

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4720 OF 2016

- 1) Abhijeet s/o Ashok Pagare,
Age 29 years, Occupation Nil,
Residing at Chankaipur, Shahnoorwadi,
Aurangabad.
- 2) Ashok s/o Vitthalrao Pagare,
Age 62 years, Occupation Pensioner,
Residing at same as above.
- 3) Madhumati w/o Ashok Pagare,
Age 54 years, Occupation Business,
Residing at same as above.
- 4) Sushilabai Dadarao Nikarje,
Age 63 years, occupation Pensioner,
Residing at Nandanvan Colony,
Aurangabad.
- 5) Chandrakant Vitthalrao Pagare,
Age 39 years, Occupation Nil,
Residing at Kajiwada, Bhadkal Gate,
Near Buddh-Vihar, Aurangabad.
- 6) Varsha Chandrakant Pagare,
Age 30 years, Occupation Household,
Residing at Kajiwada, Bhadkal Gate,
Near Buddh-Vihar, Aurangabad.

...Applicants

Versus

- 1) The Commissioner of Police,
Aurangabad.
- 2) The Police Station Officer,
Jawahar Nagar Police Station,
Aurangabad.

- 3) Mrs. Rakhi w/o Abhijeet Pagare,
Age 25 years, Occupation : well to do,
Residing Presently at c/o Daulat Sudamrao
Tupe, Plot No.9, Bhimghad Housing
Society, Dargah Road, Aurangabad. ...Respondents

Mr. Hemant Surve and Kshitij Surve, Advocate for applicants.
Mr. M. M. Nerlikar, Addl. Public Prosecutor, for respondent
No.1 / State.
Mr. R. R. Imale, Advocate for respondent No.2.

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

DATE : 16-10-2018.

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

1. Rule. Rule made returnable forthwith. By consent, heard both 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. 260 of 2016 dt. 03-08-2016, registered with Jawaharnagar Police Station, Aurangabad, for the offences punishable under Section 498-A, 323, 504, 506 read with 34 of the Indian Penal Code.

3. Respondent No.3 got married to applicant No.1 on 16-08-2015 at Hiwali Patil Lawns, Beed Bypass road, Aurangabad. Applicant No.1 is the husband of respondent No.2, applicants No.2 and 3 are

the parents of applicant No.1. Applicant No.4 is the aunt of applicant No.1 (sister of applicant No. 2). Applicant No.5 is brother of applicant No.2. Applicant No.6 is the wife of applicant No.5.

4. Respondent No.2 – informant has contended that, at the time of marriage her father had given dowry of Rs.2,51,000/-. Her husband was given two tola gold locket and gold as well as silver ornaments were given to her. After marriage she went to her matrimonial house to cohabit with her husband. Her husband and his parents were residing jointly. Applicants No 4 to 6 are also resident of Aurangabad and they used to visit often to the house of applicant No. 1. She was treated properly for 2-3 months only. Thereafter, applicants started giving pinching words on trifle matter, thereby giving mental harassment. Her husband is a dealer of Nerolac Paint company. He has a big shop, but wanted to expand the business. He therefore, started asking her to bring amount of Rs.5 lakhs from her parents. All the applicants made the said demand. She narrated the demand to her parents, they had tried to advice applicants, but in vain. They continued to harass her mentally and physically. They used to give threat to kill her. Applicants used to pick up defects in her conversation on phone with other people. They also started to take document in writing from her by using pressure tactics. She has a fear that applicants would use those documents against her. Applicants thereafter started raising suspicion over her. She was

assaulted after making demand of Rs. 5 lakhs on 15-05-2016. She felt that she was pregnant at that time. She was also assaulted by applicants on 20-04-2016 and 21-04-2016 and it was pretended that she had received injury due to fall. She was driven out of the house on 15-05-2016. She had made complaint before Women Cell. Applicants had then given threat to her in front of said office that she will not be taken back for cohabitation. She had lodged N. C. complaint for the said incident. Therefore, she has lodged the report.

5. The applicants have contended that, within one year of marriage, there were differences between applicant No. 1 and respondent No. 3. She had extreme affiliation towards her parental side. She was also in habit of inter-mixing including boy friends. She did not feel happy in matrimonial association and volunteered to abandon. This fact was communicated to her parents. They assured about her behaviour. She had given written undertaking, signed by her. However, even after the said assurance, she did not change. She then started insulting all the applicants. She made a hue and cry on 15-05-2016 to quit matrimonial home. Her parents were called and took her back. Thereafter, the dispute started between her parents and applicants. Applicants No. 2 and 3 had even asked applicant No. 1 to quit, so that they would get peace in life. They had instituted RCS No. 445 of 2016 against respondent No. 3, who was threatening to enter their house forcibly. Applicants No. 4, 5

and 6 are residing separately. There was no overt act alleged against them. The FIR has been lodged with mala fide intention. Therefore, they have prayed for quashment of the proceeding.

6. Heard learned Advocate Mr. Hemant Surve appearing on behalf of applicants, learned Addl. Public Prosecutor Mr. M. M. Nerlikar for respondent No. 1, 2 and learned Advocate Mr. R. R. Imale, appearing on behalf of respondent No.3. Perused the affidavit-in-reply filed by respondent No. 2. She has reiterated the contents of FIR and therefore, they are not reproduced here.

7. Learned Advocate appearing for applicants has taken us through the documents produced by applicants. Applicants No. 2 and 3 have filed suit for declaration and injunction against respondent No. 2 and others. Applicant No. 1 has filed proceeding for divorce against respondent No. 2. Both these petitions have been filed prior to FIR. However, we can not assess the events stated therein with the events stated in FIR. Another fact to be noted is that though FIR has been registered on 03-08-2016, it appears that a written complaint was filed by her on 16-06-2016 with Police Inspector, Osmanpura Police Station. Enquiry appears to have been conducted in respect of said complaint and then the FIR has been registered. Applicant No. 1 to 3 are residing in the same house. Under such circumstance, FIR can not be thrown only by saying events are

concocted as against applicant No. 1 to 3. Respondent No. 2 has her own version to tell, which will have to be tested. She has attributed role to each one of applicant No. 1 to 3. Therefore, there appears to be *prima facie* material against husband and parents-in-laws.

8. Applicant No. 4 to 6 are the relatives of applicant No. 1. They are resident of Aurangabad itself. However, it is to be noted that they are residing separately. No specific role has been attributed against them in respect of offence under Section 498-A of the Indian Penal Code. It has been stated that they used to visit the house of applicant No. 1 frequently, they used to instigate applicants No. 1. Omnibus statements are made against them. If at all there would have been a demand, if contents of FIR are taken as true for a moment, it would have been mainly by the husband and the father and mother-in-law. The perusal of the entire FIR would show that all of them had made the demand in chorus which is not possible. Nothing was demanded by applicants No. 4 to 6 for themselves as per the allegations in the FIR itself. So, it appears that, as a routine all the relatives of the husband have been roped, since they are also resident of same town. It would be futile exercise to ask applicant No. 4 to 6 to face the trial with such allegations. Under such circumstance relief is required to be granted to the applicants No. 4 to 6 by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- 1) Application of applicants No. 4 to 6 is hereby allowed.
- 2) Relief is granted in terms of prayer clause "B" to the applicants No. 4 to 6 only.
- 3) Application to the extent of applicants No.1 to 3 is hereby dismissed.
- 4) Rule made absolute in the above terms in favour of applicants No. 4 to 6.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.