

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2157 OF 2018

- 1) Vilasrao s/o Deorao Ambade,
Age 64 years, Occupation Agri.,
R/o Rastapur Tq. Niwasa
Dist. Ahmednagar.
- 2) Kamal w/o Vilasrao Ambade,
Age 60 years, Occupation Household,
R/o Rastapur Tq. Niwasa
Dist. Ahmednagar.
- 3) Pradeep s/o Vilasrao Ambade,
Age 38 years, Occuaption Advocate,
R/o Plot No.2, Flat No.4,
Moreshwar Housing Society,
Garkheda Parisar, Sutgirni Chowk,
Aurangabad.
- 4) Manisha w/o Shivaji Gawli,
Age 40 years, occuaption Service,
R/o 1st Floor, Mahalaxmi Building
Katraj Kondwa Road, Near
Shatrujay Mandir, Kondwa, Pune.
- 5) Shivaji s/o Vishwanath Gawli,
Age 45 years, Occuaption Service,
R/o 1st Floor, Mahalaxmi Building
Katraj Kondwa Road, Near Shatrujay
Mandir, Kondwa, Pune.

...Applicants

Versus

- 1) The State of Maharashtra,
Through Police Station Loni,
Tq. Rahata Dist. Ahmednagar.
- 2) Shraddha w/o Prasad Ambade,
Age 29 years, occupation Household

C/o Tarachand V. Mhaske,
Vitthal Prabha Society, Loni (Bk.)
Tq. Rahata Dist. Ahmednagar.

...Respondents

Mr. Pathan Hamzakhan I., Advocate for applicants.
Mr. R. V. Dasalkar, Addl. Public Prosecutor, for respondent
No.1 / State.
Mr. M. V. Bhamre, Advocate (Appointed) for respondent No.2.

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

DATE : 12-12-2018.

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

1) At the outset the learned advocate appearing for the applicants prayed for the withdrawal of application as against applicant No.1 Vilasrao Deorao Ambade and applicant No.2 Kamal Vilasrao Ambade, after pointing out that, this Court is not inclined to grant any kind of relief. Permission is granted. Application of applicant No.1 Vilasrao and applicant No.2 Kamal is disposed of as withdrawn.

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

3) Present application has been filed invoking the inherent powers of this Court under Section 482 of Code of Criminal Procedure to quash the First Information Report (FIR) in Crime No. 117 of 2018, dated 24-05-2018, registered with Loni Police Station Tq. Rahata Dist. Ahmednagar, and the proceedings in Regular Criminal Case No.

242 of 2018, pending before Joint Judicial Magistrate First Class, Rahata for the offences punishable under Section 323, 418, 420, 447, 448, 452, 498-A, 504, 506, 327 read with 34 of the Indian Penal Code.

4) Applicant No.1 is the father-in-law and applicant No.2 is the mother-in-law of respondent No.2, whose application has been withdrawn. Applicant No.3 is the brother-in-law and applicant No.4 is the sister-in-law of respondent No.2. Applicant No.5 is the husband of applicant No.4.

5) It is contended by respondent No.2 that, she got married to Prasad Vilasrao Ambade at Shirdi on 27-04-2014. Prior to the marriage, the engagement ceremony was also performed in a grand way. The parents of respondent No.2 had engaged air conditioned hall and celebrated the marriage ceremony of respondent No.2 in a luxurious way. Her parents had given gold ornaments weighing 41 tolas as per the demand of the in-laws. Her parents had also given the household articles and furniture. Her father had spent around Rs.50 lakhs for the marriage. They were given an impression by the applicants that the bridegroom has around 65 to 70 acres of irrigated land to his share, he has done his Master of Architects and he has service giving him Rs.50 lakhs per annum. Respondent No.2 has done her Bachelor of Pharmacy and Master of Business

Administration. After marriage she went to reside at Newasa at her matrimonial home, and thereafter immediately she went along with her husband to Pune at the place where he was serving. Within eight to ten days of marriage she could realize that, her husband was not physically fit to have sexual intercourse. He used to come late and used to pretend that, he is tired. Later on she came to know that, her husband is suffering from severe kind of diabetes. It was told by her husband and in-laws that, husband would recover after taking medicines. She was residing with her husband in a flat. After four to five months of marriage, her husband started demanding amount for booking a flat. She did not take the fact seriously, however thereafter all the applicants conspired and came to Pune and started demanding money to her so that she should bring it from her parents. They started harassing her mentally and physically. She was knowing a fact that, her father had obtained loan from relatives for her marriage, and therefore, she did not convey the demands to her parents. She was kept starved, assaulted, asked to do all kind of work in the house, abused, insulted in order to fulfill the illegal demand for bringing amount for booking a flat. When the ill-treatment got intensified she told the said fact to her parents. At that time her father gave a phone call to applicants No.1 and 3. All the applicants went to her parents house. She and her husband also went to her father's place. They had a

meeting there. All the applicants told that, unless the amount is given, respondent No.2 will not be allowed to cohabit. Because of the pressure from the applicants, her parents gave amount of Rs.12 lakhs by withdrawing it from their account on 06th and 07th of October 2015. In presence of all the applicants, her parents gave that amount in the hands of her husband. It was told by her father that, he will not be able to give more amount and the applicants should stop ill-treating respondent No.2. However, thereafter all the applicants started ill-treating her on account that why her father has not given amount of Rs.20 Lakhs. Respondent No.2 has further contended in the FIR that, her husband is not physically fit to have sexual intercourse, and therefore, she went through all the papers. At that time her husband cleared that, he is unable to make her conceive and therefore he handed over all the medical papers to her parents. It was realized that, he was suffering from severe diabetes since prior to marriage but that fact was not disclosed by the applicants to the respondent No.2 and her parents, thereby applicants have cheated her.

