

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 808 OF 2008

1. Nagorao @ Bapusaheb s/o Laxmanrao Deshmukh,
Age: 48 years, Occ: Agriculture,
R/at. Selu Tq. Basmatnagar, Dist. Hingoli.
2. Vijaya @ Saraswati w/o Nagorao Deshmukh,
Age: 44 yrs, Occ: Household,
R/at. Selu Tq. Basmatnagar, Dist. Hingoli.
3. Vyankatesh s/o Nagorao Deshmukh,
Age: 24 yrs, Occ: Student,
R/at. Naik Nagar, Nanded, Dist. Nanded.
4. Nilkanth s/o Nagorao Deshmukh,
Age: 25 yrs, Occ: Student,
R/o. P.D. Jain Homeopathic Medical College
Vakil Colony, Parbhani.
5. Sow. Maya w/o Gajanan Shivshete,
Age: 21 yrs, Occ: Household,
R/o. Chitali Putli,
Tq. & Dist. Jalna.

... **APPLICANTS**
(Ori. Accused)

VERSUS

1. The State of Maharashtra,
Through Police Station Officer
Kurunda Police Station, Kurunda
Tq. Basmatnagar, Dist. Hingoli.
2. Sow. Nandini w/o Vithalrao Wadgaonkar,
Age: 36 years, Occ: Nil,
R/o. Wazirabad, Nanded.

... **RESPONDENTS**
(Resp. No.2 is Ori. Complainant)

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Mr. S. S. Rathi, Advocate for Applicants.

Mr. M. M. Nerlikar, APP for Respondent No.1/State.

Mr. D. Y. Nandedkar, Advocate for Respondent No.2.

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CORAM : **T. V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 18th July, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR No.2 of 2008, registered with Kurunda Police Station, Taluka Basmatnagar, District Hingoli, for the offence punishable under Section 304 read with 34 of the Indian Penal Code.

2 Both the sides are heard.

3 The crime is registered on the basis of report given by Respondent No.2, Nandini. Deceased Kamlabai was mother of Nandini. Kamlabai was third wife of the father of Nandini. The father of Nandini died in November 2006. All the property of the father of Nandini came to Applicant No.1 Nagorao, who is son of deceased Laxmanrao from previous wife. Applicant No.2 is the wife of Applicant

No.1 and Applicant Nos.3 and 4 are the issues of Applicant Nos.1 and 2. Applicant No.5 is married daughter of Applicant Nos.1 and 2.

4 Allegations are made that the Applicants were not taking care of Kamlabai even when they were in possession of the property of Laxmanrao, husband of Kamlabai and so the proceeding was filed against the Applicants by Kamlabai, which include the proceeding filed under the provisions of Domestic Violence Act. It is contended that the learned Judicial Magistrate First Class had made order against Applicant No.1 Nagorao that he should keep Kamlabai in his house and take care of Kamlabai. It is contended that even when there was such order, Nagorao did not take care of Kamlabai and he used to give ill-treatment to Kamlabai. Allegations are made that Nagorao used to give beating to Kamlabai and he was not providing medicines and proper food to Kamlabai. Some incidents are mentioned to show that Nagorao was not maintaining Kamlabai. Kamlabai died in Government Hospital on 30th December, 2007 and FIR came to be filed on 1st August, 2008.

5 The learned counsel for Applicants took this Court through some reports prepared by concerned Police Station as per

the orders made by the learned Judicial Magistrate First Class in proceeding filed under the Domestic Violence Act. On the basis of those reports, it was submitted that Nagorao was taking proper care of Kamlabai.

6 This Court has carefully gone through the papers of investigation. The papers of investigation include the statements of public servants, who were taking steps as provided under the provisions of Domestic Violence Act. The statements of some persons of the village of Nagorao are also there. They show that Kamlabai was virtually kept in a temple and not in the house of Nagorao and Nagorao was not taking proper care of Kamlabai. As Kamlabai was collapsing, the Government Officers had shifted her to Government Hospital. There is some record to show that Kamlabai was suffering from diabetes and she had injury to her leg. Kamlabai died due to gangrene of left foot.

7 The material collected by Police show that there was nobody to take care of Kamlabai and even when there were specific directions of learned Judicial Magistrate First Class made in the proceeding filed under the Domestic Violence Act, no proper care was

taken of Kamlabai by Nagorao. As the property of Laxmanrao had come to Nagorao, it was his legal responsibility to take proper care of Kamlabai. In view of these circumstances, this Court expressed that this Court was not inclined to grant relief in favour of Nagorao. The learned counsel for Applicant No.1, Nagorao submitted, on instructions, that he wants to withdraw the proceeding of Applicant No.1, Nagorao.

8 The other Applicants are relatives of Nagorao and it can be said that there was no legal responsibility of other Applicants to take care of Kamlabai. Even the order could have been made only against Nagorao in view of the aforesaid circumstances. Though the other Applicants are close relatives of Nagorao, it can be said that it was their moral responsibility to take care of Kamlabai, but on that basis, they cannot be asked to face prosecution. In the result, this Court holds that reliefs needs to be given to Applicant Nos.2 to 5. In the result, the following order is passed:

ORDER

- I. The application of Applicant No.1 Nagorao is disposed of as withdrawn.

II. The application of other Applicants namely Vijaya, Vyankatesh, Nilkanth and Sow. Maya is allowed. Relief is granted to them in terms of prayer clauses (c).

III. Rule is made absolute in those terms.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]

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