

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

CRIMINAL APPLICATION NO. 3369 OF 2016

Nirmalabai Raosaheb Galane and Others

..APPLICANTS

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. A.R. Devakate, Advocate for applicants.

Ms. S.S. Raut, A.P.P. for Respondent No.1 – State.

Mr. V.P. Savant, Advocate for Respondent No.2.

....

CORAM : T.V. NALAWADE, J.

DATED : 20th JANUARY, 2017

ORDER :

1. The petition is filed to challenge the order of issuance of process made by Judicial Magistrate, First Class, Ashti in R.C.C. No. 100 of 2016. Cognisance of the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code is taken by the Magistrate on police report. Both sides are heard.

2. Papers of investigation are filed alongwith copy of private complaint which was filed by respondent – Pratibha. Marriage of Pratibha took place with Nilkanth in the year 2002. She had made allegations that ill treatment was started to her after five years of marriage. She made

specific allegation against husband, parents of husband and present petitioners about the ill treatment. Present petitioners are the real sisters of husband of the complainant. Allegation of the complainant is that the applicants used to say that they do not like her, she was not in a position to cook food properly, etc. The allegations are made that they were asking the complainant to bring Rs.5,00,000/- from her parents for purchasing a vehicle for husband and due to non compliance of the said demand, ill treatment and bitting was given to her by her husband, parents of husband and present applicants.

3. Two specific incidents are mentioned in the complaint dated 25th February, 2016 and 28th February, 2016. Allegations are made that when she was cohabiting with husband, on 25th February, 2016, all accused gave her beating as she did not bring amount of Rs.5,00,000/- for purchasing the vehicle and they drew her out of her matrimonial house. She made allegation that when she went to house of her parents, there also on 28th February, 2016 all accused came and picked up quarrel with her. She has contended that she approached to police on 02nd March, 2016 but police advised her to approach the grievance redressal forum. She contended that no response was given to her there and so she filed private complaint.

4. The Magistrate made order of investigation under Section 156(3) of the Code of Criminal Procedure. During investigation, statements of witnesses who include complainant, her parents and other relatives came to be recorded. One more allegation is made against the applicants that complainant could not conceive after so many years of marriage and so she was given ill treatment by accused.

5. Learned Counsel for applicants submitted that Applicant No.1 married in 1991, Applicant No.2 married in 1994 and Applicant No.3 married in 2000 and so there was no opportunity or occasion to them to give ill treatment to the complainant. By making such contentions, learned Counsel submitted that order of taking cognisance made against them needs to be set aside. This submission is not at all acceptable. Already material is collected by police and on that basis cognisance is taken by the Magistrate of the aforesaid offences. This material needs to be considered as unrebutted and at this stage it cannot be said that applicants are falsely implicated in the case. It cannot be said that taking cognisance of the matter or filing of complaint against present applicants amounts to misuse of process of law. Learned Counsel for applicants submits that the order of taking cognisance and filing of charge-sheet

appears to be made by using rubber stamp. As it is police case, police case contains aforesaid material, not much can be made of such circumstances

6. This Court holds that there is no scope to use provision of Section 482 of the Code of Criminal Procedure. In the result, application stands disposed of as dismissed. The observations are for the purpose of present proceeding only.

(T.V. NALAWADE, J.)

SSD