

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

CRIMINAL APPLICATION NO.4571 OF 2015

Vaishali d/o Sampatrao Patil,
Age-30 years, Occu:Tutions,
R/o-Renuka Nagar,
Near Gangai Colony, Latur

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through M.I.D.C. Latur
Police Station,
in Crime No.37/2014,
- 2) Sow. Alka @ Puja w/o Ganesh Giri,
Age-25 years, Occu:Household,
At present C/o-Ram Mahadeo Giri (Bhajiwale),
Ranjangaon (Shenpunji),
Tq-Gangapur, Dist-Aurangabad.

...RESPONDENTS

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Mr.Sachin S. Panale Advocate for Applicant.
Mr.S.Y. Mahajan, Additional Public Prosecutor
for Respondent No.1.
Mr.A.S. Shejwal Advocate for Respondent No.2.

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**CORAM: S.S. SHINDE AND
V.K. JADHAV, JJ.**

DATE : 13TH DECEMBER 2016

ORAL ORDER [PER V.K. JADHAV, J.] :

1. Heard finally with consent, at admission stage.

2. The Applicant - original accused seeks quashing and setting aside criminal prosecution vide R.C.C. No.402 of 2014 pending before the 5th Judicial Magistrate, First Class, Latur on the basis of F.I.R. in Crime No.37 of 2014.

3. Facts giving rise to the present Criminal Application are as follows:

. On 2nd February 2014, Respondent No.2 had lodged complaint against her husband, in-laws and sister-in-laws and present Applicant and on the basis of said complaint, Crime No.37 of 2014 came to be registered with M.I.D.C. Police Station, Latur against the present Applicant with other accused, for committing offences punishable under

Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code (for short "I.P.C."). It has alleged in the complaint that Respondent No.2 - original complainant was subjected to mental and physical harassment on account of non-fulfillment of demand of certain cash amount and that she was also subjected to ill-treatment and beating by her husband and his relatives on the count that her husband had developed illicit sexual relationship with the present Applicant.

4. The learned counsel for the Applicant submits that so far as the charge under Section 498-A of the I.P.C. is concerned, the present Applicant - original accused No.6 is not the relative of husband of Respondent No.2. The learned counsel submits that charge under Section 498-A of the I.P.C. is not attracted against the present Applicant. Learned counsel submits that, so far as the other charges are concerned, even accepting the allegations made in the complaint as

it is, no case is made out against the present Applicant. The learned counsel submits that in the supplementary statement Respondent No.2 - original complainant has alleged that present Applicant was encouraging the other accused for the so-called ill-treatment extended to Respondent No.2 - original complainant. Learned counsel submits that so far as charge under Sections 323, 504, 506 read with 34 of the I.P.C. is concerned, there are no allegations against the present Applicant and nothing is revealed during the course of investigation that the present Applicant has participated in the alleged crime and that she was present at the scene of offence when the Respondent No.2 - original complainant was subjected to ill-treatment as detailed in the complaint. Learned counsel submits that on the basis of vague allegations the continuation of such prosecution against the Applicant would be abuse of process of law.

5. On the other hand, the learned A.P.P. submits that the present Applicant was continuously visiting the matrimonial home of Respondent No.2 - original complainant. Furthermore the husband of Respondent No.2 - original complainant has admitted before the authorities that he was having illicit relations with the present Applicant. Learned A.P.P. submits that even though the ingredients of Section 34 of I.P.C. does not attract, still there is evidence against the present Applicant about the abetment and as such there is no substance in the Criminal Application.

6. On careful perusal of allegations in the complaint, it appears that so far as charge under Section 498-A read with 34 of the I.P.C. against the present Applicant is concerned, the same is not attracted for simple reason that admittedly the Applicant is not relative of the husband of Respondent No.2 - original complainant. So far as

charges under Section 323, 504, 506 read with 34 of the I.P.C. are concerned, in the complaint there are allegations about the beating and ill-treatment being extended to Respondent No.2 - original complainant, however, it has nowhere alleged in the complaint that present Applicant - original accused No.6 has participated in said ill-treatment being extended to Respondent No.2 - original complainant. Furthermore, even if charge-sheet is accepted as it is, it has only revealed during the investigation that the Applicant had given encouragement to the other accused persons to extend the ill-treatment. These allegations are so vague and it hardly attracts Section 34 of I.P.C. So far as the alteration of charge of abetment, in the given set of facts, the allegations are so vague that even the charge of abetment does not stand attracted.

7. In view of the above discussion, the continuation of prosecution against the

present Applicant would be abuse of process of law. Merely there is an allegation that the husband of Respondent No.2- original complainant had illicit relations with the Applicant cannot be a ground to book her with the aid of Section 34 or 107 of the I.P.C. along with the other accused persons. Hence the order:-

O R D E R

(I) The Criminal Application is allowed in terms of prayer clause (B).

(II) The Criminal Application is accordingly disposed of.

[V.K. JADHAV, J.]

asb/DEC16

[S.S. SHINDE, J.]