



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 495 OF 2020
WITH
INTERIM APPLICATION NO. 634 OF 2021**

- | | | | |
|----|--|---|----------------|
| 1) | Nilofar Imran Khan, |] | |
| | Aged : 32 years, Indian Inhabitant, |] | |
| | Occ: Housewife, residing at |] | |
| | Panchsheel Nagar, Room No.1238, |] | |
| | 12 th Floor, Tilaknagar, Chembur, |] | |
| | Mumbai – 400 089 |] | |
| 2) | Nadeem Nafees Khan |] | |
| | Aged : 27 years, Indian Inhabitant, |] | |
| | Occ :- service, residing at |] | |
| | Plot no 24, h2 floor, baiganwadi, |] | |
| | road no. 10 Old Bus depot, Shivajinagar] | | |
| | Govandi, Mumbai 400 043 |] | ...Petitioners |

Vs.

- | | | | |
|----|--------------------------------------|---|----------------|
| 1) | State of Maharashtra |] | |
| | At the instance of Tilaknagar Police |] | |
| | Station, Mumbai |] | |
| 2) | Smt.Ayesha Imran Khan alias d/o. |] | |
| | Abdul Khalique Khan age 38 years, |] | |
| | Occ :- Business, R/no : 516, |] | |
| | Express Highway, M.M.Building, |] | |
| | Chembur, Mumbai – 71 |] | |
| | AND | | |
| | Presently residing at Room no. 39, |] | |
| | Madina Nagar, KuttiWadi, Dharavi, |] | |
| | Mumbai – 400017 |] | ...Respondents |

Mr. Sanjay Bhatia for Petitioners.

Mr.Ashish I. Satpute, A.P.P for Respondent – State.

CORAM : A. S. GADKARI AND
RAJESH S. PATIL, JJ.
RESERVED ON : 21st JULY 2025
PRONOUNCED ON : 9th SEPTEMBER 2025

JUDGMENT (Per Rajesh S. Patil, J.) :-

1) By this Petition under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973, the Petitioner/Accused in C.C.No. 849/PW/2020 pending on the file of learned Judicial Magistrate First Class (72nd Court), Vikhroli, Mumbai, arising out of C.R.No. 459 of 2019 registered at Tilak Nagar Police Station, Mumbai, under Sections 323, 354, 509, 325 and 34 of the Indian Penal Code, is seeking quashing of the said crime.

2) By an Order dated 7th August, 2023, this Court had admitted the Petition and directed Trial Court not to frame charges till decision of the present Petition.

3) It is the case in the FIR of Respondent No.2 that, on 27th November, 2019, when she had been to the vegetable market for purchasing vegetables, she accidentally met Accused No.3, who after noticing her, started verbally abusing her. As the Respondent No.2 was alone, she had no option but to leave the place. On the same day in the evening, Accused No.1 (husband of Respondent No.2) telephonically called Respondent No.2 and started humiliating her.

3.1) On the next day, i.e. on 28th November, 2019, at around 1:00

a.m. in mid-night, Petitioner No.1 sent a message on the mobile of Respondent No.2, thereby instigating Respondent No.2 to meet her. When the Respondent No. 2 went to meet the Petitioner No.1 (second wife of Accused No.1); all the accused persons were present at the site. All of them started verbally abusing and insulting Respondent No.2. As the abuses continued, all of a sudden the Accused No.1 punched with fist to the Respondent No.2 near her left eye and forehead, thereby causing serious injury to Respondent No.2. As the Respondent No.2 was alone at that time, she called police for help on telephone number 100. She also called her brother for help. When the brother of Respondent No.2 arrived at site, he tried his best to pacify the accused persons. As the police arrived at the site, the Respondent No.2 had to be first taken to the hospital for treatment. The brother of Respondent No.2 at that time called his friend (Mr.Fazal Khan) for assistance and support. The brother of Respondent No.2 carried the Respondent No.2 to the Hospital where Respondent No.2 was given treatment. The friend of her brother was also present there.

3.2) After taking the treatment in the hospital, Respondent No.2 went to the police station to lodge her complaint. The police initially lodged N.C. Report and as the Respondent No.2 came out of the police station, the accused persons again started abusing Respondent No.2. The police then lodged an FIR against all accused. The present Petitioners being Accused Nos. 2 and 4, have sought quashing of the FIR. During the

pendency of this Petition, charge-sheet was filed. The Petitioners have amended the petition and have also sought quashing of criminal case lodged with Judicial Magistrate First Class (72nd Court), Vikhroli, Mumbai.

