

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO.1303 OF 2014**

- 1) Sachin s/o Tukaram Togarikar,
Age-32 years, Occu:Nil,
R/o-Govind Nagar, Near Ambika Colony,
Udgir, Tq-Udgir, Dist-Latur,
(Petition as against Petitioner No.1
dismissed as withdrawn as per order
dated 1/12/2014),
- 2) Vimalbai w/o Tukaram Togarikar,
Age-50 years, Occu:Household,
R/o-Govind Nagar, Near Ambika Colony,
Udgir, Tq-Udgir, Dist-Latur,
- 3) Tukaram s/o Vithal Togarikar,
Age-53 years, Occu:Service,
R/o-Govind Nagar, Near Ambika Colony,
Udgir, Tq-Udgir, Dist-Latur,
- 4) Sandhya w/o Narsing Kamble,
Age-30 years, Occu:Household,
R/o-Kalewadi, Pune,
- 5) Sonu w/o Sandip Jadhav,
Age-28 years, Occu:Household,
R/o-Shriwardhan, Dist-Raigad,
- 6) Sheetal d/o Tukaram Togarikar,
Age-22 years, Occu:Education,
R/o-Govind Nagar, Near Ambika Colony,
Udgir, Tq-Udgir, Dist-Latur,

- 7) Ranjana @ Priyanka d/o Tukaram Togarikar,
Age-20 years, Occu:Education,
R/o-Govind Nagar, Near Ambika Colony,
Udgir, Tq-Udgir, Dist-Latur,

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Police Station, Pathri,
Tq-Pathri, Dist-Parbhani,
- 2) Shubhangi w/o Sachin Togarikar,
Age-28 years, Occu:Household,
R/o-At present: Mali Wadi, Pathri,
Tq-Pathri, Dist-Parbhani.

...RESPONDENTS

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Mr.H.B. Nandgavale Advocate h/f. Mr. V.G.
Sakolkar Advocate for Petitioners.
Mr.S.W. Munde, A.P.P. for Respondent No.1.
Mr.S.J. Salunke Advocate for Respondent No.2.

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**CORAM: S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

DATE : 6TH OCTOBER 2016

ORDER :

1. Rule. Rule made returnable forthwith. By
the consent of the learned counsel appearing for
the parties, heard finally.

2. This Petition takes exception to the F.I.R. in Crime No.39 of 2014 dated 8th March 2014 for the offences under Sections 498-A, 323, 504 read with Section 34 of the Indian Penal Code ("I.P.C." in short) registered with Police Station Pathri, Tq-Pathri, Dist-Parbhani and further charge-sheet No.69 of 2014 dated 5th June 2014 filed in R.C.C. No.80 of 2014.

3. Heard the learned counsel for the Petitioners. He submits that so far as Petitioner No.1 husband - Sachin Tukaram Togarikar is concerned, this Petition on his behalf has already been withdrawn.

4. The learned counsel for the Petitioners submits that after filing this Petition, Petitioner No.1 filed Hindu Marriage Petition No.93 of 2013 in the Court of Civil Judge, Senior Division, Udgir. The said Hindu Marriage Petition is allowed and the marriage between Petitioner

No.1 and Respondent No.2 is dissolved vide Section 13(1) (ib) of the Hindu Marriage Act, 1955 and accordingly decree has been drawn. The counsel for the Petitioners placed on record copy of the judgment delivered in Hindu Marriage Petition No.93 of 2013 by the Civil Judge, Senior Division, Udgir on 8th February 2016.

4. The learned counsel for the Petitioners further submits that Petitioner Nos.2 and 3 are the parents and Petitioner Nos.4 to 7 are the sisters of Sachin. He submits that the parents of Sachin are residing at Udgir. He further submits that Petitioner No.4 Sandhya and Petitioner No.5 Sonu are the married sisters of Sachin who are staying at their respective matrimonial houses. Petitioner No.6 Sheetal and Petitioner No.7 Ranjana, are the other two sisters of Sachin, who are prosecuting their studies at Udgir. After six months of the marriage, the couple started residing at Jalna since Sachin was serving as

professor at Jalna. Therefore, the allegations as against Petitioner Nos. 2 to 7 that they ill-treated Respondent No.2, are not at all believable. There are no specific incidents with dates and specific overt acts alleged against Petitioner Nos.2 to 7. Upon reading the F.I.R. in its entirety, no offence is disclosed against them. He submits that the parents of Sachin tried to bring about amicable settlement, however did not succeed. Therefore, he prays that the F.I.R., the charge-sheet and further proceedings deserve to be quashed and set aside.

5. On the other hand, the learned A.P.P. and the learned counsel for Respondent No.2 submit that the allegations, as they are appearing in the F.I.R., and statements of witnesses will have to be tested only during trial and therefore this Court may not entertain this Petition.

6. We carefully perused the contents of the

F.I.R. and statements of the witnesses and also other documents placed on record. Upon careful perusal of the contents of the F.I.R., it appears that as per the version of Respondent No.2 she was properly treated for the initial six months after the marriage, when she was residing at Udgir. Thereafter along with her husband Sachin, she shifted to Jalna where Sachin was serving as lecturer.

7. Upon perusal of Para 12 of the judgment passed in Hindu Marriage Petition No.93 of 2013, copy of which is placed on record for our perusal, it appears that Respondent No.2 resided at Jalna for 20 to 22 days only and during that period she was residing with her husband Sachin. The allegations made in the F.I.R. that Petitioner Nos.4 to 7 visited the place of residence of Respondent No.2 at Jalna and stayed there for 12 days appear to have been made to drag them in this criminal proceeding. Apart from it, there is no

denial to the contention of the Petitioners that Petitioner No.4 Sandhya and Petitioner No.5 Sonu are married sisters of Sachin, who are residing at their respective matrimonial houses. Even if the allegations against other Petitioners are considered in their entirety as appearing in the F.I.R. and also in the statements of the witnesses, as already observed, no specific incident, date and overt act is attributed to them. On the contrary, it appears that Petitioner Nos.2 and 3 tried to settle the matter twice, however, the attempts were unsuccessful.

8. Thus, taking into consideration the contents of the F.I.R. and statements of the witnesses and other accompaniments of the charge-sheet, we are of the considered view that even if the allegations are read in their entirety and taken as they are, the allegations would not attract the ingredients of 'cruelty' as defined under Section 498-A of I.P.C. Since the Hindu

Marriage Petition filed by husband Sachin is allowed and the marriage is dissolved on the ground that Respondent No.2 herself deserted her husband Sachin without any compelling circumstances, in our considered view, continuation of further proceedings against Petitioner Nos.2 to 7 based upon the F.I.R. and charge-sheet etc. will be an abuse of process of law and the same will be an exercise in futility. Hence the following order:-

O R D E R

(I) The Writ Petition is allowed in terms of prayer Clause (B) and (C), to the extent of Petitioner Nos.2, 3, 4, 5, 6 and 7.

(II) The Rule is made absolute accordingly.

(III) The Writ Petition stands disposed
of, accordingly.

[SANGITRAO S. PATIL, J.]

asb/OCT16

[S.S. SHINDE, J.]