6) It is further contended that, she was driven out of the house on 18-10-2017, Wednesday by her husband by saying that, she should not come to Rastapur for Diwali unless she brings amount of Rs.50 lakhs for the furniture and interior of the flat. After Diwali all the applicants and her husband came to Loni on 22-10-2017 and

told that they will be getting possession of the new flat in near future and for that purpose amount of Rs.50 lakhs is needed for interior and furniture. It was stated that, that amount has to be given by her parents and they have come to collect it. Her father told that, he has already spent much amount on luxurious wedding and amount of Rs.12 lakhs is given, it will not be possible for him to give more amount of Rs.50 lakhs. At that time again all the applicants had abused and assaulted her father. Her husband had assaulted her. Therefore, a written complaint in respect of those events was filed by respondent No.2 with police which has been registered as the FIR bearing Crime No. 117 of 2018.

7) The applicants have contended that, they have been falsely implicated. In fact the husband of the respondent No.2 had booked a flat in Pune and decided to reside permanently at Pune. He had also prepared the document called agreement of sale in the name of himself as well as his wife. He had intention to obtain loan from bank for purchasing the said flat. Accordingly he had paid amount of Rs.8,46,033/- towards the booking amount on 25-05-2015 and later on further amounts have been paid by cheque and also applied for loan from State Bank of India, Pune for Rs.42,50,000/-. Copy of agreement of sale dated 15-06-2015 is produced on record.

8) It is further contended that, the respondent No.2 is raising

suspicion of disease of diabetes in order to raise quarrel with him. It was explained by her husband that the diabetes has been detected recently i.e. after marriage and he was not suffering from it prior to marriage. Her husband had told her that, they would celebrate Diwali at Rastapur but she refused to accompany him and she told that she will celebrate the Diwali with her parents at Loni. She had left the house on her own accord and thereafter she has not turned for cohabitation. He also came to know that, she has taken away all the articles from the flat where she is residing with her parents. She has not informed about the same to her husband. When her husband tried to contact her, she has not received the phone calls. The husband has also tried to establish contact with her through her relatives but she has refused to join his company. When husband had received call from Dilasa Cell, Police Superintendent Ahmednagar on 27-04-2018 to remain present on the next day, accordingly he and applicant No.3 had visited the Dilasa Cell Office on 28-04-2018. In the meeting, the father and brother of respondent No.2 were present. They rushed towards her husband and applicant No.3 to assault and abuse them. The incident has been recorded in CCTV camera. A complaint was also filed by the husband with Superintendent of Police. It is stated that, no role has been attributed to the present applicants and since the husband and wife were residing separately, they are not involved in any of the

crime. The ingredients of the offences have not been attracted at all. Applicant No.3 is a practicing lawyer in High Court, Aurangabad Bench. The sister-in-law and her husband are serving at Pune. The parents are also residing separately. Therefore they have prayed for quashment of the FIR as well as the proceedings in Regular Criminal Case No. 424 of 2018.

9) Heard Mr. Pathan Hamzakhan I., learned Advocate for applicants, Mr. R. V. Dasalkar, Addl. Public Prosecutor, for respondent No.1 / State, and Mr. M. V. Bhamre, Advocate (Appointed) for respondent No.2. Perused the documents.

10) The copy of the charge-sheet has been made available. Much stress has been given by the learned advocate for the respondent No.2 on the blood reports of the laboratory. However, at this stage we may not go into that because all the reports are pertaining to subsequent period of marriage. The charge-sheet does not include any medical report of the husband showing that since prior to the marriage the husband is suffering from any disease or diabetes.

11) As aforesaid the application is considered only in respect of applicants No.3, 4 and 5. Though the parents are stated to be residing separately from the husband of respondent No.2 and respondent No.2, yet being parents they might have been involved in the talks of settlement of marriage and later on also when the

differences arose between the husband and wife.

12) Applicant No.3 is the brother-in-law who is practicing advocate at Aurangabad. Applicants No.4 and 5 though residing at Pune, they are residing separately. They both are serving. Applicant No.4 being the married daughter, would be taking care of her family in her matrimonial home. If we perused the FIR as well as the statements of the witnesses, the applicants No.3, 4 and 5 have been involved collectively with husband and his parents. No specific role is attributed to them. In her affidavit-in-reply also the same facts have been repeated by the respondent No.2. Therefore, taking into consideration the evidence that has been gathered against the applicants No.3 to 5, it can be said that, no offence is made out against them, they are involved only on the ground that they are the relatives of the husband. It would be a futile exercise to ask applicants No.3 to 5 to face the trial. Case is made out for exercising inherent powers under Section 482 of Code of Criminal Procedure to grant relief to applicants No.3 to 5. Hence, following order.

ORDER

- 1) Application of applicants No.1 Vilasrao and No.2 Kamal is disposed of as withdrawn.
- 2) Application of applicants No.3, 4 and 5 is allowed.

- 3) Relief is granted to applicants No.3, 4 and 5 in terms of prayer Clause 'B' and 'C-1'.
- 4) The appointed counsel is to be paid Rs.3,000/- (three thousand) through High Court Legal Services Authority, though the counsel appointed by the first informant was also allowed to argue.
- 5) Rule made absolute in those terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.