

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

CRIMINAL WRIT PETITION NO. 153 OF 2018

1. Chandrakant s/o Khandu Badgujar
Age: 70 years, Occu. Nil,
R/o Shivshankar Colony, House No.B-15,
Tq. & Dist. Aurangabad.
2. Sunanda w/o Chandrakant Badgujar,
Age: 68 years, Occu. Household,
R/o As above.
3. Amol s/o Chandrakant Badgujar,
Age: 33 years, Occu. Private Service,
R/o Shivshankar Colony, House No.B-15,
Tq. & Dist. Aurangabad.
At present R/o. Mother Dairy Fruit &
Vegetable Pvt. Ltd.
Near W.C.L. Telangkhedi Road,
Civil Live, Nagpur-440001.
4. Mohini w/o Amol Badgujar,
Age: 30 years, Occu. Household,
R/o. As above.
5. Mahendra s/o Gangaram Shinde,
Age: 46 years, Occu. Service,
R/o. Saraswati Colony, Dondaicha,
Tq. Sindkheda, Dist. Dhule.
6. Anita w/o Mahendra Shinde,
Age: 38 years, Occu. Household,
R/o As above.
7. Dhanraj s/o Shantaram Badgujar,
Age: 44 years, Occu. Service,
R/o. Ganeshnagar, Chikhali Baugh,
Kalyan (W) Thane,
Now R/o. Police Head Quarter Jalgaon,
Dist. Jalgaon.

8. Jayshri w/o Dhanraj Badgujar,
Age: 37 years, Occu. Household,
R/o. As above. ...Petitioners

versus

1. The State of Maharashtra
Through Jawahar Nagar Police Station,
Aurangabad, Dist. Aurangabad.
2. Rajshri w/o Bhushan Badgujar,
Age: 29 years, Occu. Household,
R/o C/o. Narayan s/o Namdeo Pawar,
Mamba Devi Chowk near Mastgadh,
Old Jalna, Dist. Jalna. ...Respondents

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Mr. S. K. Adkine, advocate for the petitioners.
Mr. D. R. Kale, A.P.P. for respondent-State.
Mr. Swapnil S. Patnurkar, advocate for respondent no.2.

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**CORAM : S. S. SHINDE AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 28.06.2018**

**Date of pronouncing
the Judgment : 12.07.2018**

JUDGMENT (PER V.K. JADHAV, J.) :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2. This criminal writ petition is filed with the following prayer:

“(B) First Information Report No. 18/2018 registered with Jawaharnagar Police Station, Aurangabad, Tq. & Dist.

Aurangabad U/s. 498-A, 323, 504 r/w 34 of I.P.C. and Sec. 3 & 4 of Dowry Prohibition Act against the petitioners may kindly be quashed and set aside.”

3. The learned counsel appearing for the petitioners submits that the allegations made in the First Information Report are general in nature, without specifying any incident or overt act qua the petitioners. Petitioner nos. 1 and 2 are the in-laws of respondent no.2-Rajshri and petitioner no.3 is her brother-in-law. Petitioner no. 4 is the wife of petitioner no.3. Petitioner nos. 6 and 8 are the married sisters-in-law of respondent no.2 and petitioner nos. 5 and 7 are their husbands respectively. The learned counsel submits that petitioner nos. 1 and 2 are old aged persons suffering from several ailments since last five years. Petitioner nos. 3 to 8 are residing at different places. Even if the allegations in the F.I.R. are taken at its face value and read in its entirety, the alleged offences are not disclosed. It has been alleged in the complaint that the petitioners demanded the remaining dowry of Rs.50,000/- and ill-treated respondent no.2 on that count. In fact, marriage of respondent no.2 with co-accused Bhushan took place on 30th June, 2009 and they are also blessed with a son namely Swarup. There were no complaints for about eight years after their marriage. The ingredients of Section 498-A are absent in the complaint. The allegations in the F.I.R. are inherently improbable. Even the husband of respondent no.2 has filed an application for restitution of conjugal rights since respondent no.2 is residing with her parents without any just cause. The learned counsel

submits that respondent nos. 6 and 8 are the married sisters-in-law of respondent no.2. They are residing at their respective matrimonial houses situated at Dhule and Jalgaon. It has been simply alleged in the complaint, without specifying any particular incident, that they were also ill-treating respondent no.2 on the count of unpaid dowry. Even though the alleged ill-treatment stated to have been extended during the period from 2012 to 2017, the complaint came to be lodged belatedly in the month of January, 2018. It is submitted that the F.I.R. is filed only with a view to harass and pressurise the petitioners. It is thus prayed that the F.I.R. may be quashed and set aside.

