

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 312 OF 2016

- 1) Shivaji s/o Shamrao Dhale,
Age 33 years, Occupation Agri.,
R/o Telangsi Tq. Jamkhed
Dist. Ahmednagar.
- 2) Shamrao s/o Manohar Dhale,
Age 58 years, Occupation Service,
Working as Police Constable,
Head Quarter, S. P. Office,
Ahmednagar – 414 001.
At Present Residing Gajanan Colony,
Nav Nagapur, M.I.D.C. Area,
Ahmednagar.
- 3) Sundara (Nilabai) Shamrao Dhale,
Age 46 years, Occupation Household,
R/o Gajanan Colony, Nav-Nagapur,
M.I.D.C. Area, Tq. Dist.Ahmednagar.
- 4) Tanaji Shamrao Dhale,
Age 30 years, Occupation Agri.,
R/o Telangsi Tq. Jamkhed
Dist. Ahmednagar.
- 5) Sonali w/o Tanaji Dhale,
Age 25 years, Occupation Household,
R/o Telangsi Tq. Patoda
Dist. Beed.

...Petitioners

Versus

- 1) The State of Maharashtra,
Through Police Inspector,
Police Station Patoda,
Tq. Patoda Dist. Beed.
- 2) Janabai w/o Shivaji Dhale,

Age 28 years, Occupation Household,
R/o At Present Sautada Tq. Patoda
Dist. Beed.

...Respondents

Mr. N. L. Jadhav, Advocate for petitioners.
Mr. M. M. Nerlikar, Addl. Public Prosecutor, for respondent
No.1/ State.
Mr. R. C. Bramhankar, Advocate (Appointed) for respondent
No.2

**WITH
CRIMINAL WRIT PETITION NO. 338 OF 2016**

1) Anjali d/o Dadarao Veer,
Age 15 years, Occupation Nil,
Minor U/g Asrabai Dadarao Veer,
Age 50 years, Occupation Agri.,
R/o Anpatwadi Tq. Patoda
Dist. Beed.

2) Asrabai Dadarao Veer,
Age 50 years, Occupation Agri.,
R/o Anpatwadi Tq. Patoda
Dist. Beed.

3) Dadasaheb Kondiba Veer,
Age 65 years, Occupation Agri.,
R/o as above.

...Petitioners

Versus

1) The State of Maharashtra,
Through Police Inspector,
Police Station Patoda
Tq. Patoda Dist. Beed.

2) Janabai w/o Shivaji Dhale,
Age 28 years, Occupation Household,
R/o At Present Sautada
Tq. Patoda Dist. Beed.

...Respondents

Mr. B. S. Shinde, Advocate for petitioners.

Mr. M. M. Nerlikar, Addl. Public Prosecutor, for respondent No.1/ State.

Mr. R. C. Bramhankar, Advocate (Appointed) for respondent No.2

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

DATE : 05-12-2018.

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

1. At the outset, learned Advocate for the petitioners seeks permission to withdraw the application to the extent of petitioners No.1 to 4 in Writ Petition No. 312 of 2016.

2. Permission granted. The petition stands disposed of as withdrawn to the extent of petitioners No.1 to 4 in Writ Petition No. 312 of 2016.

3. Rule. Rule made returnable forthwith. By consent, heard finally.

4. Both the petitions have been filed invoking the powers of this Court under Article 226 of Constitution of India and Section 482 of Code of Criminal Procedure for quashing FIR bearing No. 10 of 2016, dated 23-01-2016, registered with Patoda Police Station, Patoda Dist. Beed for the offence punishable under Section 498-A, 323, 504, 506 read with 34 of the Indian Penal Code.

5. The petitioners in Writ Petition No. 312 of 2016 are the

husband, father-in-law, mother-in-law, brother-in-law and sister-in-law (wife of petitioner No.4) of respondent No.2, whereas the petitioner No.1 in Writ Petition No. 338 of 2016 is second wife of husband of respondent No.2, mother and father of petitioner No.1 therein.

6. Respondent No.2 got married with Shivaji Dhale about eight years prior to 23-01-2016. She was treated properly for about six years after marriage. She could not conceive for about seven years. Thereafter, the husband and wife underwent medical test in which it was revealed that the wife i.e. respondent No.2 cannot conceive. Thereafter all the accused persons started harassing her on the count that she is unable to conceive. They were keeping her starved, and therefore, she went to reside at her parent's house at Sautada about a year ago prior to the FIR. The accused persons went to her house at Sautada on 10-01-2016 and abused and assaulted her on the ground that they will not allow her to cohabit, her husband will perform second marriage, if she brings amount of Rs.1 lakh as dowry, she would be allowed to cohabit. At that time her parents and relatives had tried to settle the dispute, however there was no positive reply. Therefore, she filed a complaint with Women Forum, Beed. No compromise took place and therefore she lodged the report.

