

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

Criminal Application No. 6618 of 2014

1. Ashok s/o. Shamrao Chavan,
Age : 65 years,
Occupation : Labour.
2. Vishwanath w/o. Shamrao Chavan,
Age : 60 years,
Occupation : Labour.
3. Vimalbai w/o. Vishwanath Chavan,
Age : 55 years,
Occupation : Household.
4. Savita w/o. Ashok Chavan,
Age : 60 years,
Occupation : Household.
5. Ashok s/o. Ambadas Mohite,
Age : 45 years,
Occupation : Labour.
6. Latabai w/o. Ashok Mohite,
Age : 40 years,
Occupation : Household.

All R/o. Chaitanaya Nagar, Nanded,
Taluka & District : Nanded.

7. Smt. Kautika Shamrao Chavan,
Age : 80 years,
Occupation : Household,
R/o. Village Bothtanda,
Taluka : Kinwat,
District : Nanded.

.. Applicants
(Original accused)

versus

1. The State of Maharashtra,
Through the Police Sub-Inspector,
Mahur Police Station,
Taluka : Mahur,
District : Nanded.
 2. Vidhya w/o. Anil Chavan,
Age : 25 years,
Occupation : Household,
R/o. village Limbayat,
Taluka : Mahur,
District : Nanded.
- .. Respondents
(No.2 - Original
complainant)

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Mr. S.N. Janakwade, Advocate, for the applicants.

*Mrs. M.B. Gangwal (Patni), Additional Public Prosecutor,
for respondent no.1 - State.*

Mr. S.M. Ganachari, Advocate, for respondent no.2.

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**CORAM : S.S. SHINDE &
A.M. BADAR, JJ.**

DATE : 11TH MARCH 2015

ORAL JUDGMENT (Per S.S. Shinde, J.) :

1. Heard Adv. Mr. S.N. Janakwade appearing for the applicants,
learned APP Mrs. M.B. Gangwal (Patni) appearing for respondent no.1,
and Adv. Mr. S.M. Ganachari appearing for respondent no.2.
2. Rule. Rule made returnable forthwith. By consent of the
learned Counsel for the parties, heard finally.

3. This Application is filed with following prayer :

“ Your Lordship may graciously be pleased to quash and set aside the impugned proceedings of Misc. Criminal Application No. 46/2014 pending before J.M.F.C., Mahur, for offence punishable under Section 498A, read with Section 34 of Indian Penal Code, and F.I.R. bearing Crime No. 45/2014, dated 28-6-2014, registered with Mahur Police Station, Taluka Mahur, District Nanded, for offence punishable under Section 498A, read with Section 34, of Indian Penal Code. ”

4. The learned Counsel appearing for the applicants invited our attention to the allegations in the FIR and submits that even if allegations in the FIR are taken at its face value and read in its entirety, no offence is constituted against original accused nos.2 to 8. Therefore, he submits that in view of the judgment of Hon'ble Apex Court in the case of ***State of Haryana and others Vs. Ch. Bhajan Lal and others***, reported in ***AIR 1992 Supreme Court 604***, this Application deserves to be allowed.

5. The learned Additional Public Prosecutor appearing for the State and the learned Counsel appearing for the original complainant submits that the Investigating Officer has collected enough material so as to try the case against the applicants and, therefore, at this stage, allegations in the FIR will have to be taken as it is and this Court may not

consider the prayer of the applicants for quashing the proceedings.

6. We have given due consideration to the submissions of the learned Counsel for the applicants, learned Additional Public Prosecutor appearing for the State, and learned Counsel appearing for the original complainant.

7. In the FIR, allegations against original accused nos.2 to 8 i.e. applicants herein, are as under :

“ Accused nos.2 to 8 were saying telephonically to accused no.1, that if his wife was not to bring Rs. 1,00,000/- from her parents as dowry, he must give divorce to her. Such instigation was being made frequently. ”

8. We have considered the entire material placed on record and we are of the opinion that the material collected by the prosecution agency is not sufficient so as to try the original accused nos.2 to 8. There is no other material on record to prove that the original accused nos.2 to 8 by telephonic conversation asked the applicant no.1 to get Rs. 1,00,000/- towards dowry from the parents of the complainant, otherwise give her divorce. Such allegations, in absence of any material collected by the prosecution agency, cannot be proved.

9. In that view of the matter, applying the parameters laid down by the Hon'ble Apex Court, in the case of *State of Haryana and others Vs.*

Ch. Bhajan Lal and others (supra), that even if the allegations in the FIR are taken at its face value and read in its entirety, would not constitute offence, and also the fact that there is no material collected by the prosecution agency to prove the said allegations, we are inclined to allow this Application.

10. In the result, the Application is allowed.

The proceedings of Misc. Criminal Application No. 46/2014, pending before Judicial Magistrate (F.C.), Mahur, for offence punishable under Section 498-A, read with Section 34 of Indian Penal Code, and F.I.R. bearing Crime No. 45/2014, registered with Mahur Police Station, District Nanded, for offence punishable under Section 498-A, read with Section 34 of Indian Penal Code, so far as present applicants are concerned, are quashed and set aside.

However, we make it clear that so far as original accused no.1, by name, Anil s/o. Shamrao Chavan, is concerned, trial court can proceed further with the trial.

11. Rule made absolute in the above terms.

(A.M. BADAR)
JUDGE

(S.S. SHINDE)
JUDGE

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