

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

CRIMINAL APPLICATION NO. 4273 OF 2014

- 1) Asgar Ali Abbas Ali Saiyad,
Age 55, Occ-Service,
R/o- Naktion-1, Sanjay Bag Colony
Nagpur, Taluka and District Nagpur.
- 2) Asharafun Bee w/o Sameer Shaikh,
(Deliberately referred in FIR as,
Asharafun Bee d/o Asgar Ali Saiyad,
Age 25, Occ- Household,
R/o - Khalwadi Mohalla, Sendwa,
Taluka and District Sendwa (Madhya Pradesh).
- 3) Aasma Bee d/o Asgar Ali Saiyad,
Age 22, Occ- Education,
- 4) Anwar Ali s/o Asgar Ali Saiyad,
Age 20, Occ- Education,
Both r/o- Naktion-1, Sanjay Bag Colony
Nagpur, Taluka and District Nagpur.
- 5) Afsar Bee w/o Sabuddin Shaikh,
Age 35, Occ- Household,
R/o- Pili Nadi Mohalla, Nagpur,
Taluka and District Nagpur.

... APPLICANTS

(Arrayed as Accused no.1 to 5)

VERSUS

- 1) State of Maharashtra.
- 2) Tahira Parvin w/o Asgar Ali,
Age 40, Occ- Private,
R/o- Beldar Mohalla, Dharangaon,
Taluka and District Jalgaon.

.. RESPONDENT

(Original Complainant)

...
Mr. Naseem R. Shaikh, Advocate for Applicants
Mr. S. J. Salgare, APP for Respondent No.1 / State.
Mr. S. S. Shaikh, Advocate for Respondent No.2.
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CORAM : **T. V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 23rd 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 proceeding of R.C.C. No.38 of 2012, pending before the Judicial Magistrate First Class, Dharangaon, District Jalgaon. The case is filed in C.R. No.52 of 2012, which is registered in Dharangaon Police Station, District Jalgaon, for the offences punishable under Sections 498-A, 406, 448, 323, 504 and 506 read with 34 of the Indian Penal Code.

2 Both the sides are heard.

3 The report is given by Respondent No.2, who is the wife of Applicant No.1 Asgar Ali. As per the record, the proceeding of Applicant No.1 is not pressed and his proceeding needs to be

disposed of as withdrawn. Applicant No.2 is the married daughter of Applicant No.1 and she is resident of Madhya Pradesh. Applicant No.3 is unmarried daughter of Applicant No.1 and she is receiving education. Applicant No.4 is unmarried son of Applicant No.1 and he is also studying. Applicant Nos.2 to 4 are the issues from first wife of Applicant No.1. Applicant No.5 is the married sister of Applicant No.1. Thus, Applicant No.2 and Applicant No.5 are living separate from Applicant No.1. It is the third marriage of Applicant No.1 with Respondent No.2. She had filed maintenance proceeding against Applicant No.1 in the year 2011. She filed private complaint against the present Applicants and others for the aforesaid offences on 16th February, 2012 and order if investigation was made under Section 156 (3) of the Code of Criminal Procedure. The submissions made show that after making investigation, Police filed charge-sheet for the aforesaid offences.

4 It is the case of Respondent No.2, wife of Applicant No.1 that her marriage took place on 6th April, 2009 at Jalgaon. Applicant No.1 had married two wives prior to this marriage. He has no issue from the second wife.

5 Allegations are made that after few days of the marriage, Applicant No.1 started giving ill-treatment to Respondent No.2 on the instigation of the issues from first wife. Allegations are made that Applicant no.1 was not allowing Respondent No.2 to leave the house out of suspicion. Allegations are made that there was cohabitation of about one year and during that cohabitation, on the instigation of other Accused, Applicant No.1 gave ill-treatment to her, asked her to bring valuable articles from her parents and he started asking her to take *Khula*. Allegations are made that ultimately in March 2010, she was driven out of the house and since then she is living with her parents.

6 It is the contention of Respondent No.2 that when she filed proceeding for maintenance and notice was sent prior to that proceeding to Applicant No.1, the Applicants came to the house of her parents to Dharangaon, they picked up quarrel, gave threats and harassed her by asking her to give *Khula*. It is her contention that on the same day, she approached Police, but Police did not take steps and so she was required to file private complaint.

7 The submissions made and record show that main allegations are against Applicant No.1, husband. He has not paid a single pie of maintenance to the first informant. However, the circumstance that on the day of complaint, which was filed in the year 2012, Applicant No.2 was married and Applicant No.5 was also married and they were living separate, cannot be ignored. The circumstance that Applicant Nos.3 and 4 were receiving education also cannot be ignored. Allegations are made that Applicant No.1 is misusing his post, in police department as PSI and due to that she is not able to get any relief. Allegations as against the other Applicants are vague and it can be said that incident of Dharangaon is added to see that Dharangaon Court gets jurisdiction. Possibility that Applicant No.1 was harassing and threatening is there, but the allegations made against other Applicants are very vague. It is not believable that when Applicant No.1 is working as PSI, other Applicants were required to take part in such incident. This Court holds that the relief needs to be granted to Applicant Nos.2 to 5. In the result, the following order is passed:

ORDER

- I. The application of Applicant No.1 Asgar Ali is

already disposed of. The case against him is to be tried expeditiously by the Trial Court.

II. The application of Applicant Nos.2 to 5 is allowed. Relief is granted in terms of prayer clause (b) and to their extent only.

III. Rule is made absolute in those terms.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]

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