

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

CRIMINAL APPLICATION NO. 920 OF 2017

- 1] Tukaram s/o Bajirao Deshmukh,
Age : 55 years, Occu. Service,
- 2] Vijyabai w/o Tukaram Deshmukh,
Age : 50 years, Occu. Housewife,
Both R/o Plot No. 23, Sector F.N.S.-1 north of
12th Shivaji Nagar, Aurangabad.

VERSUS

- 1] State of Maharashtra,
Through P.S.O.P.S Ahemadpur, Ahemadpur.
- 2] Rohini w/o Amol Deshmukh,
Age : 28 years, Occu. Service,
R/o Bank Colony, Ahemadpur,
Dist. Latur.

Mr. V.D. Salunke Advocate h/f Shri. R.A. Jaiswal, Advocate for Applicant
Mr. K.D. Munde APP for Respondent-State
Mr. J.R. Patil, Advocate for Respondent No. 2

CRIMINAL WRIT PETITION NO. 792 OF 2015

Amol s/o Tukaram Deshmukh,
Age ; 30 years, Occu. Junior Advocate,
R/o Plot No. 23, Gut No. 125,
Sector FNS-1, Shivaji Nagar,
Aurangabad.

...PETITIONER

versus

- 1] State of Maharashtra,
Through : District Superintendent of Police,
Latur, Dist. Latur.
- 2] The Police Inspector,
Police Station, Ahedmadpur,
Tq. Ahemadpur, Dist. Latur.

- 3] Sow. Rohini w/o Amol Deshmukh,
Age : 26 years, Occu. Household,
R/o . Bank Colony, Ahemadpur,
Tq. Ahemadpur, Dist. Latur

...RESPONDENTS

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Mr. V.D. Salunke Advocate h/f Shri. R.A. Jaiswal, Advocate for Applicant
Mr. K.D. Munde APP for Respondent-State
Mr. J.R. Patil, Advocate for Respondent No. 2

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**CORAM : S.S. SHINDE AND
K.K. SONAWANE, JJ.**

RESERVED ON : 7th April, 2017.

PRONOUNCED ON : 13th June, 2017.

JUDGMENT : (Per : K.K. Sonawane, J.)

1] Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2] By the present petition, filed under Article 226 and 227 of the Constitution of India and the application filed under Section 482 of Cr.P.C., the petitioner/applicants have prayed to quash and set aside the criminal proceedings bearing RCC No. 109 of 2015, instituted against them, pursuant to crime No. 124 of 2015 registered under Section 498-A, 323, 504, 506 r/w. 34 of IPC, at Ahmedpur police station, Dist. Latur, following directions of the learned Magistrate, Ahmedpur for investigation under Section 156(3) of Cr.P.C.

3] The factual matrix, giving rise to these proceedings is as under :-

That, the complainant Sau. Rohini is the wife of petitioner Amol Tukaram Deshmukh. The applicants Shri Tukaram s/o. Bajirao Deshmukh and Smt. Vijayabai Tukaram Deshmukh are the parents of petitioner Amol r/o. CIDCO, Aurangabad. The marriage of complainant Rohini with Amol was solemnized on 24.12.2013 as per the Hindu rites. After marriage, complainant Rohini joined the company of husband Amol at matrimonial home located in Aurangabad city. At the time of marriage, petitioner Amol was in service at Tasgaonkar Sugar Mills Ltd. The complainant used to reside with in-laws at matrimonial home in Aurangabad. The wife Rohini was insisting husband - Amol to take her at Mumbai for cohabitation. But, he refused to allow the wife to accompany with him at the place of his avocation. The complainant was not keeping good health. Therefore, she came to parents house at Ahmedpur for rest. During medical treatment, it was revealed that the complainant was pregnant. The news of conception of Rohini was communicated to the husband and his parents. But, they did not give any response. In contrast, husband Amol and in-laws insisted the complainant Rohini for abortion and they compelled her to terminate the pregnancy in the hospital of Dr. Khade. It has alleged that the complainant Rohini was subjected to ill-treatment and humiliate for demand of gold ornaments, laptop, refrigerator etc. The husband and in-laws were demanding divorce from the complainant for second marriage of the petitioner Amol. They used to hurl abuses and torture the complainant Rohini under one or the other pretext. There was an attempt to push her from terrace with intention to kill her. Whenever complainant received

