

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2172 OF 2018

- 1) Arun Shantaram Kalal,
Age 45 years, Occupation Nil,
- 2) Sushila Shantaram Kalal,
Age 74 years, Occupation Nil,
- 3) Shantaram Chinghoo Kalal,
Age 78 years, Occupation Agriculture,
R/o Gonchi Taronda, Bakri Mohalla,
New Yard Ward Number -10,
Near Khedapati Mata Mandir,
Gonchi Taronda, Jujharpur,
Hoshangabad, Madhya Pradesh
– 461 111.
- 4) Mangala Rajendra Kalal,
Age 42 years, Occupation Housewife,
- 5) Rajendra Murar Kalal,
Age 52 years, Occupation Agriculture,
- 6) Manish Raju Kalal,
Age 20 years, Occupation Student.

No.1, 2, 4, 5 and 6 residing at
186-9019, Market Road, Ambika Nagar,
Shirpur Tq. Shirpur Dist. Dhule.

...Applicants

Versus

- 1) The State of Maharashtra.
- 2) Dipali Arun Kalal,
Age 33 years, Occupation Household,
R/o Shriram Nagar – 2, Jijamata
College Road, Plot No. 151,
Nandurbar Tq. Dist. Nandurbar.

...Respondents

Mr. P. S. Paranjape, Advocate for applicants.
Mr. R. V. Dasalkar, Addl. Public Prosecutor, for respondent
No.1 / State.
Mr. M. S. Deshpande, Advocate (Appointed) for respondent
No.2 .

CORAM : T. V. NALAWADE &

SMT.VIBHA KANKANWADI. JJ.

DATE : 06-12-2018.

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

1. Rule. Rule made returnable forthwith. By consent, heard both the 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. 107 of 2018 dt. 03-07-2018, registered with Upanagar Police Station, Nandurbar, 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 applicant No.1 on 06-02-2003. Applicant No.1 is the husband of respondent No.2, applicants No.2 and 3 are the parents of applicant No.1, and applicants No.4 is sister of applicant No.1. Applicant No.5 is the husband of applicant

No.4. Applicant No. 6 is the son of applicants No. 4 and 5.

4. Respondent No.2 – informant has contended that, she has son by name Yashraj from applicant No.1, who is 7 years old now. Applicant No. 1 used to look after her properly after marriage, but thereafter he started harassing her on trifle grounds on the instigation by applicants No.2 to 4. Applicant No. 1 was not doing anything to earn and therefore, she is used to work as cook. Her father expired and his financial condition was poor. All the applicants with one Kalpana Kalal (applicant No. 1's aunt from maternal side), Vijay Kalal (applicant No.1's maternal uncle), Asha Kalal (another relative of applicant No.1 had harassed her. They used to beat her and demand amount of Rs.3,50,000/-. Therefore, she has lodged the report.

5. The applicants have contended that, applicant No.1 is 100% blind in both eyes, since birth. Applicant No.4 is also 75% blind in both eyes. They have produced disability certificates. Applicant No.3 resides ordinarily in Madhya Pradesh. Applicant No.6 is a student. Applicants No.4 to 6 reside at Shirpur, dist. Dhule. Respondent No. 2 intends to grab the house property and therefore, has driven out applicants No. 1 and 2 from the said house. Now with oblique motive she is making allegations. Contents of the FIR are totally false. Vague allegations have been made after many years of marriage.

There is huge delay in lodging FIR. Details of the events have not been given and they have been kept as vague as possible. Therefore, they have prayed for quashment of the proceeding.

6. Heard learned Advocate Mr. P. S. Paranjape appearing on behalf of applicants, learned Addl. Public Prosecutor Mr. R. V. Dasalkar and learned Advocate Mr. M. S. Deshpande, appointed for respondent No.2.

7. Contents of the FIR would show that the marriage had taken place in 2003. Informant has son aged 7 years. FIR is not specific to state as to what happened all of a sudden that she should file such kind of complaint stating that she is harassed since many years. There is absolutely no explanation for the delay. Very vague allegations have been made by saying that applicants used to harass her on trifle grounds. Thereafter it is stated that there was demand of Rs.3,50,000/-. It has not been clarified as to for what purpose the amount was demanded, when, by whom etc. No specific role has been attributed against any of the persons named in the FIR attributing offence under Section 498-A of the Indian Penal Code. The perusal of the entire FIR would show that all of them had made the demand in chorus which is not possible when elders are there. Important point to be noted is that respondent No.2 has intentionally not disclosed that applicant No.1 is 100% blind by both eyes even prior to marriage. Disability certificate is produced on record. That

means, with knowledge she had married to applicant No.1. Even applicant No.4 is also blind by 75%. Applicants No.4 to 6 are resident of Shirpur. Applicant No. 3 also resides in Madhya Pradesh. He has produced his Aadhar Card. It appears that applicants No.1 and 2 used to reside in the house property with respondent No.2 and her son. Respondent No.2 has not come forward to deny the fact stated by applicants on oath that applicants No.1 and 2 has been driven out by her from the house owned by applicant No.2. Thus, it appears that the FIR has been lodged with oblique motive. Allegations are also made against other distant relatives, who are residing at different places. Those allegations against them are also very vague. Thus, it appears that, as a routine all the relatives of the husband have also been roped. It would be a futile exercise to ask all the persons named in the FIR to stand trial. Under such circumstance relief is required to be granted to the all the applicants as well as those persons also who have been named in the FIR by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure. Entire FIR deserves to be quashed and set aside. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Relief is granted in terms of prayer clause "b" to the applicants.

- 3) Leave is granted to the persons who are named in the FIR but who are not before this Court also.
- 4) Fees of the appointed counsel is quantified @ Rs. 3,000/- (Rupees Three Thousand Only) which is to be paid through High Court Legal Services Authority, Sub-Committee, Aurangabad.
- 5) Rule made absolute in the above terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.