into R.C.C No. 1074/2023.
4. The undisputed relationship between the parties is as follows :
Applicant No.

Name

Relationship with Respondent No. 2

1

Sharad s/o Ramesh Kedar

Husband

2

Ramesh s/o Pundlik Kedar

Father in law

3

Shantabai w/o Ramesh Kedar

Mother in law

4

Navnath s/o Ramesh Kedar

Brother in law

5

Manisha w/o Kishor Avhad

Married sister in law

6

Kishor s/o Karbhari Avhad

Husband of sister in law

5. It is alleged in the complaint that the applicant nos. 1 to 4 were residing with the respondent no. 2. The applicant nos. 5 and 6 used to visit them. She was being taunted for not bearing child. She was being harassed for money for purchasing plot. She was required to file complaint before Women Redressal Forum, Aurangabad on 29.11.2022. Since 10.02.2023, the respondent no. 2 is residing separately with her friend.

6. Learned counsel for the applicants submit that the allegations are very vague. No specific role has been attributed against them. At the most, some role is attributable against the applicant no. 1/husband. He would further submit that the statements recorded during the course of investigation are inconsistent with the first information report. Our attention was invited to the statement of Laxman/father of the respondent no. 2 and Vijay. He would submit that statement of Laxman refers of his conversation on phone with Vijay and Vinayak. The statement of Vijay does not refer to the telephonic conversation.

7. Learned counsel for the applicants has referred to the statement of Phulchand Shivajirao Bhanghe who has, for the first time made allegations against the applicants castigating the character of the respondent no.2. The respondent no. 2 and other witnesses do not make any allegations touching infidelity of the respondent no. 2. It is submitted that the applicants are implicated falsely and the allegations are inherently improbable. It is an abuse of process of law to subject the applicants to trial.

8. Learned APP has repelled the submissions of the applicants. He submits that from the first information report and the statements recorded during the course of the investigation, incriminating role is attributed to the applicants. It is further submitted that due to harassment of the applicants, the respondent no. 2 tried to commit suicide by consuming poison in the year 2022. A reference is made to the statement of Phulchand to show that allegations are serious.

9. Learned counsel for the respondent no. 2 adopts the submissions of learned counsel, learned APP. He would further submit that the fidelity of the respondent no. 2 was suspected and she was subjected to cruelty for payment of money for purchasing plot. It is further submitted that on three occasions, non-cognizable offence was reported against the applicant. He would further submit that matter needs to be decided after full-fledged trial. No interference at this stage is warranted.

10. We have considered rival submissions of the parties. With the assistance of learned counsel, we have gone through the first information report and the statements of the witnesses. At the outset, we find that incriminating role is attributed to the husband specifically. Application as against him has already been withdrawn.

11. The complaint lodged by the respondent no. 2 with the police does not spell out specific incriminating role against the applicant nos. 2 to 4. The applicant nos. 5 and 6 are the resident of Satara / different place. There are no allegations about even they having questioned character of the respondent no. 2 in the First Information Report. For the first time, the allegations find place in the statement of Phulchand. Similar is the case with the allegation of an attempt to commit suicide in the year 2022. The statements of Laxman, Namdeo and Jayshri are silent about these allegations.

12. Considering the inconsistencies in the statement of the witnesses with the first information report, we find substance in the submission of learned counsel for the applicants that the allegations are improbable and there is no prima facie case made out. Allegations against the applicant nos. 2 to 6 are improbable.

13. So far as applicant no. 4 / Navnath is concerned, we do not find any material attributing specific role to him. It is rightly submitted by the applicant that the statement of Laxman/father of the respondent no. 2 is inconsistent with the statement of Vijay. The telephonic conversation as stated by Laxman has not been indicated in the statement of Vijay. Considering the material placed on

record, we find that no offence is made out against the applicant nos. 2 to 6. The F.I.R and R.C.C. No. 1074/2023 are liable to be quashed against them.

14. We therefore allow this application to the extent of applicant nos. 2 to 6. F.I.R bearing Crime No. 0158 of 2023 registered with the MIDC Waluj Police Station, Aurangabad Disttirtct Aurangabad and R.C.C No. 1074 of 2023 pending before Judicial Magistrate First Class, Aurangabad are quashed and set aside to the extent of applicant nos. 2 to 6.