

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1370 OF 2016

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| 1 | Pournima W/o Bandu Khobragade,
Aged about 40 Years, Occupation
Service, Resident of Jujau Nagar,
Amravati, Taluka and District
Amravati | Petitioners |
| 2 | Rama W/o Surendra Gharde, Aged
about 42 Years, Occupation
Service, Resident of Flat No.9,
suma Plaza Apartment, Dwarka
Nagari, Akola, Taluka and
District Akola | |
| 3 | Mamta W/o Bhimprasad Gedam, Aged
about 58 Years, Occupation
Service, Resident of Bajrang
Nagar, Indore (MP) | |
| 4 | Sangita W/o Madhavan Mani, Aged
about 35 Years, Occupation
Service, Resident of Bajrang
Nagar, Indore (MP) | |
| 5 | Manish S/o Yuvraj Bagade, Aged
about 37 Years, Occupation
Service, Resident of A.M.-2-93,
Pandit Dindayal Uppadhaya Nagar,
Indore (MP) | |
| 6 | Laxmi wd/o Yuvraj Bagade, Aged
about 65 Years, Occupation
Household, Resident of Sukhriya,
165, 166 Prime City, Indore (MP) | |

- 7 Dhiraj S/o Yuvraj Bagade, Aged
 about 31 Years, Occupation
 Service, Resident of Sukhriya,
 165, 166 Prime City, Indore (MP)

V E R S U S

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| 1 | The State of Maharashtra, through
P.S.O. Bhusawal taluka, Bhusawal,
District Jalgaon | Respondents |
| 2 | Suwarna W/o Dhiraj Bagde, Aged
about 30 Years, Occupation
Household, Resident of C/o.
Ishwar Sitaram Borkar, Deep Nagar
Colony, III Type 3/17, Taluka
Bhusawal, District Jalgaon | |

Mr. H.A. Patankar, Advocate for the Petitioners
Mr. S.D. Ghayal, A.P.P. for Respondent No.1/State
Mr. Shaikh Naseer, Advocate for Respondent No.2

CORAM : T.V. NALAWADE, J.

DATE : 17th NOVEMBER, 2017

ORAL JUDGMENT (PER T.V. NALAWADE, J.) :

1. Rule. Rule made returnable forthwith.
2. Heard learned counsels for the petitioners,
learned counsel for original complainant and learned
A.P.P. for respondent No.1-State.

3. This petition is filed to challenge the order made by learned Judicial Magistrate, First Class, Bhusawal in R.C.C. No. 436 of 2012 at Exhibit 58, by which application filed by the petitioners for discharging them is rejected and also against the decision of learned Additional Sessions Judge, Bhusawal given in Criminal Revision application No.36 of 2016 by which the learned Additional Sessions Judge has dismissed the revision filed against the aforesaid order of learned Judicial Magistrate, First Class.

4. The First Information Report filed by present respondent No.2 shows that she was given in marriage to present respondent No.7 on 2nd December, 2010, and after the marriage, she started cohabiting with respondent No.7 at prime city Indore (MP). It is her case that in that house, her mother-in-law (respondent No.6) was also living.

5. It is the contention of first informant/wife that after 13 days of the marriage, her father-in-law died, and due to that, the accused persons started

feeling that she proved unlucky for them. It is also her case that after death of her father-in-law, all accused started harassing her by saying that she was unlucky for them. It is her contention that, then all the accused started asking her to bring Rs.2,00,000/- from her father as they wanted to purchase a Car for present petitioner No.7 - her husband. It is also her contention that her sisters-in-law used to visit the place where she was residing for harassing her. It is her case that in November, 2011, she was driven out of the house after giving beating to her by all the petitioners as the demand of money was not fulfilled. She was pregnant at that time, and on the date of complaint, she had a son, aged about 11 months.

6. The contentions and the record show that petitioner Nos.1 to 4 are the sisters of husband of the first informant. Petitioner No.5 is brother of husband of the first informant. Petitioner No.1 is resident of Amravati, petitioner No.2 is resident of Akola and petitioner Nos. 3 and 4 are resident of Indore (MP) and they are in service. The residential

place of petitioner No.5-Manish Bagade, brother of the husband is shown as resident of Bajrang Nagar, Indore and he is also in service.

7. Above circumstances show that petitioner Nos.1 to 5 were not residing in joint family with husband of the first informant. In view of this circumstance, it was necessary for the first informant to give specific instances of ill-treatment against each petitioner. There is allegation against petitioners that they were asking her to bring Rs.2,00,000/- from her parents for purchasing Car and other allegations are also made against them. As per Section 211 of Code of Criminal Procedure, it will become difficult to frame Charge against petitioner Nos.1 to 5 as no specific incidents with dates or incidents are mentioned.

8. Learned counsel for the petitioners submitted that in view of nature of the allegations, petitioner Nos.6 and 7 are also entitled to get the relief. Learned counsel for the petitioners relied on the

observations of this Court in ***Criminal Application No. 5429 of 2014, Kailas S/o Damodhar Pathe and others versus The State of Maharashtra and another, decided on 23rd December, 2014.*** Facts and circumstances of every criminal case are always different. In aforesaid case, it appears that the husband had obtained decree of Restitution of Conjugal Rights. In the present matter, if the wife had no desire to resume cohabitation, she would not have approached the redressal forum and she would not have approached the police with such grievance. Due to these circumstances and as there are statements of relatives of wife in support of the allegations made by her, this Court holds that petitioner Nos.6 and 7 being mother of the husband and husband of the first informant are not entitled to get the relief of discharge. In view of the aforesaid observations, this Court holds that discharge application filed by petitioner Nos. 1 to 5 needs to be allowed.

9. In the result, I proceed to pass following order :-

O R D E R

- A] Petition of petitioner Nos.1 to 5 is allowed.
- B] Application at Exh.58 in R.C.C. No.436 of 2012 filed by petitioner Nos.1 to 5 is allowed and, for that, the order made by learned Judicial Magistrate, First Class, Bhusawal of rejection of application and the decision given by learned Judge Sessions Court are hereby set aside.
- C] Petitioner Nos.1 to 5/accused stand discharged of the offences for which the Charge-Sheet is filed against them.
- D] Petition of petitioner Nos.6 and 7 stands dismissed.
- E] Rule made absolute in aforesaid terms.

(T.V. NALAWADE, J.)