opportunity, she used to disclose her ordeal to parents and relatives. They all gave understanding to the petitioner Amol and in-laws of complainant but all the efforts did not evoke result. It has been alleged that in the Month of September, 2014, husband Amol, under the pretext of going to excursion, took the wife Rohini to her parents home at Ahmedpur. Her mother-in-law i.e. applicant Vijaya also taken out the gold ornaments of complainant under the guise that spouses are going for excursion. However, the husband Amol left the wife Rohini at Ahmedpur and returned to Aurangabad. The Complainant Rohini insisted the husband to accompany with him but he reprimanded the wife and said that he has no desire to cohabit with her and asked wife Rohini to stay with parents at Ahmedpur. He had also given threats of life to the wife, in case she makes forcible attempt to accompany with him. Thereafter, he left the complainant at her parents house and went away.

Eventually, complainant approached to Ahmedpur Police Station, for lodging the FIR but they did not take any cognizance. The Police directed the complainant to approach to the Court for redressal of grievances. At last, complainant knocked the door of court of learned Magistrate and filed a complaint bearing M.A. No. 167 of 2015. The learned Magistrate dealt with the complaint of wife Rohini and directed the police to investigate into the allegations under section 156(3) of Cr.P.C. Pursuant to the directions of the learned Magistrate, the police of Ahmedpur P.S. registered the Crime No. 124 of 2015 and set the criminal law in motion. I.O. carried out the investigation and recorded the statements of witnesses

acquainted with the facts of the case. I.O. also collected relevant documents and after completion of formalities, I.O. preferred the charge-sheet against the petitioner as well as both the applicants for the offence punishable under Section 498-A, 323, 504 and 506 r/w. 34 of IPC, bearing RCC No. 109 of 2015 before the learned Magistrate, Ahmedpur. The impugned criminal proceedings and charge sheet is the subject matter of present proceedings.

4] Learned counsel Shri V.D. Salunke for the petitioner/applicants strenuously contends that the petitioner/applicants are innocent of the charges pitted against them. They have not committed any crime. They are falsely implicated in this case. He submits that the respondent Rohini, since marriage was reluctant to cohabit with husband Amol. It was revealed that the marriage of the complainant Rohini was solemnized with petitioner Amol against her will and, she was not happy at matrimonial home. She used to give threats of self immolation to the petitioner and in-laws. Eventually, complainant Rohini left the matrimonial home and started residing with her parents at Ahmedpur. The circumstances constrained the petitioner Amol and applicants to indulge in matrimonial litigation which are pending before the court of law. There were threats of dire consequences to the petitioner Amol and applicants owing to which complaint/applications were filed in the concerned court as well as police station resulting into registration of various NCs, bearing Nos. 321 of 2015, 1941 of 2015, 550 of 2015 and 703 of 2015 etc. There was an endeavour to lodge FIR but no crime was registered against respondent. The private complaint bearing MCA No. 1222 of 2015 was also filed before the learned Magistrate for investigation of the

allegations under Section 156(3) of Cr.P.C. and same is pending with the learned Magistrate for further process. The Learned counsel Shri Salunke added that the wife Rohini, with malafide intention to harass and torture the husband Amol and in-laws, preferred a private complainant on false and fabricated accusations under Section 498-A of IPC. He submits that there was no ill-treatment and harassment to complainant Rohini but she herself was not happy to cohabit with husband Amol at matrimonial home. He submits that there is a delay in filing the FIR as the cruelty alleged to the complainant, as per the FIR commenced since April, 2014. The allegations made in the FIR are false and concocted one. She did not disclose in the impugned FIR about the matrimonial litigation pending between the spouses in the Family court and by misleading, she obtained the impugned order under section 156(3) of Cr.P.C. According to learned counsel Shri Salunke, the impugned order of the learned Magistrate is illegal, imperfect and bad in law.

5] Learned counsel for the petitioner/applicants, further assailed that the court of JMFC, Ahmedpur has no jurisdiction to try the said offence. There was no such incident of cruelty or harassment ever occurred within the territorial jurisdiction of learned Magistrate at Ahmedpur. Shri Salunke further urged that the incidents as alleged against the petitioner/applicants all were occurred at Aurangabad. There are no allegations particularly against applicant Shri Tukaram and his wife Vijayabai that they committed crime within the territorial jurisdiction of learned Magistrate at Ahmedpur. Hence, he submits that the learned Magistrate at Ahmedpur has no

jurisdiction to deal with criminal proceedings instituted against applicants and petitioner Amol. He also harped on the circumstances that in view of allegations made in the FIR it cannot be said that the offence of cruelty was continuing one. In such circumstances the proceedings against these applicants are required to be quashed and set aside. Learned counsel for petitioner/applicants relied upon the judicial pronouncements of Honourable Apex Court in the case of ***Bhuraram and others Vs. State of Rajasthan*** reported in AIR 2008 SC 2666 and in the case of ***Y. Abraham Ajith and others vs. Inspector of Police, Chennai and another*** reported in 2004 Cri.L.J. 4180 : MANU/SC/0635/2004. .

