

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

CRIMINAL APPLICATION NO.6216 OF 2017

1. Sangram s/o.Subhash Ghuge,
Age – 33 years, Occu – Private Job,
R/o.A-1/504, Gagangiri Enclave,
Barave Rd. Sai Chowk, Khadakpada,
Kalyan [West], Dist. Thane – 421 301
2. Suverna w/o. Shriram Avhad,
Age – 34 Years, Occu – Service,
R/o. 1104, Asha Co-op. Housing Society,
Birla College Road, Sayadri Nagar,
Kalyan [Weat], Dist. Thane – 421 301.
3. Wachala wd/o.Subhash Ghuge,
Age – 58 years, Occu – Household,
R/o. B-11/404, Gagangiri Enclave,
Barave Rd. Sai Chowk, Khadakpada,
Kalyan [West], Dist. Thane – 421 301.
4. Sandip s/o. Subhash Ghuge,
Age – 30 years, Occu – Private Job,
R/o. B-11/404, Gagangiri Enclave,
Barave Rd. Sai Chowk, Khadakpada,
Kalyan [West], Dist. Thane – 421 301.
5. Keshav s/o. Mahadev Ghuge,
Age – 68 years, Occu – Nill,
R/o. A-1/10, Room No.101,
Shri Complex Phase 3, Aadharvadi Jail
Road, Kalyan [West], Dist.Thane.

APPLICANTS

VERSUS

1. State of Maharashtra
Through Police Inspector,
Police Station Pathardi,
Dist. Ahmednagar.

2. Harsha w/o. Sangram Ghuge,
Age – 28 years, Occu – Service,
R/o. Dinkar Savleram Palve,
Nathnagar, Tq.Pathrdi,
Dist. Ahmednagar.

RESPONDENTS

...
Mr.Amol P.Ghule Patil, Advocate for the
applicants
Mr.V.M.Kagne, APP for the Respondent/State
Mr.N.C.Garud, Advocate for respondent no.2.

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CORAM: S.S.SHINDE &
A.M.DHAVAL, JJ.
Date: 15.12.2017

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

1] This Application is filed praying
therein to quash the R.C.C.No.102/2016 for
the offence punishable under Sections 498-A,
323, 504, 506 [2] r/w. 34 of the Indian Penal
Code, pending before the Judicial Magistrate
First Class [Court No.1], Pathardi, District
Ahmednagar.

2] Learned counsel appearing for the
applicants submits that, even if the
allegations in the First Information Report
[for short 'FIR'] are read in its entirety,

the alleged offences are not disclosed. There are vague and general allegations, without attributing overt act qua each of the applicants. An allegation of the alleged demand of amount of Rs.5 lacs is palpably false and inherently improbable, since the applicants have enough source of income. He further submits that, the FIR has been registered at Pathardi Police Station, and the case is pending before the Judicial Magistrate First Class at Pathardi. Since no cause of action or part of cause of action has arisen at Pathardi; the Court of Judicial Magistrate First Class at Pathardi has no jurisdiction to try R.C.C.No.102/2016. Therefore, relying upon the judgments of the Supreme Court in the case of **Bhura Ram and Ors. Vs. State of Rajasthan & Anr.**¹ and also in the case of **Y.Abraham Ajith and others Vs.Inspector of Police, Chennai and another**²,

1 [2008] 11 SCC 103

2 [2004] 8 SCC 100

learned counsel appearing for the applicants submits that, application may be allowed.

3] On the other hand, learned APP appearing for the respondent-State and learned counsel appearing for respondent no.2, jointly submit that, there are serious allegations against all the applicants. There was unlawful demand of amount of Rs.5 lacs by the applicants—accused. The alleged offences are clearly disclosed, and therefore, need further investigation.

4] Learned counsel appearing for respondent no.2 submitted that, when respondent no.2 was pregnant; her husband made a phone call to her father, and told him to ask respondent no.2 to terminate pregnancy. It is further submitted that, on 5th January, 2016, respondent no.2 issued notice to the accused, and asked them to allow her to stay in the matrimonial home.

However, accused did not bother to take cognizance of the said notice. Therefore, respondent no.2 lodged the FIR, at Pathardi Police Station. It is submitted that, the court of Judicial Magistrate First Class, Pathardi, District Ahmednagar, is well within its jurisdiction to adjudicate the R.C.C.No. 102/2016.

5] We have carefully perused the allegations in the FIR. There are serious allegations in the FIR about ill-treatment, harassment and unlawful demand. The specific instances are also quoted in the FIR. The specific incident of 1st June, 2015, is mentioned in the FIR. It appears that, due to assault by the accused-applicants to respondent no. 2, she sustained injury. There is specific allegation that, the accused were asking her to terminate pregnancy. On her refusal, the accused driven

out her from the matrimonial home, and then she went to Pathardi. The husband made a phone call to the father of respondent no.2 and told that, respondent no.2 should terminate pregnancy. Therefore, it cannot be said that, there was no cause of action for respondent no.2 to lodge the FIR at Pathardi, and the proceedings of R.C.C.No.102/2016, which are arising out of the said FIR, are not maintainable before the Court of Judicial Magistrate First Class at Pathardi. It also appears that, respondent no.2 sent a notice from Pathardi to the accused – applicants to take her to the matrimonial home, however, the accused did not bother to accept her request. Already the charge-sheet has been filed. The Investigating Officer has collected sufficient material, and the trial can proceed on the basis of the said material. It is not desirable to elaborate the reasons on merits, which may cause

prejudice to the parties during the course of trial.

6] The Supreme Court in the case of ***Bhaskar Lal Sharma and another Vs. Monica and others***³ in para 11 and 12 held thus:

11. The facts, as alleged, therefore will have to be proved which can only be done in the course of a regular trial. It is wholly unnecessary for us to embark upon a discourse as regards the scope and ambit of the Court's power to quash a criminal proceeding. The appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by

3 [2014] 3 SCC 383

the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence.

12. Insofar as the offence under Section 406 of the Penal Code is concerned, it is clear from the averments made in Paras 16, 18, 24 and 29 of the complaint petition that it has been alleged that the appellants were entrusted or had exercised dominion over the property belonging to the respondent and further that the appellants had unlawfully retained the same. The statements made in Para 6 of the complaint also alleges retention of cash and other gifts received by the respondent complainant at the time of her marriage to the Appellant 2 – accused. In the face of the said averments made in the complaint petition, it cannot be said that the complaint filed by the respondent is shorn of the necessary allegations to prima facie sustain the case of commission of the offence under Section 406 by the appellants.

Yet in another exposition of the Supreme Court in the case of ***Taramani Parakh Vs. State of Madhya Pradesh & others***⁴ in para 15 it has been held that the question whether the appellant has infact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible.

7] In the light of discussion herein above, we are of the view that, the application deserves to be rejected, and accordingly, the same stands rejected.

8] The observations made herein above are *prima facie* in nature and confined to the adjudication of the present application only.

[A.M.DHAVALÉ]
JUDGE

[S.S.SHINDE]
JUDGE

DDC

4 2015 AIR [SCW] 1817