4. The learned APP submits that on careful perusal of the allegations made in the F.I.R., ingredients of the alleged offences have been disclosed. Therefore, it needs further investigation so as to take those allegations to the logical end.

5. The learned counsel appearing for respondent no.2 invites our attention to the allegations in the F.I.R., statements of witnesses and the affidavit-in-reply filed by respondent no.2 and submits that respondent no.2 was initially treated well by the petitioners and her husband. But thereafter she was subjected to intolerable physical and mental cruelty on the count of demand of unpaid dowry. There are specific allegations made in the F.I.R. She was subjected to physical and mental torture including beating at the hands of her mother in law and husband. Respondent no.2 has specifically mentioned the incident of cruelty and dowry demand and as such,

ingredients of all the offences leveled against the petitioners are attracted. The learned counsel submits that on 22.09.2017, she was pushed from the second floor of her house by her mother-in-law due to which she had sustained bleeding injuries. Thus, the writ petition is devoid of any substance and liable to be dismissed.

6. We have given careful consideration to the submissions made by learned counsel appearing for the respective parties. With their able assistance, we have perused the grounds taken in the petition, annexures thereto, the allegations in the F.I.R., the statements of witnesses and also the investigation papers. Upon careful perusal of the contents of F.I.R., it appears that so far as petitioner nos. 3 to 8 are concerned, there are general allegations made against them without specifying any incident or overt act on their part. We find substance in the submissions made on behalf of petitioner nos. 3 to 8 that the allegations, taken at its face value and read in its entirety, the alleged offences are not disclosed as against them. Petitioner no.3 is serving in a private company at Nagpur. Petitioner nos. 6 and 8 are the sisters of husband of respondent no.2 and they are residing at Dhule and Jalgaon respectively. On careful perusal of the contents of F.I.R. and the statements recorded during the course of investigation, we do not find that any specific role is attributed to them. There are general allegations against them. Considering their places of residence, the allegations in the F.I.R. made against them appear to be inherently improbable. However, there are

specific allegations against the father-in-law, the mother-in-law and the husband of respondent no.2. Husband of respondent no.2 is not a petitioner in this writ petition. However, the in-laws are the petitioner nos. 1 and 2. There are specific allegations against them and certain incidents are also quoted when respondent no.2 was subjected to physical and mental torture by them. It appears that allegations have been made against the entire family members of the husband.

7. The Supreme Court in the case of ***Geeta Mehrotra and another vs. State of Uttar Pradesh and another***, reported in ***(2012) 10 SCC 741***, in the facts of that case held that casual reference to a large number of members of the husband's family without any allegation of active involvement would not justify taking cognizance against them and subjecting them to trial. In the said judgment, there is also reference of the judgment of the Supreme Court in the case of ***G.V. Rao vs. L.H.V. Prasad***, reported in ***(2000) 3 SCC 693***, wherein in para 12 it is observed thus:

“12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the

criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts.”

8. The Supreme Court in the case of *State of Haryana vs. Bhajan Lal*, reported in **AIR 1992 SC 604** held that, in the following categories the Court would be able to quash the F.I.R.:

“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
 7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”
9. In the light of the above discussion and keeping in view the categories laid down in the case of ***State of Haryana vs. Bhajan Lal*** (supra), the case of petitioner nos. 3 to 8 would fall within categories at sr. nos. 1 to 5 mentioned above. We find that the allegations made in the F.I.R. against them are general in nature without mentioning any specific overt act/specific incident. In that view of the matter, we are inclined to quash and set aside the F.I.R. as against petitioner nos. 3 to 8.
10. In the result, we pass the following order: -

ORDER

- I. The criminal writ petition is partly allowed.
- II. The First Information Report No. 18/2018 registered with Jawahar Nagar Police Station, Aurangabad Tq. & Dist. Aurangabad U/s. 498-A, 323, 504 r/w 34 of I.P.C. & Sec. 3 & 4 of Dowry Prohibition Act, 1961, is hereby quashed and set aside to the extent of petitioner nos. 3 to 8.
- III. The criminal writ petition of petitioner nos. 1 and 2 stands dismissed.
- IV. Rule is made absolute in the above terms.
- V. The criminal writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

(S. S. SHINDE, J.)

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