According to Shri Salunke, learned counsel the impugned criminal proceedings instituted against petitioner/applicants is an abuse of process of law. The respondent-wife Rohini preferred the present complaint under Section 498-A of Cr.P.C. only to harass and torture the husband and in-laws, which can be termed as “legal terrorism” as described by the Honourable Supreme Court in the case of ***Sushilkumar Sharma vs. Union of India, JT 2005(6) SC 266, in W.P. (C) No. 141 of 2005*** decided on 19.7.2005. He also placed on record the citation of the Honourable Supreme Court in the case of ***Prabhu chawla vs. State of Rajasthan (2016) ALL SCR (Cri) 1526, Vijay and another vs. State of Maharashtra (2017) ALL SCR (Cri) 248***. In these case laws, it has been held that the availability of alternate remedy of revision cannot be a ground to dis entitle the relief under Section 482 of Cr.P.C. Eventually, learned counsel Shri Salunke fervidly urged that prima facie allegations made in the FIR are all false, baseless and

fabricated and do not constitute cognizable offence for initiating criminal proceedings against petitioner and applicants. Moreover, learned Magistrate has no territorial jurisdiction to deal with the FIR particularly against applicant Tukaram and Smt. Vijayabai, as no offence alleged against them, came to be committed within the jurisdiction of Ahmedpur town. Hence, he prayed that the criminal case instituted against petitioner and applicants bearing RCC No. 109 of 2015 pending in the court of Learned Magistrate at Ahmedpur be quashed and set aside.

6] Per contra, learned APP for respondent/State and learned counsel Shri Patil for respondent/wife Rohini vociferously opposed the contentions put-forth on behalf of petitioner/applicants. Learned counsel Shri Patil submits that the allegations made in the FIR prima facie constitute ingredients of the offences of cruelty. Complainant Rohini was subjected to ill-treatment and harassment by her husband and in-laws. It is evident from the FIR that complainant Rohini was forced to terminate the pregnancy by abortion. There was a demand of gift articles on the part of applicant. The complainant has specifically attributed overt act of the petitioner/applicants in the FIR. Therefore, it would be unjust and improper to quash and set aside the criminal proceedings initiated against the petitioner/applicants.

7] The learned counsel Shri Patil further submitted that in the FIR it has been categorically stated that the applicant Smt. Vijayabai i.e. mother-in-law of the complainant took out the entire gold ornaments under

the guise that the spouses are going for excursion to Nanded. Thereafter the husband Amol took the wife Rohini to Ahmedpur and left her at the mercy of parents. Applicant Vijayabai also goaded petitioner Amol to take wife Rohini to parents home at Ahmedpur under the pretext of excursion to Nanded. Therefore the offence of cruelty under section 498-A in this case is a continuing offence, as the complainant was not only ill treated and harassed at her matrimonial home in Aurangabad but also subjected to torture and humiliation at her parents home in Ahmedpur. The husband abandoned her by giving threats to life and did not allow her to cohabit. These events occurred at Ahmedpur constituting offence of cruelty within the territorial jurisdiction of learned magistrate at Ahmedpur. Therefore impugned criminal proceedings is maintainable in the court of learned magistrate at Ahmedpur for trial of the petitioner/applicants as per law. Learned counsel Shri. Patil explained the attending circumstances in detail and prayed not to nod in favour of applicants and reject the petition/application. He also placed reliance on the judicial precedent of the Hon'ble Apex court in the matter of ***Smt. Sujata Mukharjee Vs. Prashant Mukharjee reported in 1997 Cr.L.J. 2985***. Learned APP also stepped into the shoe of learned counsel Shri. Patil and prayed to dismiss both the proceedings filed on behalf of petitioner/applicants.

