

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

CRIMINAL WRIT PETITION NO. 1434 OF 2015

1. Shaikh Sadiq s/o Shaikh Baber,
age 31 years, Occ. Driver,
R/o Kokach Peer Mohalla,
Kanadi Road, Kaij, Dist. Beed.
 2. Amina Begum w/o Shaikh Baber,
age 60 yrs, Occ. Household,
R/o Kokach Peer Mohalla,
Kanadi Road, Kaij, Dist. Beed.
 3. Shabana Begum w/o Shaikh Aju,
age 25 years, Occ. Household,
R/o At post Masajog, Tq. Kaij,
Dist Beed.
 4. Shaikh Aju S/o Sk Shamshuddin,
age 28 yrs, Occ. Labour,
R/o Post Masajog, Tq. Kaij,
Dist Beed.
 5. Shaikh Mushtaq s/o Shaikh Baber,
age 40 yrs, Occ. Business,
R/o at Post Shiradhon, Tq. Kallamb,
Dist Osmababad.
 6. Shama Begum w/o Shaikh Mushtaq,
age 36 yrs, Occ. Household,
R/o at Post Shiradhon, Tq. Kalamb
Dist Osmanabad 413 528
 7. Shaikh Parvez s/o Shaikh Baber,
age 30 yrs, Occ. Labour,
R/o at Post Kanadi Road East side,
Koki Pavir, Mukkam Kaij,
Tq. Kaij, Dist. Beed.
- Petitioners.

VERSUS

1. The State of Maharashtra,
Through PI Shivaji Nagar, Police Station,
Tq. & Dist Beed.
(Copy to be served on Public Prosecutor
High Court of Judicature of Bombay
at Aurangabad.)
2. Rubina Begum w/o Shaikh Sadiq,
age 23 yrs, Occ. Household,
R/o Kokach Peer Mohalla,
Kanadi Road, Kaij,
At present Beside Mansoor Shah School,
Shahunagar, Tq. & Dist Beed. ..Respondents..

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Advocate for Petitioners : Mr Kazi S.S
APP for Respondents: Mr P G Borade
Advocate for Respondent 2 : Mr M A Tandale

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CORAM : V.K. JADHAV, J.**Dated: August 31, 2016**

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ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. Being aggrieved by the order dated 8.4.2015 in RCC No.175/2015 passed by the Judicial Magistrate First Class, Beed issuing the process against the petitioner-accused under section 498-A read with 34 of the Indian Penal Code, and confirmed by the Additional Sessions Judge, Beed by judgment and order dated

9.10.2015 in Criminal Revision Application No.94/2015, the original accused preferred this Writ Petition.

3. The learned counsel for the petitioners, at this stage, has not pressed the Criminal Writ Petition for the petitioner nos. 1 and 2. Thus, Writ Petition is disposed of as against the petitioner nos. 1 and 2 as withdrawn.

4. Brief facts, giving rise to the present writ petition, are as under :-

It has alleged in the complaint that respondent no.2 has filed a private complaint before the Judicial Magistrate F.C., Beed alleging therein that her marriage with original accused no.1 was solemnized on 23.8.2012 and thereafter she started cohabiting with him. She was treated well for 5-6 months after the marriage and thereafter subjected to ill-treatment. It has also alleged in the complaint that accused no.1 husband used to abuse her and insisted her to bring the amount of Rs.20,000/- remained to be unpaid in the marriage. On 1.8.2013 accused no.1 left her to her parents house for delivery purpose and on 28.9.2013 the respondent-

wife had delivered a male child, however, none of the accused came to her parents house to see the newly born baby. Even though, thereafter, the accused no.1 started demanding the said amount of Rs.20,000/- which remained to be unpaid. It has also alleged in the complaint that respondent-wife in fact was driven out from the house. Thus, on 28.4.2014 respondent-wife had lodged the complaint against all the petitioners-accused however, on that day, the petitioner-original accused came to the parents house of the respondent wife and it has alleged in the complaint that accused nos. 1 and 2 extended beating to her. It has also alleged that all the accused extended beating to her. On the basis of these allegations, the learned Magistrate has called the report of the police as provided under section 202 of the Code of Criminal Procedure. On perusal of the report and the complaint, the learned Magistrate by its impugned order dated 8.4.2015 issued process against all the accused persons for the offence punishable u/s 498-A read with section 34 of the Indian Penal Code. Being aggrieved by the same, the petitioner-accused preferred criminal revision

application No.94/2015 and the learned Additional Sessions Judge, Beed, by its judgment and order dated 9.10.2015 confirmed the said order. Hence, this writ petition.

