

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1124 OF 2018

- 1) Sayyed Idris s/o Sayyed Hussain,
Age 32 years, Occupation Labour,
R/o Wadod Bazaar, Tq. Phulambri
Dist. Aurangabad.
- 2) Rashidabi w/o Sayyed Hussain,
Age 60 years, Occupation Household,
R/o Wadod Bazaar, Tq. Phulambri
Dist. Aurangabad.
- 3) Shaheen d/o Sayyed Hussain,
Age 38 years, Occupation Household,
R/o Muzzaffarnagar, Aurangabad
Tq. Dist. Aurangabad.
- 4) Nasreen w/o Ismoddin Shaikh,
Age 35 years, Occupation Household,
R/o Babra, Phulambri
Tq. Phulambri Dist. Aurangabad.
- 5) Ismoddin Shaikh s/o Mehboob Shaikh,
Age 38 years, Occupation Business,
R/o Babra, Phulambri Tq. Phulambri
Dist. Aurangabad.
- 6) Sayyed Nazim s/o Sayyed Hussain,
Age 42 years, Occupation Business,
R/o S. T. Colony, Aurangabad
Tq. Dist. Aurangabad.

...Petitioners

Versus

- 1) The State of Maharashtra.
- 2) Aasma w/o Sayyed Idris,
Age 28 years, Occupation Household,
R/o Wadod Bazaar,
Tq. Phulambri Dist. Aurangabad.

...Respondents

Mr. A. T. Patel Shaikh, Advocate for petitioners.
Mrs. V. S. Choudhari, Addl. Public Prosecutor, for respondent
No.1 / State.
Mr. Rahul Pawar, Advocate for respondent No.2 (Appointed).

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

DATE : 10-12-2018.

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

1. At the outset, learned Advocate for the applicants seeks permission to withdraw the application to the extent of applicant No.1.
2. Permission granted. The application stands disposed of as withdrawn to the extent of applicant No.1.
3. Rule. Rule made returnable forthwith. By consent, heard finally.
4. Present petition has been filed by original accused persons invoking the powers of this Court under Article 227 of Constitution of India and Section 482 of the Code of Criminal Procedure in order to quash the proceedings bearing Regular Criminal Case No. 32 of 2016 pending before Judicial Magistrate First Class, Phulambri, Dist. Aurangabad, for the offences punishable under Section 498-A, 323, 504, 506 read with 34 of the Indian Penal Code.

5. Respondent No.2 got married to applicant No.1 on 13-05-2012. Applicant No.2 is the mother, applicant No. 3 and 4 are the sisters and applicant No. 6 is the brother of applicant No.1. Applicant No.5 is the husband of applicant No.4.

6. Respondent No.2 – informant has contended that, her father had spent about Rs. 3,00,000/- at the time of marriage. After marriage she went to Vadod Bazar at her matrimonial house to cohabit with her husband. She was treated properly for about 2-3 months. She has one daughter. When she was pregnant, all the petitioners started saying that they do not want the child. They used to abuse her and asking her to go and stay with her parents. They used to drove her out of the house, but her parents used to leave her at matrimonial home by requesting the petitioners. After persuasion by her parents, she was treated properly for 4 months. Thereafter, her daughter was born. petitioners got annoyed by saying that female child is born. She was taken to home after about 5 months of delivery. petitioners then started saying that applicant No. 1 would perform second marriage. petitioners also used to say that if she want to cohabit then she will have to search for a job and collect money. petitioners thereafter started demanding Rs.2 lakhs from her parents. Her parents used to give some amount. petitioners used to treat properly with her for few days after payment of amount. After about 2-3 months, she was driven out of

the house. Again the petitioners started making demand, when she went back for cohabitation after compromise. She was again driven out of the house after demand. However, now she is residing in her matrimonial home and in-laws are residing at Aurangabad. Therefore, she has lodged the report.

7. The petitioners have contended that, the FIR is baseless and concocted. Petitioner No. 1 has filed petition for restitution of conjugal rights before Family Court, Aurangabad on 22-12-2014. The said petition came to be allowed on 03-11-2016. Respondent No. 2 has been directed to resume cohabitation with him. Petitioner No. 3 to 6 are residing separately from petitioner No. 1 even prior to his marriage with respondent No. 2. They all have been falsely implicated. 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.

8. Heard learned Advocate Mr. A. T. Patel SHAikh appearing on behalf of petitioners, learned Addl. Public Prosecutor Mrs. V. S. Choudhari and learned Advocate (Appointed) Mr. Rahul Pawar, appearing on behalf of respondent No.2. When it was pointed out to the learned advocate for the petitioners that, this Court is not inclined to grant any relief to petitioners No.1, he prayed for withdrawal of the petition as against him.

9. The petition was considered only for the allegations against petitioner No. 2 to 6. Admittedly petitioner No. 3 to 6 are not residing at Wadod Bazar, Phulambri. They are residing at different places in connection with their service or work. Petitioner No. 3 and 4 are the married sisters-in-law. They would be busy with their own marital obligations. Petitioner No. 6 resides at Aurangabad. Only petitioner No. 2 appears to be residing at Phulambri. However, it is to be noted that even as per FIR, informant is residing in the matrimonial home and applicants have gone to reside at Aurangabad. She has suppressed under which circumstance she came in possession of matrimonial home. Petitioner No. 1 had filed petition for restitution of conjugal rights and it has been decreed. Respondent No. 2 had not filed any reply to the petition and then did not remain present before the concerned Court, resulting in decree. Thus, the opportunity to contest the petition was offered to her, but she did not grab it. Those reasons behind the said decree also deserves to be considered. There were also efforts to mediate the matter before Women Cell. The noting dt. 20-10-2014 clearly shows that though the husband showed willingness to take her back, she refused by putting condition that if husband and wife reside separately, then she is ready to stay with husband. If such conditional approach is adopted, then relations are bound to strain. Further as regards petitioner No.2 to 6 are concerned, no specific

role has been attributed against them in respect of offence under Section 498-A of the Indian Penal Code. So, it appears that, as a routine all the relatives of the husband have been roped. Under such circumstance relief is required to be granted to the petitioners No.2 to 6 by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- 1) Petition of petitioner No. 1 is disposed of as withdrawn.
- 2) Petition of petitioners No. 2 to 6 is hereby allowed.
- 3) Relief is granted in terms of prayer clause "B" to the petitioners No. 2 to 6 only.
- 4) Fees of the appointed Advocate is quantified at Rs.3,000/-, 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/-.