8] We have considered the rival submissions made on behalf of both sides. We have also delved into the factual aspect and relevant documents, placed on record. Admittedly, the marital relations in between

petitioner Amol and complainant Rohini is not put in controversy. After marriage, complainant joined the company of husband Amol as well as applicants Tukaram and Smt. Vijayabai for cohabitation. But there was marital discord between the spouses which resulted into litigation amongst them. The impugned criminal proceedings bearing RCC No. 109 of 2015 is also the fallout of marital discord in between the spouses.

9] In such backdrop, we proceed to scrutinize the circumstances to deal with the controversy in the present proceedings. The questions that arise for consideration are :-

{1} Whether the impugned proceeding bearing RCC No. 109 of 2015 is required to be quashed and set aside being not amenable within the provisions of law and no cognizable offence is made out against the petitioner - Amol.

[2] Whether the Court of learned Magistrate at Ahmedpur has territorial jurisdiction to deal with Criminal case bearing RCC No. 109 of 2015 instituted against applicants Tukaram and Smt. Vijayabai.

10] Whether the offence has been disclosed or not must necessarily be based on the factual aspects of each case. If on appreciation of relevant material, the court is satisfied that prima-facie offence has been disclosed, it will not normally cause any interference in the progress of the matter. It is also imperative to take into consideration the scope of extraordinary jurisdiction under Article 226 and 227 of the Constitution of India, as well as the inherent powers of this court under Section 482 of the Cr.P.C. There is no dispute about the legal principles that the Writ jurisdiction under Article

226 of the Constitution of India is not available for quashing the criminal investigation unless there is an error apparent on the face of record or the proceedings can be termed to be malafide one. Moreover, the discretion vested in the High Court under Section 482 of Cr.P.C. is to be exercised to prevent abuse of process of court or otherwise to secure the ends of justice. This legal aspect has been clarified by the Honourable Apex Court in the case of State of Haryana vs. Bhajanlal¹ wherein the Honourable Apex Court delineated that though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myraid kinds of cases wherein such power should be exercised, there are circumstances where the court may be justified in exercising such jurisdiction. It has been laid down that the inherent powers under Section 482 may be exercised by the Court in the case where the FIR does not prima facie constitute an offence, does not disclose a cognizable offence justifying investigation by the police; where the allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused; where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act; where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance and with a view to spite the accused due to private or personal grudge.

1 AIR 1992 SC 604

It is worth to mention that, in addition to aforesaid guidelines, the Honourable Apex Court further given a note of caution to the effect that the power to quash a criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest of rarer case. The Honourable Apex Court also give a warning that it would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer arbitrary jurisdiction on the court to act according to its whims and caprice.

11] In the case of *Rajiv Thapar Vs. Madanlal Kapur*² Their Lordships of the Honourable Apex Court in para. 28 enunciated the ambit and scope of section 482 of Cr.P.C. as below :-

“28. The High Court, in exercise of its jurisdiction under Section 482 Cr.P.C, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is

² (2013)3 SCC 330

not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.”

(Emphasis Supplied)

12] Keeping in view the aforesaid principles of law, we proceed to deal with the questions raised on behalf of petitioner/applicants in the matter in hand. We have minutely perused the contents of the FIR and the statements of prosecution witnesses as well as the documents placed on record. Intense scrutiny of the attending circumstances and the factual score, reflects that the allegations nurtured on behalf of complainant against the petitioner/applicants, prima facie, constitute an offence of cruelty, voluntarily causing hurt, criminal intimidation etc. The complainant categorically cast allegations that she was subjected to ill-treatment and humiliation by her husband and in-laws while cohabitation at matrimonial home. She made allegation that the husband and in-laws forced her for abortion. She stated about the overt acts and participation of husband and in-laws for the cruelty meted out to her. She has also disclosed about attempt to kill her by pushing from the terrace. There were allegations about demand of valuable articles. The allegations regarding maltreatment and harassment with cruelty is a matter of trial and, therefore, the quashing

of proceeding before trial is impermissible. In view of specific overt acts attributed to the petitioner/applicants, we are of the considered opinion that it would be unjust and improper to quash and set aside the penal proceedings initiated against the petitioner/applicants.

13] It has been propounded on behalf of petitioner/applicants that the complainant Rohini was not happy for cohabitation with the husband Amol. Her marriage with petitioner Amol was performed against her will and she was reluctant to reside at the matrimonial home. Therefore, she left the matrimonial home and started residing at her parents house. The accused/petitioner initiated matrimonial dispute and taking umbrage of the litigation filed by the petitioner Amol, complainant Rohini initiated the present penal action against petitioner/applicants on false and fabricated accusations.

