

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 191 OF 2018

- 1) Rahul Raosaheb Kale,
Age : 33 years,
Occupation : Service,
R/o. Ahmednagar,
Dist. Ahmednagar.
- 2) Raosaheb Haribhau Kale,
Age : 60 years,
Occupation : Agriculture,
R/o. Padhegaon,
Tal. Shrirampur,
Dist. Ahmednagar.
- 3) Sharda Raosaheb Kale,
Age : 49 years,
Occupation : Household,
R/o. Padhegaon,
Taluka Shrirampur,
Dist. Ahmednagar.
- 4) Sharad Raosaheb Kale,
Age : 29 years,
Occupation : - ,
R/o. Aurangabad,
Dist. Aurangabad.
- 5) Rutuja Shivaji Yeole,
Age : 21 years,
Occupation : - ,
R/o. Aurangabad,
Dist. Aurangabad.
- 6) Bapusaheb Haribhau Kale,
Age : 66 years,
Occupation : - ,
R/o. Padhegaon,
Tal. Shrirampur,
Dist. Ahmednagar.

- 7) Manda Bapusaheb Kale,
Age : 58 years,
Occupation : Household,
R/o. Padhegaon,
Tal. Shrirampur,
Dist. Ahmednagar.
- 8) Kiran Bapusaheb Kale,
Age : 40 years,
Occupation : Household,
R/o. Shrirampur,
Tal. Shrirampur,
Dist. Ahmednagar.
- 9) Bharti Kiran Kale,
Age : 34 years,
Occupation : Household,
R/o. Shrirampur,
Tal. Shrirampur,
Dist. Ahmednagar.
- 10) Sachin Bapusaheb Kale,
Age : 38 years,
Occupation : Agriculture,
R/o. Padhegaon,
Tal. Shrirampur,
Dist. Ahmednagar.
- 11) Surekha Sachin Kale,
Age : 30 years,
Occupation : Household,
R/o. Padhegaon,
Tal. Shrirampur,
Dist. Ahmednagar.
- 12) Hirabai Tawale Mawalan,
Age : 71 years,
Occupation : Household,
R/o. Padhegaon,
Tal. Shrirampur,
Dist. Ahmednagar.

- 13) Archana Prasanna Walke,
Age : 34 years,
Occupation : Household,
R/o. Ahmednagar,
Dist. Ahmednagar.
- 14) Tarabai Udhav Garud,
Age : 68 years,
Occupation : Household,
R/o. Ahmednagar,
Dist. Ahmednagar.
- 15) Bhimabai Dattatraya Yeole,
Age : 72 years,
Occupation : Household,
R/o. Waghachakada,
Tal. Rahuri, Dist. Ahmednagar.
- 16) Abasaheb Haribhau Kale,
Age : 64 years,
Occupation : Retired,
R/o. Shrirampur,
Tal. Shrirampur,
Dist. Ahmednagar.
- 17) Supriya Balaso Morge,
Age : 27 years,
Occupation : Household,
R/o. Shrirampur,
Tal. Shrirampur,
Dist. Ahmednagar.
- 18) Nanda Abasaheb Kale,
Age : 56 years,
Occupation : Household,
R/o. Shrirampur,
Tal. Shrirampur,
Dist. Ahmednagar.

... Applicants.

Versus

- 1) The State of Maharashtra

Through the Police Station Officer,
Shrirampur Taluka Police Station,
Dist. Ahmednagar.

- 2) Suvarna Rahul Kale,
Age : 32 years,
Occupation : Household,
R/o. Balapur,
Tal. Shrirampur,
Dist. Ahmednagar. ...Respondents

Mr. N. V. Gaware, Advocate for Petitioners.
Ms. V. S. Choudhary, Addl. Public Prosecutor, for respondent
No.1 / State.
Mr. S. S. Pande, Advocate for respondent No.2.

**CORAM : T. V. NALAWADE &
SMT.VIBHA KANKANWADI. JJ.**

DATE : 27-09-2018.

ORAL JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. At the outset, learned Advocate for the applicants seeks permission to withdraw the application to the extent of applicant nos.1 to 3.
2. Permission granted. The application stands disposed of as withdrawn to the extent of applicant nos.1 to 3.
3. Rule. Rule made returnable forthwith. By consent, heard finally.
4. Present petition has been filed by original accused persons invoking the powers of this Court under Article 226, 227 of Constitution of India and the inherent powers of this Court under Section 482 of the Code of Criminal Procedure in order to quash the

First Information Report vide Crime No. 159 of 2017, registered with Shrirampur Taluka Police Station, Ahmednagar, for the offences punishable under Section 406, 420, 498-A, 323, 504, 506 read with 34 of the Indian Penal Code.

5. Respondent No.2 got married to Petitioner No.1 on 05-01-2013. Petitioner No.1 is the husband of respondent No.2, Petitioners No.2 and 3 are the parents of Petitioner No.1, Petitioners No.4 is brother of Petitioner No.1 and Petitioner No.5 is wife of Petitioner No.4, Petitioners No.6 is brother of Petitioner No.2 and Petitioner No.7 is wife of Petitioner No.6. Petitioner No. 8 is the son of Petitioner No. 6 and 7, Petitioner No. 9 is wife of Petitioner No. 8. Petitioner No. 10 is the another son of Petitioner No. 6 and 7, Petitioner No. 11 is wife of Petitioner No. 10. Petitioner 12 and 14 are paternal aunt of Petitioner No. 1. Petitioner No. 13 is cousin sister of Petitioner No. 1. Petitioner No. 15 is the grand-mother of Petitioner No. 1 (mother of Petitioner No. 3). Petitioner No. 16 is another brother of Petitioner No. 2 and Petitioner No. 18 is the wife of Petitioner No. 16. Petitioner No. 17 is distant relative of Petitioner No.1.