5. The learned counsel for the petitioners submits that, there are allegations mostly against the original accused nos. 1 and 2 i.e. husband and mother- in-law. Learned counsel submits that, the original accused no.3 is the married sister of accused no.1 and accused no.4 is her husband. Furthermore, the accused nos. 5 and 7 are the real brothers of accused no.1 and accused no.6 is the wife of accused no.5. Learned counsel submits that, the brothers of accused no.1 resides separately and they are doing their own business. The married sister is also staying with her husband since long. Learned counsel submits that there are general allegations against them and no specific incidents have been quoted nor specific roles are assigned to them.

6. Learned counsel for the petitioners in order to substantiate his contentions places his reliance on the

following Judgments:-

- I] **Preeti Gupta and another Vs. State of Jharkhand and another** reported in **(2010) 7 Supreme Court Cases 667.**
- II] **Geeta Mehrotra and another Vs. State of Uttar Pradesh and another** reported in **(2012) 10 Supreme Court Cases 741.**

7. Learned counsel for respondent no.2- wife submits that the respondent no.2 wife was subjected to ill-treatment on account of non-fulfillment of the unlawful demand of unpaid dowry. Furthermore, respondent no.2 wife has mentioned one specific incident occurred on 28.4.2014. On that day all accused persons in furtherance of their common intention came to her parents house and accused nos. 1 and 2 extended beating to her. It is also case of respondent no.2-wife that at that time all the accused extended beating to her. Learned counsel submits that on perusal of the complaint as well as the report submitted by the police u/s 202 of Cr.P.C. since *prima facie* case is made out, the learned Magistrate has rightly issued process against all he accused for the offence punishable under section 498-A read with section 34 of the Indian Penal

Code.

8. On perusal of the complaint, it appears that even married sisters of accused no.1 husband and his real brothers who are more than 30 years of age are not spared. Even husband of the married sister is also implicated. It further appears from the contents of the complaint that no specific incident is quoted against them. So far as incident dated 28.4.2014 as alleged in the complaint is concerned, no specific role ascribed to the original accused nos. 3 to 7. Though specific role has been assigned to original accused nos. 1 and 2 i.e. husband and mother in law of the respondent-complainant, general allegations have been made against the petitioners no. 3 to 7 to that effect that they have also extended beating to her. It *prima facie* appears from the contents of the complaint that, the entire family of the accused is implicated in the case. Even *prima facie* ingredients of section 498-A are not attracted against them.

9. In a case of **Preeti Gupta and another Vs. State of Jharkhand and another** reported in **(2010) 7 Supreme Court Cases 667** in paragraph no.35 of the Judgment apex court has made following observations :-

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. ”

10. In a case of **Geeta Mehrotra and another Vs. State of Uttar Pradesh and another reported in (2012) 10 Supreme Court Cases 741** the Supreme Court in paragraph No.20 and 25 of the Judgment has made following observations :-

20. "Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if

there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law.”

11. So, in view of the above, and in view of the ratio laid down by the Supreme Court in the aforesaid two

cases, I proceed to pass following order.

O R D E R

- I. Criminal Writ Petition is hereby partly allowed in terms of prayer clause "**B**" and the complaint bearing RCC No.175/2015 stands dismissed as against the petitioner-original accused nos. 3 to 7.
- II. Writ Petition is accordingly disposed of. Rule is made absolute in above terms.

sd/-

(V.K. JADHAV, J.)

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aaa/-