

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

CRIMINAL APPLICATION NO. 3769 OF 2017

- 1) Kishor Gokul Birari, (Applicant Nos.1 to 3 & 5 to 9
Age: 28 Years, Occ: Service rejected as per Courts order
dated 27/7/2017)

- 2) Ushabai Gokul Birari,
Age: 48 Years, Occ: Service

- 3) Gokul Shrawan Birari,
Age: 52 Years, Occ: Service

1 to 3 R/o. Plot No.5, Flat No.1,
Rajgad Apartment, Nandanvan Nagar
Sharadha Colony, Jalgaon.

- 4) Bablu @ Jitendra Gokul Birari,
Age: 27 Years, Occ: Service,
R/o. 33, Nicholson Street, South Yatra,
VIC 3141, Melbourne, Australia.

- 5) Manisha Yogesh Borse,
Age: 31 Years, Occ: Service

- 6) Yogesh Bhikani Borse,
Age: 38 Years, Occ: Service

5 & 6 R/o: Room no 16, F F Police line,
Jalgaon Taluka & Dist : Jalgaon.

- 7) Ramesh Gangaram Desale (Patil),
Age: 57 Years, Occ: Agriculture,

- 8 Kisan Gangaram Desale (Patil),
Age: 55 Years, Occ: Agriculture,

7 & 8 R/o: Pimpri Hatt, Taluka Bhadgaon,
District: Jalgaon.

- 9 Prakash Onkar Patil,
Age: 57 Years, Occ: Agriculture,
R/o. Nagaon, Taluka Parola,
District Jalgaon.

... **APPLICANTS**

VERSUS

- 1 The State of Maharashtra,
Through, Police Inspector,
Nandubar Police Station,
Tal: Nandubar, Dist: Nandubar.

- 2 Bharti @ Nikita Kishor Birari,
Age: 23 Years, Occ: Nil,

R/o: C/o: Ramesh Subhash Patil,
Lahan Hudco Colony,
Plot no 5, Nandubar,
Tal & Dist : Nandubar.

... **RESPONDENTS**

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Mr. Girish Nagori, Advocate for Applicants.

Mr. P. G. Borade, APP for Respondent No.1 / State.

Mr. J. R. Shah, Advocate for Respondent No.2.

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CORAM : **T. V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 27th June, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

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

2 The proceeding is filed by 9 persons. During the arguments it was submitted that the proceeding is being prosecuted only in respect of Applicant No.4 Bablu @ Jitendra Gokul Birari,. It appears that the proceeding as against Applicant Nos.1 to 3 and 5 to 9 was dismissed by this Court and the matter was taken up the Apex Court. However, the matter of Applicant No.4 was not taken upto the Apex Court as per the statement made by the learned counsel for Applicants. It was submitted that the relief is granted to Applicant Nos.2, 3, 5, 6, 7 and 8 by the Supreme Court. Thus, argument was heard only for Applicant No.4.

3 The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR No.150 of 2017, registered with Nandubar Upnagar Police Station, Taluka Nandurbar, for offences punishable under Section 420, 498-A, 323, 504 and 506 read with 34 of the Indian Penal Code.

4 The crime is registered on the basis of report given by Respondent No.2 Bharti, who is the wife of Applicant No.1 Kishor. Applicant No.4 is a brother of Kishor.

5 In the FIR, the contentions are made by Respondent No.2 Bharti that after her marriage, which took place on 11th February, 2017, she started cohabiting with her husband. It is her case that on 13th February, 2017, when she was at her parent's house, as per the custom, her father-in-law came there and said that Kishor had no service and so, the parents of Respondent No.2 should make arrangement of Rs.5,00,000/- for seeking service to Kishor. It is her case that her parents had promised to do something, but when she returned to the matrimonial house, all the Applicants started harassing her for forcing that demand. It is her case that even the married sister of the husband and husband of the married sister used to visit the matrimonial house to harass her and to ask her to bring money from her parents. Allegations are mainly made that Kishor used to assault her and he was not allowing her even to have talk with her parents. It is her case that one incident took place on 23rd February, 2017, when her brother had come to the matrimonial house to take her for few days to the parent's house. It is her case that on that day, the husband, parents of husband, sister-in-law and husband of sister-in-law asked her brother as to whether amount was brought or not and they picked up quarrel with her brother. Allegations are made that

threat also given of life and it was said that the relatives of the married sister are in police department and nobody can do anything against them. It is her case that she then returned to her parent's house and after that the Applicants did not come to her parent's house to take her back to the matrimonial house. It is her case that the husband then sent notice to her and she approached to grievance cell as she was always ready to return to the matrimonial house. It is her case that the Applicants were not accepting her in the matrimonial house as they want Rs.5,00,000/- from her parents.

6 The allegations made against Applicant No.4 are vague in nature. Some record is produced by Applicant No.4 to show that he is resident of Australia and he had come to India for short visit. Record is produced to show that he had come to India on 1st February, 2017 and he left India on 19th February, 2017. It can be said that particular date like 13th February, 2017, is added in the FIR as Applicant No.4 was present in India. If he is living in Australia for his service, there was no reason for him to give harassment to Respondent No.2. There is clear possibility of exaggeration of things. Nothing can be achieved if Applicant No.4 is asked to face the trial and that will be

further harassment to him. Even Section 420 of the Indian Penal Code is mentioned in the FIR, when no such offence can be made out. In the result, the following order is passed:

ORDER

- I. The application of Applicant No.4 is allowed.
- II. Relief is granted to him only in terms of prayer clause (B).
- III. Rule made absolute in those terms.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]

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