

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

CRIMINAL WRIT PETITION NO.1524 OF 2016

1. Mrs. Manisha Rahul Bhosle,
Age – 37 years, Occu. Service,
2. Shri. Rahul Yuvraj Bhosle,
Age – 40 years, Occu. Service,

Resident at Mungi Engineers Pvt. Ltd.,
Block No.1, Survey No.192/B,
Jahirabad, Tal. Dist. Medak (A.P.).
3. Shri. Amolkumar Vasantrao Patil,
Age – 35 years, Occu. Service,
R/o Flat No.101, 1st Cross, 3rd Main Road,
LB Shastrinagar Vimanapura Post,
Opp. to APSA Dream School,
Bangalore 560 017, Karnataka. ... **Petitioners**

Versus

1. The State of Maharashtra
Through the Officer in charge
Devpur Police Station,
Dhule, District Dhule.
2. Sau. Trupti Amol Patil,
Age 27 years, Occu. Household,
Resident of 203/9, Cross, K P C layout,
Kaswananalli, Sarajpur Road, Bangalore
Presently residing of plot No.6,
Near Swami Nagar Kamalani Hospital,
Nakane Road, Dhule. ... **Respondents**

...

Mr. Mukul S. Kulkarni, Advocate for Petitioners
Mrs. P.V. Diggikar, APP for Respondent No.1-State
Mr. M.S.Sonawane, Advocate for Respondent No.2

...

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

**RESERVED ON : 12th October, 2017
PRONOUNCED ON : 31st October, 2017**

JUDGMENT : (Per Mangesh S. Patil, J.) :-

1. Rule. The Rule is made returnable forthwith.
Heard finally by consent of learned advocates for the parties.

2. The petitioners have filed this Writ Petition under Article 226 read with 227 of Constitution of India for quashing of Crime No.95 of 2016, registered under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC'), registered at Devpur Police Station, Dhule. The offence has been registered on a complaint filed by the Respondent No.2 alleging inter alia that since after her marriage with the Petitioner No.3, he along with his married sister (Petitioner No.1) and her husband (Petitioner No.2) started ill-treating her. In spite of spending huge amount in performance of the marriage,

all the in-laws started insulting her alleging that they were not appropriately treated at the marriage. They started asking her to fetch money from her parents for buying a Honda City Car and also started insisting that she should bring Rs.50,00,000/- (Rupees Fifty Lakhs) for purchasing a flat. In order to extract the money they all started physically and mentally harassing her. The Petitioner Nos.1 and 2 instigated her parents in-law and her husband in raising the demand for money and in beating her. They also started teasing her whenever she used to complain about the ill-treatment by her husband by saying that she deserved it. An amount of more than Rs.2,00,000/- (Rupees Two Lakh) was also withdrawn from her account without her consent. It is on the basis of such complaint that the impugned FIR has been registered.

3. We have heard the learned Advocate for the Petitioners. He submitted that Petitioner Nos.1 and 2 are residents of Jahirabad Town, Taluka and District Medak, in the erstwhile State of Andhra Pradesh.

However, only with a view to harass all the in-laws they have been roped in mala fide. There are no concrete allegations against them and no case can be made out against them even if the allegations in the FIR are taken at their face value. The learned Advocate for the Petitioner also placed reliance on the decision of the Supreme Court in the case of (i) ***Taramani Parakh Vs. State of M.P. & Ors., [2015 AIR (SC) 704]*** and (ii) ***Geeta Mehrotra and Anr. Vs. State of U.P. and Anr. [AIR 2013 Supreme Court 181]***.

4. Per contra, the learned Advocate for the Respondent No.2 and the learned APP strenuously argued that the allegations in the complaint clearly refer to the role played by the Petitioner Nos.1 and 2 in instigating Petitioner No.3 in harassing Respondent No.2 on account of unlawful demand of money. Already the charge-sheet has been filed and the matter is pending trial before the Criminal Court and an opportunity needs to be extended to the prosecution to substantiate the charges levelled against the Petitioners. They

argued that in view of the stage of the proceeding where the charge is to be framed, it will not be appropriate to quash the entire criminal proceeding.

5. We have carefully perused the documents furnished along with the Petition and the investigation papers. Apparently, though Petitioner No.3, who happens to be the husband of the Respondent No.2 has been added as a Petitioner subsequent to the filing of the petition without making any suitable change in the prayer clause, we will have to proceed assuming that the Petitioners are seeking to quash the FIR and the criminal proceedings qua Petitioner No.3 also. However, suffice for the purpose to observe that there are apparently several allegations levelled by Respondent No.2 against Petitioner No.3, which prima facie constitute 'cruelty' within the meaning of Section 498-A of IPC.

6. As regards the role attributed to Petitioner Nos.1 and 2, it is necessary to observe at the cost of repetition that even against them clear allegations have been

levelled in the complaint about they having instigated Petitioner No.3 and his parents to treat Respondent No.2 with cruelty. Simply because they are residents of a distant place one cannot readily infer that they have no role to play in the treatment meted out to Respondent No.2. It has been specifically alleged in the complaint that during the festival of Diwali of the year 2015 they had been to the house of Petitioner No.3 and Respondent No.2 and even during that time they had instigated Petitioner No.3 while he was ill-treating Respondent No.2. It is not that there is only a vague and isolated instance attributed against Petitioner Nos.1 and 2. At several places in the complaint one can find reference to the role played by them in the alleged ill-treatment meted out to the Respondent No.2.

7. It is trite that a criminal proceeding cannot be given an abrupt stop without extending any opportunity to the prosecution to establish its allegations. The decision cited on behalf of the Petitioners (Supra) in our considered view do not help them to salvage any ground.

In the case of Taramani Parakh (supra) the observations have been made that quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at the initial stage. The Court is not expected to martial the records with a view to decide admissibility and reliability of the documents or records but has to form only a prima facie opinion. It is to be noted that these observations made by the Supreme Court in its earlier decision in the case of ***Amit Kapoor Vs. Ramesh Chander and Anr. [(2012) 8 SCC 460]*** have been quoted with approval in this subsequent decision. Applying all these principles laid down in the case of Amit Kapoor (Supra) also, the Petitioners are not entitled to claim quashing of the proceeding in the peculiar facts and circumstances of the present case, as discussed herein above.

8. In the case of Geeta Mehrotra (supra) also the facts were peculiar to the case wherein it was noted that

there were no allegations against Ku. Geeta Mehrotra and Ramji Mehrotra except casual reference of their names in the matrimonial dispute without allegations of active involvement. In the matter in hand, as is observed above, the FIR does contain specific role attributed to Petitioner Nos.1 and 2.

9. In view of above, we are not inclined to stall the criminal proceedings abruptly and the petition is liable to be dismissed.

10. However, it is made clear that the observations made herein above are confined to the decision of the present Writ Petition and the learned Trial Judge shall not get influenced by these observations. It is also made clear that the petitioners shall be at liberty to apply for discharge, if so advised.

11. The petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

(S.S.SHINDE, J.)

...

vmk/-