6. Respondent No.2 – informant has contended that, after marriage she went to Padhegaon at her matrimonial house to cohabit with her husband. Her husband used to reside with his parents and brother. It was disclosed by Petitioners No. 1 to 3, 5 and 6 at the time of settlement of marriage, that Petitioner No. 1 is serving at Nasik as Manager in Ranbaxy Company. He has salary of Rs.55,000/- p. m. and he is having his own house at Bangalore. Respondent No. 2 later on revealed after marriage that Petitioner No. 1 is not having that service and house at Bangalore. She felt that she was cheated, still she continued to cohabit with Petitioner No. 1.

Respondent No. 2 is serving as Talathi at Shrirampur since 2011. Petitioners No. 5 to 18 used to visit their house occasionally. Petitioners No. 1 to 4 started demanding amount of Rs.10 lakhs for purchase of four wheeler and flat at Shrirampur. They used to say that since her father has retired, he has huge amount and therefore she should bring the amount. They were harassing her on that count. Petitioner had withdrawn amount from her salary account on many occasion. Her ornament was take by Petitioner No. 1 for mortgaging in order to purchase of house. But he had not purchased any house. He gave that amount to Petitioner No. 2 and 3. Petitioner No. 1 to 4 used to do such activities so that she should not go to her duty in time. She was driven out of the house, when she was pregnant. Her husband brought her with a promise to reside separately at Shrirampur. They resided there from June 2013 to October 2013. Petitioners No. 2 to 4 used to visit that place also and mentally harass her. Petitioner No. 17 used to instigate Petitioner No. 1 to harass respondent No. 2. Her daughter was born on 4-12-2013. Her father gave Rs.25,000/- for purchase of Indigo Car. She was forced to pay installments of the loan for car. Petitioners No. 2 and 3 told her, when she is at her father's house after delivery that she should not return to Padhegaon as she was not talking to neighbours. She was not taken back for cohabitation as she could not fulfill the demand of Rs.10 lakhs. She was assaulted on 2-12-2017 when she went to Padhegaon. She was driven out of the house. Therefore, she has lodged the report.

7. The Petitioners have contended that, Petitioner No. 1 and respondent No. 2 were residing in a rented house separately at Shrirampur. She has willfully deserted him in October 2013 and thereafter never resumed cohabitation. She was in habit of raising quarrels on trifle matters. Presently respondent No. 2 is under

suspension as FIR has been lodged against her for the offence under Prevention of Corruption Act. Petitioner No. 1 had lodged application for restitution of conjugal rights H. M. P. No. 132 of 2014 in December 2014. It was withdrawn due to technical reasons. She has filed Misc. Cri. Application No. 395 of 2017 under Domestic Violence Act. Thereafter, petitioner No. 1 filed H. M. P. No. 123 of 2017 for divorce. The FIR has been lodged only with an intention to harass them. There is inordinate delay in lodging FIR. The FIR does not disclose commission of any offence against Petitioners. FIR is based on false and concocted story. Details of the events have not been given and they have been kept as vague as possible. Therefore, they have prayed for quashment of the proceeding.

8. Heard learned Advocate Mr. N. V. Gaware appearing on behalf of Petitioners, learned Addl. Public Prosecutor Ms. V. S. Choudhary and learned Advocate Mr. S. S. Pande, appearing on behalf of respondent No.2. Respondent No. 2 has filed her affidavit-in-reply and has also filed certain documents on record. When it was pointed out to the learned advocate for the Petitioners that, this Court is not inclined to grant any relief to Petitioners No.1 to 3, he prayed for withdrawal of the application as against them.

9. The application was considered only for the allegations against the petitioners No. 4 to 18. No specific role has been attributed against them in respect of offence under Section 498-A of the Indian Penal Code. All the while allegations are made that they were instigating Petitioner No. 1. What way they used to instigate is not given. If at all there would have been a demand it would have been mainly by the husband and the father and mother-in-law. The perusal of the entire FIR would show that all of them had made the demand in chorus which is not possible when elders are there.

Nothing was demanded by Petitioners No. 4 to 18 for themselves as per the allegations in the FIR itself. Why these Petitioners will have common intention with Petitioner No. 1 to 3? Moreover many Petitioners are residing at different places. Their casual visits to the house of Petitioner No. 1 to 3 can not be presumed with an intention to commit crime of any nature. Even the cousin brother, his wife, grand-mother, cousin sister are also roped. It appears that respondent No.2 was the government servant. She felt that she has been cheated by husband and therefore, all relatives have been included. Such attitude is not proper. Unnecessary involvement of others cast doubt over the story. So, it appears that, as a routine all the relatives of the husband have been roped. Under such circumstance relief is required to be granted to the Petitioners No. 4 to 18 by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- 1) Application of applicants No. 4 to 18 is hereby allowed.
- 2) Relief is granted in terms of prayer clause "B" to the applicants No. 4 to 18 only.
- 3) Application to the extent of applicants No.1 to 3 is hereby disposed of as withdrawn.
- 4) Rule made absolute in the above terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.