

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

CRIMINAL WRIT PETITION NO. 562 OF 2017

Hanumant S/o Jagganath Bhosle
Age : 40 years, Occ : Kirtankar,
R/o At Post. Alandi, Goaplura,
Tq. Khed, Dist. Pune.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through Police Station,
Kalamb, Dist. Osmanabad.
2. Niranjana W/o Hanumant Bhosle
Age : 39 years, Occ : Kirtankar,
R/o C/o Bhaskar Changdev Shinde,
At Post. Alandi Devachi,
Bhagyashri Dharmashala,
Near Old Bridge, Tq. Khed,
Dist. Pune.

RESPONDENTS

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Mr.Sharad S. Ambore, Advocate for the
Petitioner

Mrs.P.V. Diggikar, APP for Respondent No.1 -
State.

Mr.S.S.Thombre, Advocate for respondent no.2.

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**CORAM: S.S.SHINDE &
MANGESH S. PATIL, JJ.**

DATE : 09.10.2017

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

Rule. Rule made returnable

forthwith, and heard finally with the consent of the parties.

2. This Petition is filed with the following prayer :-

"B) Quash and set aside the FIR No.0115 of 2016 dated 09.06.2016, registered with Kalamb Police Station against the petitioner to the extent of offence punishable under Sections 323, 498-A, 504 and 506 of the Indian Penal Code and for that purpose issue necessary orders;

3. The background facts for filing the present Petition, as disclosed in the memo of Petition, in brief are as under:

The petitioner has been arrayed as accused in FIR No.0115/2011 by Respondent No.2, with Kalamb Police Station on 9th June, 2016, for the offences punishable under

sections 323, 498-A, 504, 506 of the Indian Penal Code. It is the case of the petitioner that, Respondent No.2 is legally wedded wife of the petitioner, and their marriage was solemnized on 20th May, 2011 according to Hindu rituals. After marriage, respondent no.2 cohabited with petitioner till 3rd September, 2013. On 3rd September, 2013, Respondent No.2, left the house of the petitioner and started residing with another person namely Bhaskar Shinde.

4. It is the case of the petitioner that the petitioner got mentally disturbed and consumed poison on 6th September, 2013 and thereafter was admitted in the Pimpri-Chinchwad Municipal Corporation Hospital, wherein he was treated till 9th September, 2013. It is the case of the petitioner that, thereafter on 21st April, 2014 and 24th May, 2014, the petitioner sent notices through

advocate to Respondent No.2, and called upon Respondent no.2 to resume cohabitation with him. But Respondent no.2 neither replied the said notices nor came for cohabitation. On 13th June, 2014 and 18th July, 2014, the petitioner made applications to the Sub-Inspector, Pune District Rural Police Station making grievance that, his wife had left the matrimonial house, and started residing with another man i.e. Bhaskar Shinde.

5. It is further the case of the petitioner that, on 24th August, 2015, he filed Divorce Petition (No) 207 of 2015, in the Court of the Civil Judge, Senior Division, Rajgurunagar under Section 13(1) of the Hindu Marriage Act, 1955. On 10th November, 2016, the Civil Judge, Senior Division, Khed-Rajgurunagar partly allowed the application and directed him to pay Rs.2500/- as monthly maintenance to

Respondent No.2 and Rs. 3000/- towards litigation charges.

It is the case of the petitioner that, on 29th February, 2016 respondent no.2 filed Miscellaneous Application no. 10 of 2016 before the Judicial Magistrate, First Class, Kalamb under sections 3, 12, 17, 18, 19, 20, 22, 23 of the Protection of Women from Domestic Violence Act.

Respondent No.2 after service of summons of divorce petition filed by the petitioner, belatedly after five years of marriage, on 9th June, 2016 she lodged the present F.I.R. Hence this Petition.

6. Learned counsel appearing for the petitioner submits that, even if the allegations in the first information report are taken at its face value and read in its

entirety, the alleged offences have not been disclosed. In fact the petitioner is ready to settle the dispute with Respondent No.2, however, Respondent No.2 is not agreeable for settlement. Learned counsel appearing for the petitioner invites our attention to the grounds taken in the Petition, annexures thereto, and submits that, the Petition deserves to be allowed.

7. On the other hand, the learned APP appearing for the respondent – State relying upon the contents of the first information report and also the investigation papers, submits that, there are serious allegations of illtreatment and harassment and also there was demand of Rs.7 Lakhs from the father of the Respondent No.2 by the accused. The allegations in the first information report will have to be taken as it is and can only be tested during the trial.

8. Learned counsel appearing for Respondent No.2, relying upon the averments in the affidavit in reply and also allegations in the first information report, submits that, there was continuous illtreatment and harassment at the hands of the petitioner to Respondent No.2. As a result of which, she was driven out of the matrimonial house. There was demand of Rs. 7 Lakhs by the petitioner to the father of Respondent No.2. The father of Respondent No.2 collected amount from the relatives and paid Rs. 5 Lakhs to the petitioner so as to purchase the 1.5 guntha land at Alandi. However, the petitioner continued to illtreat respondent no.2. Therefore, he submits that, the Petition may be rejected.

9. We have given careful consideration to the submissions advanced by the learned

counsel appearing for the parties. With their able assistance, we have carefully perused the grounds taken in the petition, annexures thereto and reply filed by Respondent No.2 so also the investigation papers. Upon careful perusal of the allegations in the first information report, there are serious allegations in the first information report against the accused that he used to suspect the character/chastity of Respondent No.2, and on that count used to illtreat and harass her. There are specific allegations that, to purchase the land at Alandi, the petitioner demanded Rs. 7 Lakhs from the father of Respondent No.2, and the father of Respondent No.2 collected the amount of Rs. 5 Lakhs from the relatives, and said amount was given to the petitioner. Since there was demand of Rs. 7 Lakhs and the father of Respondent No.2 fulfilled demand of only Rs. 5 Lakhs, for remaining amount of Rs. 2 Lakhs, the

petitioner used to illtreat and harass Respondent No.2. As a result of continuous illtreatment and harassment, on 3rd September, 2013, Respondent No.2 was driven out from the matrimonial house by the petitioner.

10. Upon careful perusal of the contents of the first information report and also other documents placed on record, an ingredients of the alleged offences have been disclosed and consequently the alleged offences needs further investigation.

11. The Supreme Court in the case of **Bhaskar Lal Sharma and another V/s Monica and others**¹ in para 11 of the judgment has held that the facts, as alleged, in the complaint will have to be proved which can be done only in the course of a regular trial. The

1 (2014) 3 SCC 383

appreciation, in a summary manner, of the averments made in a complaint petition or F.I.R. would not be permissible at the stage of quashing of F.I.R. and the facts stated will have to be accepted as they appear on the very face of it.

12. The Supreme Court in another judgment in the case of **Taramani Prakash V/s State of M.P. and others**² has also taken a view that, the question whether the informant/complainant has infact been harassed and treated with cruelty is a matter of trial. In that view of the matter, we are not inclined to entertain this Petition for quashing of First Information Report. Hence the Petition stands rejected.

The observations made hereinabove are, prima facie, in nature and the rejection

² 2015 AIR (SC) (Supp) 704

of this Petition shall not be construed as an impediment to the petitioner to avail of an appropriate remedy as available in law, in the event of filing charge-sheet by the Investigating Officer.

[MANGESH S. PATIL]
JUDGE

[S.S.SHINDE]
JUDGE

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