7. The petitioners in Writ Petition No.312 of 2016 have contended that, petitioners No.2 and 3, the parents reside at Ahmednagar. In fact the first wife of petitioner No.2 had expired on 04-01-2000. Thereafter, he got married to petitioner No.3. They have two children. Petitioner No.2 is residing in MIDC Police Quarters and he is serving there in MIDC Police Station. Petitioners No.4 and 5 are also residing separately. They have their own separate ration card. No specific allegations have been made against petitioners No.2 to 5 and the petitioners in Writ Petition No. 338 of 2016. Petitioners in Criminal Writ Petition No. 338 of 2016 contend that, they are not related to the husband and therefore they cannot be booked under Section 498-A of Indian Penal code. They have been falsely implicated. All the petitioners have prayed for quashing the FIR.

8. Heard Mr. N. L. Jadhav, Advocate for petitioners in Writ Petition No. 312 of 2016, Mr. B. S. Shinde, Advocate for petitioners in Writ Petition No. 338 of 2016, Mr. M. M. Nerlikar, Addl. Public Prosecutor, for respondent No.1/ State in both the petitions, and Mr. R. C. Bramhankar, Advocate (Appointed) for respondent No.2 in both the petitions. All of them have argued in support of their respective contentions.

9. The perusal of the FIR would show that, out of eight years of married life according to the petitioner herself about seven years she

was treated properly. The real dispute appears to be the fact that, she was unable to conceive and that could be revealed only after she herself as well as husband under went medical test after seven years of marriage. After coming to know that she is unable to conceive, it is hard to believe that on that count thereafter the harassment would have been started. In fact she does not make any allegation that, prior to seven years of marriage, at any point of time, the husband and in-laws had harassed her on any count. She then says that, since one year prior to the FIR, she went to reside with her parents because of the harassment. As regards harassment is concerned she says that, she was assaulted and kept starved. Omnibus statements have been made and no specific role is attributed to any of the accused persons. In fact in FIR the petitioner No.1 in Criminal Writ Petition No.338 of 2016 has been described as sister-in-law. Exact relationship is not given, however the police papers show that she is stated to be the second wife of husband of the respondent No.2. Even according to the police papers it appears that, the petitioner No.1 in Criminal Writ Petition No.338 of 2016 is stated to be the juvenile. If it is so, and there are no specific allegations regarding second marriage, and Section 494 of Indian Penal Code has not been invoked, it cannot be said that the petitioners in Writ Petition No. 338 of 2016 are relatives of husband of respondent No.2, and therefore, ingredients of Section

498-A of Indian Penal Code are not at all attracted against them.

10. Perusal of the FIR would show that, the petitioners No.1 to 4 in Criminal Writ Petition No.312 of 2016 reside at Telangsi and MIDC Area and there are specific allegations against them. Therefore, when it was made clear to the learned advocate for the petitioners that, this Court is not inclined to grant any relief to those petitioners, he prayed for the withdrawal of the petition as against them. As regards the petitioner No.5 in Criminal Writ Petition No.312 of 2016 is concerned, she is the wife of the brother-in-law of respondent No.2. She is residing at Telangsi but no specific role is attributed to her. Even if for the sake of arguments it is accepted that, her name has been taken, it is to be seen that, she is also the daughter-in-law of the house and why she would harass respondent No.2 on the count that she is not able to conceive. Therefore, allegations against petitioner No.5 are far stretched, therefore, the relief is required to be granted to her. Hence, following order.

ORDER

- 1) Petition of petitioners No.1 to 4 in Writ Petition No.312 of 2016 is disposed of as withdrawn.
- 2) Petition of petitioner No.5 in Writ Petition No. 312 of 2016 is allowed.
- 3) Relief is granted to petitioner No.5 in Writ Petition No. 312 of 2016 in terms of prayer Clause 'B'.

- 4) Writ Petition No. 338 of 2016 is allowed.
- 5) Relief is granted to the petitioners in Writ Petition No. 338 of 2016 in terms of prayer Clause 'B'.
- 6) Rule is made absolute in those terms.
- 7) In both the petitions fees of the appointed counsel is quantified @ of Rs.5,000/- (five thousand) which is to be paid through the High Court Legal Services Authority.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.