14] At this juncture, we would reiterate the principle of law laid down by the Apex court in Rajiv Thapar's case (referred supra). It is to be noted that this is not a stage of evaluating truthfulness or otherwise of the allegations levelled by the complainant Rohini. Moreover, it is also not legally justifiable to determine the quality and veracity of the defence raised on behalf of petitioner/applicants. According to rule of law, even if the petitioner/accused is successful in showing some suspicion or doubt in the allegations nurtured on behalf of complainant Rohini, it would be impermissible to discharge the petitioner/applicants before trial. Obviously,

in case the criminal proceeding against the petitioner/applicants is quashed and set aside it would result in giving finality to the accusations cast on behalf of complainant, without any opportunity to adduce the evidence to substantiate the claim. Admittedly, after completion of investigation, I.O. has filed the charge-sheet against the petitioner/applicants and the matter is on the board/cause-list of the learned Magistrate for framing charge. In such circumstances, we are not inclined to nod in favour of petitioner/applicants. Moreover, the material placed on record, prima facie, make out a cognizable case against the petitioner/applicants and pursuant to guidelines laid down in Bhajanlal's case (referred supra) the inherent powers under Section 482 cannot be exercised in favour of petitioner/applicants, for quashment of criminal proceedings pending against them. There is no error apparent on the face of record or the proceeding could not be termed to be malafide in nature for exercise of writ jurisdiction of this court in favour of petitioner for relief prayed in these proceedings.

15] The petitioner - Amol also raised objection that there was no compliance under Section 154 of Cr.P.C. in this case. Therefore, the impugned order directing investigation under Section 156(3) of Cr.P.C. passed by the learned trial court, is erroneous, illegal and deserves to be set aside. In this regard, the learned counsel for petitioner placed reliance on the judicial pronouncement of the Full Bench of this court in the matter of ***Panchabhai Popatbhai Butani vs. State of Maharashtra and others,***

(2010)1 Mh.L.J.421. In the matter in hand, the complaint filed before the learned Magistrate on behalf of complainant Rohini, reflects that she had filed an application to the Ahmedpur Police Station on 26.11.2014 but the police did not take any action and eventually she knocked the door of trial court. Moreover, it is essential to take into consideration that the stage of the proceeding. After investigation, I.O. filed charge sheet against the petitioner/applicants and the matter is pending for framing of charge. Therefore, we do not find any substance in such objections raised on behalf of petitioner/applicants. It is also preposterous to appreciate that the impugned penal action would be an “legal terrorism” against present petitioner/applicants, as discussed by Honourable Apex Court in Sushil Kumar Sharma's case referred supra.

16] Now, turning to the core question as to whether the allegations made in the FIR constitute a continuing offence to confer jurisdiction on the learned Magistrate, Ahmedpur to deal with the trial of the applicant Tukaram and Smt. Vijayabai for the charges pitted against them.

It is to be noted that the provisions of Section 177 of Cr.P.C. contemplates that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. The term “ordinarily” will have to be considered having regard to the provisions contained in Section 178 of Cr.P.C., which are reproduced hereinbelow :-

“178. Place of inquiry or trial. (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”

The Apex Court in the matter of *State of Bihar vs. Deokaram Nenshi and another*¹, had an occasion to describe the term “continuing offence” and in para. 5, elucidated that :-

“5. Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes and offence once and for all and an act or omission which continues and therefore, constitutes and offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasioned on which it continues. In the case of a continuing a fresh offence every time or occasioned on which it continues. In the case of the continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.”

17] In the case of *Sujata Mukherjee (Smt.) vs. Prashant Kumar Mukherjee*² relied upon on behalf of respondent/complainant, the Honourable Supreme Court, dealt with the allegations of continuing offence committed in more local areas than one. There were allegations made in the complaint that the complainant was subjected to cruelty persistently at Raigarh and also at Raipur and incident taking place at Raipur is not isolated event but consequential to the series of incidents taking place at Raigarh. Therefore, in view of the provision of Section 178 of Cr.P.C. it was held that the offence of cruelty meted out to the complainant was continuing one. It was also observed that the High Court was wrong in appreciating the scope of the proceeding on the footing that several isolated events had taken place at Raigarh and one isolated incident had taken place at Raipur. Hence, the criminal case filed in the court of Chief Judicial Magistrate was only maintainable against the respondent husband, against whom some overt act at Raipur was alleged. While appreciating the circumstances on record, the Honourable Supreme Court observed in para.7 as under :-

