

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 574 OF 2014

Ramdas s/o Baliram Bobde,
Age 65 years, occupation Nil,
R/o Mahatma Gandhi Zopadpatti,
Behind Wooden Machine, Kalamb
Tq. Kalamb Dist. Osmanabad. ...Petitioner

Versus

- 1) The State of Maharashtra.
- 2) Gita @ Chandrakala w/o Govind Paul,
Age 22 years, Occupation Household,
R/o. C/o. Babruwan Sitaram Wankalas,
Government Auyrvedik Colony,
Tuljapur Road, Osmanabad. ...Respondents

Mr. Balaji S. Shinde, Advocate for petitioners.
Mr. S. J. Salgare, Addl. Public Prosecutor, for respondent
No.1 / State.
Mr. M. B. Kolpe, Advocate for respondent No.2.

CORAM : T. V. NALAWADE &

SMT.VIBHA KANKANWADI. JJ.

DATE : 25-10-2018.

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

1. Present petition has been filed by original accused person under Article 226 of Constitution of India and by invoking 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. M-27 of 2014, registered with Yermala Police Station, Tal. Kalamb, Dist. Osmanabad, for the offences punishable under Section 498-A, 315, 323, 506 read with 34 of the Indian Penal Code.

2. Respondent No.2 got married to one Govind Gopinath Paul on 24-05-2011 at Sapnai Tq. Kalamb, Dist. Osmanabad. Petitioner is the maternal uncle of Govind.

3. Respondent No.2 – informant has contended that, her father had given dowry of Rs.35,000/-, household articles and clothes at the time of marriage. After marriage she went to her matrimonial house to cohabit with her husband. She was treated properly by her husband and in-laws for about one month. Thereafter, they started assaulting her on trifle grounds. They were telling her that they will not allow her to cohabit, as husband want to perform second marriage. Her husband used to beat her often, on the instigation of others. He had not kept physical relations with her on the say of other accused persons. Thereafter, they started asking her to bring amount of Rs.2 lakhs for the completion of construction of their house. She was beaten in order to fulfilling the said demand. Her father collected amount of Rs.50,000/- from his savings and Rs.1,50,000/- as loan from his brother Babruvahan and the said amount was given to accused in June 2011. Thereafter again the accused started beating her by saying that her husband want to

perform second marriage. There was demand of amount of Rs.1,00,000/- for purchasing Tata Sumo. Informant could not fulfill the said demand. Her father had tried to advice accused persons, but he was driven out after insulting. Accused persons tried to commit murder of informant by kerosene on her person on 21-08-2012. There was compromise in Women Cell between her and accused persons on 15-09-2012 and she was taken back for cohabitation. Due to the pressure from accused, she had taken her complaint back. However, again the accused persons started harassing her. She was driven out of the house, just two days prior to Diwali in 2012, by taking all her gold ornaments. Her husband had given her notice asking her to resume cohabitation, which she has replied. She had thereafter lodged complaint under Domestic Violence Act. Her husband has filed petition for restitution of conjugal rights. There was compromise in that petition and she was again taken back for cohabitation. She was treated properly only for 15 days. Her husband and she herself started residing separately near in-laws. She was pregnant at that time, but her husband and others raised suspicion over paternity of the child. She was told to bring amount of Rs.1,00,000/-, as a condition of cohabitation. She was threatened that her pregnancy would be terminated if demand is not fulfilled. Her husband had thrown iron plate on her stomach with an intention that her child should die on 14-03-2014. Thereafter

her sonography was done at two places, but she was not informed anything about the result. She was then driven out of the house. Therefore she lodged private complaint. It was sent for investigation under Section 156 (3) of Code of Criminal Procedure, by the learned Judicial Magistrate First Class, Kalamb. Thereafter, FIR vide Cr. No. M-27-2014 came to be registered.

4. The petitioner has contended that, except the fact that he is related to the husband of respondent No. 2, there is no involvement of him in the matter. He is residing separately from husband of respondent No. 2 and his parents, brother. He has been unnecessarily roped in the matter. Therefore, they have prayed for quashment of the proceeding.

5. Heard learned Advocate Mr. Balaji S. Shinde appearing on behalf of petitioners, learned Addl. Public Prosecutor Mr. S. J. Salgare and learned Advocate Mr. M. B. Kolpe, appearing on behalf of respondent No.2. Respondent No. 2 has filed affidavit-in-reply objecting the petition. She has reiterated the same allegations which she has made in FIR, hence those contents are not reproduced here. All the parties have made submissions in support to their respective contentions.

6. Perusal of entire FIR would show that no specific role has been attributed against them in respect of offence under Section 498-A of

the Indian Penal Code. A picture has been tried to be painted that maternal uncle is also residing with husband of respondent No. 2. If at all it is a true fact, then she ought to have given reason as to why he was residing with other accused persons. Her own complaint would show that accused No. 1 to 3 and 5 are residing at Sapnai, Tal. Kalamb; whereas present petitioner is residing at Kalamb proper. Therefore, their residence is separate. At the time of earlier compromise, her statement has been recorded. She has not made any allegations against present petitioner. She has made allegations about demand of money by accused persons. 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 including present petitioner had made the demand in chorus which is not possible. Nothing was demanded by petitioner for him as per the allegations in the FIR itself. So, it appears that, as a routine, the relative of the husband have been roped. It would be futile exercise to ask the petitioner to face the trial, with such material and allegations. Under such circumstance relief is required to be granted to the petitioner by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure as well as powers of this Court under Article No. 226 of Constitution of India. Hence, following order.

ORDER

- 1) Petition is hereby allowed.
- 2) Relief is granted in terms of prayer clause "B" to the petitioner only.
- 3) Rule made absolute in the above terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.