

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1584 OF 2018

Muktar s/o Ahemad Shaha,
Age 25 years, Occupation Unemployed,
R/o Harsul Aurangabad Tq. Aurangabad
Dist. Aurangabad.

...Applicant

Versus

1) The State of Maharashtra,
Through The Police Station Officer,
Police Station Pishor Tq. Kannad
Dist. Aurangabad.

2) Sumaya w/o Nisar Shaha,
Age 21 years, Occupation Household,
R/o 503 Shri. Datta C.H.S. Ltd.
Anand Nagar, Oshivara, Jogeshwari
(West), Oshivara, Mumbai 400 102.

...Respondents

Mr. A. R. Devkate, Advocate for applicant.

Mr. S. J. Salgare, Addl. Public Prosecutor, for respondent
No.1 / State.

Mr. Shaikh Shafique A. R. Ahmad, Advocate for respondent
No.2.

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

DATE : 11-12-2018.

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

1. Rule. Rule made returnable forthwith. By consent, heard both
sides for final disposal.

2. Present application has been filed by original accused persons

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. 101 of 2018, registered with Pishore Police Station, Kannad, Dist. Aurangabad for the offences punishable under Section 498-A, 323, 504, 506 read with 34 of the Indian Penal Code.

3. Respondent No.2 got married to one Nisar Shah Ahmed Shah on 18-05-2016. Applicant is the brother of husband of respondent No.2.

4. Respondent No.2 – informant has contended that, she has a son aged 10 months from her husband. Her husband is employed in Social-Welfare department at Beed and therefore, since marriage she is residing at her matrimonial home at Bhildari with parents and brothers of her husband. She was treated properly for about two months. Thereafter she realized that her husband is intentionally not allowed to come to home. She asked about the same to his parents. They told her that she is unable to prepare food properly. They used to abuse and assault her. Thereafter, when her husband was transferred to Aurangabad, she told him that he should take her along with him. However, he refused and asked her to stay with his parents. He had also abused her. She disclosed the said fact to her parents on phone. Her parents gave her advice to wait. Her younger brother-in-law Mukhtar was getting job as Talathi. Therefore, her

parents-in-law, husband, sister-in-law and her husband asked her to demand amount of Rs.5 lakhs from her parents. Thereafter, she was ill due to scorpion bite. She was not given proper medical aid. Her mother and brother had come to see her. They took her with them and gave medical aid. She was pregnant at that time. She was not given proper food by accused persons. She delivered male child at her parental house. Her husband started saying that the said child is not begotten from him. He had abused her at that time. Her parents-in-law told that if she intends to cohabit, then she should bring amount of Rs.5 lakhs. All the accused persons have harassed her mentally and physically. She had tried to resolve the dispute through Women Cell but was not successful. Therefore, she has lodged the report.

5. The applicant has contended that, he is not residing in Bhilgari with his parents since last 5 years. He was residing at Aurangabad in connection with his studies. He has completed degree in Law course and he was preparing himself for competitive exams. He is selected for the post of Clerk-cum-typist in the exams conducted by Maharashtra State Public Service Commission. The results were declared in April 2018. He is waiting for posting. He was not residing in the matrimonial home of respondent No.2, when she came to reside as per FIR. He has been added just to harass. No specific role is attributed to him. Therefore, they have prayed for

quashment of the proceeding.

6. Heard learned Advocate Mr. A. R. Devkate appearing on behalf of applicants, learned Addl. Public Prosecutor Mr. S. J. Salgare and learned Advocate Mr. Shaikh Shafique A. R. Ahmad, appearing on behalf of respondent No.2.

7. Perusal of FIR would show that no specific role has been attributed against the applicant in respect of offence under Section 498-A of the Indian Penal Code. Main allegations are made against husband and parents-in-law. Whatever allegations have been made it is stated to be done collectively. Only omnibus statements to that effect have been made. If at all there would have been a demand it would have been mainly by the husband, father-in-law and mother-in-law. Applicant is the younger brother of husband of respondent No.2. The perusal of the entire FIR would show that all of them had made the demand in chorus which is not possible when there are elders in the family. Applicant has produced documents on record to show that he is not ordinarily residing with his parents; as he is pursuing studies and competitive exam. So, it appears that, as a routine the brother of the husband has also been roped. It would be a futile exercise to ask applicant to face the trial with such kind of allegations. Under such circumstance relief is required to be granted to the applicant by invoking the inherent powers of this Court under

Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

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

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.