“7. Despite service being effected on the private respondents, no one has appeared for any of the accused respondents. We have taken into consideration the complaint filed by the appellant and it appears to us that the complaint reveals a continuing offence of the maltreatment and humiliation meted out to the appellant in the hands of all the accused respondents and in such continuing offence, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part. Therefore, clause (C) of Section

2(1997)5 SCC 30,

178 of the Code of Criminal Procedure is clearly attracted. We, therefore, set aside the impugned order of the High Court and direct the learned Chief Judicial Magistrate, Raipur to proceed with the criminal case. Since the matter is pending for long, steps should be taken to expedite the hearing. The appeals are accordingly allowed.”

18] In the matter in hand, complainant Rohini cast the allegations that she was mal-treated and harassed by the husband and in-laws at matrimonial home in Aurangabad. She has also categorically stated in the complaint that on 23.9.2014, her mother-in-law had taken out the gold ornaments from her person under the pretext that the spouses are going for excursion at Nanded. Thereafter, the husband Amol took the complainant Rohini at Ahmedpur on 24.9.2014 and left her at the mercy of parents. There are allegations nurtured against the husband that when the wife insisted the husband to accompany with him, that time, the petitioner Amol reprimanded her and stated that he had no desire to cohabit with her and he refused to take her back for cohabitation. He had also given threat of life to her, in case she forced to accompany with him. These allegations made in the complaint categorically indicate that the offence of cruelty was continuing one, as contemplated under clause (c) of Section 178 of Cr.P.C. It is evident from the complaint that the complainant Rohini was subjected to cruel treatment at Aurangabad and also at Ahmedpur when she had been to her parent's home with husband Amol. Therefore, the incident taking place at Ahmedpur cannot be considered as isolated event but it occurred consequential to the series of incidents taking place at Aurangabad. The

applicant Vijayabai had knowledge that her son petitioner Amol with his spouse was not going for excursion at Nanded but they are going to Ahmedpur to leave the complainant to her parent's home. The circumstances indicate that the mother and son hatched a conspiracy to take complainant Rohini to her parent's house at Ahmedpur and she should not be allowed for cohabitation with petitioner Amol. Therefore, the circumstances in which the events occurred as disclosed in the complaint, adumbrate that there was an continuing offence of ill-treatment and humiliation meted out to wife/complainant Rohini at the hands of all the accused and in such continuing offence on several occasions, the husband and in-laws had taken part and on one occasion, only the husband had taken part. In view of clause (C) of Section 178 of Cr.P.C, the offence alleged against the petitioner/applicants is continuing one. Therefore, we are of the considered opinion that the learned Magistrate at Ahmedpur has a jurisdiction to deal with the trial against the petitioner and applicants within the ambit of law.

19] The judicial pronouncements relied on behalf of the petitioner in the case of *Y. Abraham Ajith and others* as well as *Bhuraram and others (supra)* are totally distinguishable on the facts and circumstances of the present case and same appear misplaced. In those cases, the factual position seems totally different in nature. There were no allegations or whisper about any cruelty or commission of any act constituting offence at the place where the complainant was residing and filed the complaint.

20] In the above premises, we are of the considered opinion that the allegations nurtured against the petitioner/applicants in the FIR prima facie constitute a cognizable offence against them. The impugned proceeding is at the stage of framing of charge. Therefore, it would be unjust and improper to quash and set aside the criminal proceedings prior to detail trial of the petitioner/applicants on the anvil of merit. It is also evident from the factual aspect that the court of learned Magistrate at Ahmedpur has a jurisdiction to entertain the criminal proceedings filed against the petitioner/applicants being an continuing offence. In such circumstances, both, the proceedings i.e. Criminal Writ Petition and Criminal Application, deserve to be dismissed. Accordingly, both, Criminal Writ petition and Criminal application, stand dismissed. Rule is discharged. No orders as to costs. Trial to proceed in accordance with law expeditiously. Needless to state that during the course of trial, the learned trial Judge should not be influenced by the observations made by this Court which are confined only to the extent of adjudication of present proceeding.

In view of dismissal of Criminal Application No.920 of 2015, filed by applicant Tukaram and his wife, taking exception to charge-sheet, wherein petitioner Amol is also one of the accused, Criminal Application No. 4691 of 2015 filed by petitioner Amol for requisite amendment to take exception to the charge sheet, stands disposed of.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-