

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1151 OF 2014

1. Smita w/o. Balasaheb Dalve,
Age 38 years, Occu. Housewife,
R/o. Kunkulol plots, Ajalgaon Road,
Barshi, Tq. Barshi, Dist. Solapur.
2. Nita w/o. Maruti Dandawate,
Age 32 years, Occu. Housewife,
R/o. Flat No. 403, Iris Everest Country
side, Kasarwadhavli, Ghodbandar
Road, Thane (west).

....Petitioners.

Versus

1. The State of Maharashtra
Through Kotwali Police Station,
Ahmednagar.
2. Renu Ajit Zarekar,
Age 29 years, Occu. Advocate,
R/o. Abhijeet Monot Estate,
Station, Ahmednagar.

....Respondents.

Mr. R.N. Dhorde, Senior Counsel i/b. Mr. A.C. Darandale, Advocate
for petitioners.

Mrs. R.K. Ladda, APP for State.

Mr. U.S. Malte, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**

DATED : 23rd March, 2015.

JUDGMENT :

- 1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.

2) The proceeding is filed under section 482 of Criminal Procedure Code and under Article 226 of Constitution of India for quashing of the FIR and also for quashing of criminal case bearing RTC No. 431 of 2014, presently pending in the Court of Judicial Magistrate First Class, Ahmadnagar. The case is filed against the petitioners and others for the offences punishable under Sections 498-A, 406, 323, 504, 506 and 34 of Indian Penal Code and Sections 66(A) of Information Technology Act. Both the sides are heard.

3) Husband of original complainant was real brother of petitioners. The marriage of brother of petitioners with the complainant took place on 14/05/2011. It was intercaste love marriage. The brother of petitioners committed suicide in the house where he was cohabiting with the complainant on 14/10/2013. He blamed his wife, present respondent No.2, for his suicide and he left behind such suicide note. After making the investigation of the said case, charge sheet came to be filed against the present respondent No.2 and others for the offences punishable under sections 306, 34 of IPC. Present report came to be given on 18/02/2014 by respondent No. 2.

4) The complainant has made allegations against the present petitioners that in one incident dated 20/5/2011 when she was present in the house of parents of husband, the applicants together gave beating to her on face and said that it was not the practice in their house to allow the husband and wife to go for outing or allow them to take decisions on their own. Then, she has made allegations that when she used to visit to the house of the parents of husband, there the relatives of parents of husband used to harass her. The complainant was living with her husband in Aurangabad.

5) During the course of investigation, the statements of some colleagues of the complainant and her parents came to be recorded. She is practicing advocate. The statements of the witnesses are mainly on the basis of disclosures made by the complainant to them and they are very vague in nature.

6) It is not disputed that the petitioners are married and their marriage took place in the year 2000-2001 and since then they are cohabiting in respective matrimonial houses. The petitioner No. 1 is living in Solapur and petitioner No. 2 is living in Thane.

7) Even if the record and the material collected against the petitioners is considered as it is, there is only one allegation in respect of specific incident dated 20/05/2011 that both the petitioners gave beating to her on face, probably gave slap to her and said that there was no practice in their family to allow the husband and wife to go for outing or to take decisions on their own. Thus, apparently there is no sufficient material to make out offence punishable under Sections 498-A of IPC against the petitioners. They had virtually no specific reason to visit the house of their parents where the complainant used to go occasionally. When the marriage took place on 14/05/2011 the husband of the complainant committed suicide on 14/10/2013. The complainant is advocate, but she gave report to police against the petitioners only after the suicide of her husband and registration of crime against her. It appears that there is serious dispute between complainant and the relatives of husband over many things. The material is not sufficient to make out case for offence punishable under Section 498-A of IPC against the petitioners and nothing can be achieved by allowing the proceeding to go on against the petitioners.

8) The learned Senior counsel for petitioners placed reliance on the case reported as **AIR 2010 SUPREME COURT**

3363 (Preeti Gupta and Anr. V. State of Jharkhand and Anr.). In this case the Hon'ble Apex Court has quoaded and discussed the categories of cases which can be considered while exercising the powers under section 482 of Cr.P.c. The categories include the cases which are filed with mala-fide intention or where the proceeding is maliciously instituted with ulterior motive for taking vengeance. When continuation of proceedings will be abuse of process of law, those proceedings can also be considered for exercising power under section 482 of Cr.P.C. This Court holds that the power under section 482 of Cr.P.C. needs to be used and the proceeding needs to be quashed in respect of petitioners as apparently there was no application of mind when the cognizance of the offence was taken on the basis of aforesaid allegations.

9) In the result, the petition is allowed. Criminal proceeding bearing RTC No. 431 of 2014 presently pending in the Court of J.M.F.C., Ahmednagar is hereby quashed and set aside to the extent of petitioners.

Rule is made absolute in aforesaid terms.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

ssc/