4) It is the case of the Petitioners that Petitioner No.1 – Accused No.2 is the second wife of the Accused No.1 (Mr.Imran Khan) and Petitioner No.2 is the brother of the Petitioner No.1, who are arraigned as Accused Nos. 2 and 4 in First Information Report (FIR). The Police have supported Respondent No.2, who is first wife of Accused No.1, initially lodged an NC against Accused Nos. 1 and 3 and subsequently filed an FIR against Accused Nos. 2 and 4 and also without verifying the facts and considering evidence on record, filed the charge-sheet against all the accused.

4.1) Basically, the dispute is a matrimonial dispute between Respondent No.2 (wife) and Accused No.1 (husband). The Petitioner No.1 being the second wife of Accused No.1 has been purposely dragged in by the Respondent No.2. There are various proceedings filed by the Respondent No.2 against Accused No.1. In fact, Memorandum of Understanding(MOU) was entered into between Respondent No.2 and Accused No.1. The benefits under the MOU have already been received by Respondent No.2. However, she is not willing to comply with her part of the MOU. The Petitioners have not committed any offence as alleged in the FIR and therefore the FIR and consequently the criminal case qua the Petitioners, be quashed.

5) Learned A.P.P for the State opposed the Petition. He submitted that, on the basis of the complaint lodged by Respondent No. 2, the police lodged an FIR. After conducting investigation by recording the statements of eyewitnesses and collecting the medical certificate, charge-sheet has been filed. Therefore, the present Petition has now become infructuous and be dismissed.

6) We have heard learned Advocates for the parties and with their help we have perused the through documents on record, including the charge-sheet.

7) For quashing criminal proceedings under Article 226 of the Constitution of India and/or under Section 482 of the Cr.P.C. it has to be seen whether the allegations in the complaint and/or the FIR *prima facie* indicate that, *prima facie* case is made out or not, against the accused person of having committed an offence.

8) In the present proceedings, Respondent No. 2 has lodged the FIR against the accused persons for the offences punishable under Sections 323, 354, 509, 325 and 34 of the Indian Penal Code. It is the prosecution's case that, the Accused No.1 has assaulted her by giving her punch near her left eye and on the forehead. So also, there is a specific allegation against Accused Nos. 3 and 4 that, they had molested and insulted Respondent No.2. The Respondent No.2 had called the Police on the date of incident by dialing the number 100 at midnight. The Police have visited the spot where

the incident occurred and found her in injured condition. The Respondent No.2 thereafter had first gone to hospital and after receiving medication, had been to the Police Station and thereafter lodged FIR. The Respondent No.2 had narrated the entire incident to the Police pursuant to which, an FIR has been lodged. Present Petitioners themselves went on their own to the Police Station and outside the Police Station, there was again altercation between the Petitioners and Respondent No.2. Police have recorded the statements of two witnesses. One of them is the brother of Respondent No.2, who is the eye witness. The statement of the said eye witness corroborates with the statement of Respondent No.2 in the FIR. The statement of friend of brother of Respondent No.2 who was present in the hospital is also recorded. The medical certificate of Rajawadi Hospital has been produced on record with the Writ Petition. The said medical certificate mentions about the injury caused to the Respondent No.2.

8.1) So also, after filing of this Petition, the Police have already filed charge-sheet where the names of the present Petitioners are arraigned as Accused Nos. 2 and 4.

9) The Hon'ble Supreme Court in its Judgments namely (i) *State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors.*, AIR 1992 SC 604, (ii) *Rajeev Kourav vs. Baisahab & others*, (2020) 3 SCC 317 and (iii) *Kaptan Singh vs. State of Uttar Pradesh and others*, (2021) 9 SCC 35, has held that, exercise of powers under section 482 Cr.P.C. to quash the proceedings is an

exception and not a rule. Appreciation of evidence is not permissible at the stage of quashing of proceedings is exercise of powers under Section 482 Cr.PC.

9.1) In the recently reported case of *CBI vs. Aryan Singh, AIR 2023 SC 1987*, the Supreme Court has held that while examining the power under Section 482, the High Court should not conduct a mini trial.

10) After considering the contents of FIR and the various documents on record, we are satisfied that it constitutes the ingredients of the offences as alleged. Taking into account the law as laid down by the Hon'ble Supreme Court in the judgments referred above, we find that there are no merits in present Petition and the same deserves to be dismissed.

11) Criminal Writ Petition No. 495 of 2020 is accordingly dismissed. In sequel, Interim Application No. 634 of 2021 does not survive and also disposed off accordingly.

(RAJESH S. PATIL, J.)

(A.S. GADKARI, J.)