

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

CRIMINAL WRIT PETITION NO. 408 OF 2018

1. Subhash Vitthal Kedar ..(Accused no.2)
Age: 40 years, Occu.: Service as Clerk,
R/o Bhagwan Nagar, Nagar Road,
Pathardi, Tq. Pathardi,
Dist. Ahmednagar.
2. Vastalabai Vitthal Kedar ..(Accused no.3)
Age: 61 years, Occu.: Household,
R/o Village Hatral, Saidapur,
Tq. Pathardi, Dist. Ahmednagar. ..PETITIONERS

VERSUS

1. State of Maharashtra
Through Police Station, Pathardi,
Tq. Pathardi, Dist. Ahmednagar.
2. Sarika Sanjay Kedar ..(Informant)
Age: 31 years, Occu.: Household,
R/o At Present Kuttarwadi,
Post Chinchpur (Ijde), Tq. Pathardi,
Dist. Ahmednagar. ..RESPONDENTS

Mr. Joydeep Chatterji, Advocate h/f Mr. S.R. Andhale,
Advocate for petitioners.
Mr. S.B. Joshi, A.P.P. for respondent no.1 – State.
Mr. P.R. Nangare, Advocate for respondent no.2.

**CORAM : SANGITRAO S. PATIL, J.
DATE : 24th JULY, 2018**

ORAL JUDGMENT :-

Rule, made returnable forthwith. Heard finally
with the consent of both the sides.

2. The petitioners, who are the brother-in-law and mother-in-law respectively of the informant – Sarika Sanjay Kedar, have prayed for their discharge of the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

3. The informant – Sarika and the son of petitioner no.2 viz:- Sanjay got married on 16th May, 2005. It is stated that the informant – Sarika was treated properly at her matrimonial house for about three years of marriage. Thereafter her husband and in-laws started ill-treating her on the say that she could not conceive child and further for compelling her to bring cash amount from her maternal home. Ultimately, on 25th May, 2016 at about 07.00 a.m. the husband of the informant and others beat the informant on the same grounds and drove her out of her matrimonial house. She complained against her husband and the present petitioners to the Women Grievance Redressal Cell, Pathardi, however, no response was given by the present petitioners and her husband. Ultimately, she lodged F.I.R. on 22nd June, 2016, on the basis of which the above mentioned crime came to be registered.

4. The learned Counsel for the petitioners submits that these petitioners have been falsely implicated in this case just to harass them. He pointed out to the fact that the husband of the informant is serving as a Primary Teacher and residing at Shendur Malai, Tq. Mahad, Dist. Raigadh. The informant deserted him on 01st April, 2014 and thereafter she did not resume cohabitation despite several attempts made by Sanjay. Ultimately, he issued notice on 04th June, 2016 calling upon the informant to divorce him. After receiving that notice, the informant sent reply dated 09th June, 2016 and made a number of allegations against her husband. She further made vague and general allegations against the present petitioners and her husband about having ill-treated her. Thereafter, on 22nd June, 2016 she lodged F.I.R. According to the learned Counsel for the petitioners, the said F.I.R. is nothing but an outcome of afterthought. He submits that petitioner no.1 is serving at Zilla Parishad, Ahmednagar and he resides at Pathardi with his family since 2011 onwards. Petitioner no.2 is an aged woman. She has lost sight as one of her eye is defective. False allegations have been made against the petitioners. According to him,

in the circumstances of the case, prosecuting these petitioners for the above mentioned offences would be nothing but an abuse of process of law. He, therefore, prays that the petition may be allowed and the petitioners may be discharged of the above mentioned offences.

5. The learned Counsel for respondent no.2 strongly opposed the petition. He submits that there are specific allegations made against these petitioners. The petitioners used to ill-treat the informant on the say that she was not able to conceive child and further with a view to compel her to bring money from her maternal home. He submits that the informant complained against her husband and the petitioners before the Women Grievance Redressal Cell. He submits that from the contents of the F.I.R. and the statements of the witnesses, a strong prima facie case is made out against the petitioners. This is not a stage to consider whether the trial would end into conviction or acquittal. He submits that the learned Trial Judge has rightly rejected the application for discharge. The learned Additional Sessions Judge also has rightly confirmed the order passed by the learned

Magistrate. He, therefore, prays that the Criminal Writ Petition may be dismissed.

6. Though it is alleged by the informant that she was beaten and driven out of her matrimonial house on 25th May, 2016, it is not explained as to why she did not lodge report immediately after her departure from her matrimonial house. The husband of the informant notice on 04th June, 2016 stating therein as to how the informant was not interested in cohabiting with him and how she left his house on 01st April, 2014. She replied that notice on 09th June, 2016 and made allegations against him. It is stated by the learned Counsel for respondent no.2 that on 10th June, 2016 she approached to the Women Grievance Redressal Cell to complain against her husband and the present petitioners. Thereafter also she took about 16 days for lodging F.I.R. This unexplained delay, prima facie, would have adverse effect on the case of the informant. Had the present petitioners really subjected her to cruelty on 25th May, 2016, as claimed by the informant, she would not have awaited till 22nd June, 2016 for lodging report against them. In the notice dated 04th June, 2016, the husband of

the informant has specifically mentioned that the informant left his house on 01st April, 2014 without informing him and since then she is residing at her maternal home. If this was the position, a strong doubt is created about the alleged incident dated 25th May, 2016. It seems that only because the husband of the informant sent notice to her on 04th June, 2016, that she made complaints against him and the present petitioners.

7. The learned Counsel for the petitioners pointed out to the cross-examination of the informant recorded in Criminal Miscellaneous Application no. 126 of 2016 on 12th March, 2018, wherein she admitted that petitioner no.1 is residing at Pathardi alongwith his family since the year 2011 onwards. As such, there was no reason and occasion for petitioner no.1 to subject the informant to cruelty on any ground. So far as petitioner no.2 is concerned, she is now aged about 62 years.

8. In the above mentioned facts and circumstances of the case, continuation of the prosecution against the present petitioners for the above mentioned offences would

be nothing but an abuse of process of law. There are no sufficient grounds to proceed against them for the above mentioned offences. The petitioners cannot be subjected to face ordeal of trial unnecessarily. I, therefore, think fit to discharge the petitioners of the above mentioned offences.

9. The learned Magistrate and the learned Additional Sessions Judge did not appreciate the facts of the case properly and wrongly referred to discharge the petitioners of the above mentioned offences. For the reasons stated above, the impugned judgments and orders are liable to be quashed and set aside. In the result, I pass the following order :-

ORDER

(i) Criminal Writ Petition is allowed.

(ii) The impugned orders are quashed and set aside.

(iii) The petitioners are discharged of the offences punishable under Sections 498-A, 323, 504 and 506 of the Indian Penal Code.

(iv) Their bail bonds are cancelled. They are set at liberty.

(v) Rule is made absolute accordingly.

(vi) Criminal Writ Petition is disposed of.

[SANGITRAO S. PATIL]
JUDGE

SSD