

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO. 2454 OF 2018**

- 1) Vinod s/o Prakash Gawali,  
Age 32 years, Occupation Service,  
R/o Block-A, 194, Near Mahveer Bakery  
Kurla Camp Ulhasnagar – 04, Taluka  
Ulhasnagar Dist. Thane.
- 2) Shobha w/o Prakash Gawali,  
Age 54 years, Occupation Household,  
R/o Behind Jetvan, Budha Vihar,  
Bhim Nagar, Aurangabad.
- 3) Prakash s/o Banduji Gawali,  
Age 56 years, Occupation Service,  
R/o Behind Jetvan, Budha Vihar,  
Bhim Nagar, Aurangabad.
- 4) Swarupa w/o Vikas Pawar,  
Age 27 years, Occupation Household,  
R/o Near Sanghmitra, Budha Vihar,  
Shivmandir Road,  
Ambarnath – (E), Thane  
Tq. Dist. Thane.
- 5) Vikas s/o Umesh Pawar,  
Age 36 years, Occupation Service,  
R/o Near Sanghmitra, Budha Vihar,  
Shivmandir Road,  
Ambarnath – (E), Thane  
Tq. Dist. Thane.

...Applicants

Versus

- 1) The State of Maharashtra.
- 2) The Police Station Incharge,  
Begumpura Police Station,  
Dist. Aurangabad.

- 3) Prasansha w/o Vinod Gawali,  
Age 25 years, Occupation Household,  
R/o Jalan Nagar, Tq. Dist. Aurangabad. ...Respondents

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Mr. A. N. Kakde, Advocate for applicants.

Mrs. V. S. Choudhary, Addl. Public Prosecutor, for respondents  
No.1 and 2/ State.

Mr. M. V. Ghatge, Advocate for respondent No.2.

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

**DATE : 19-10-2018.**

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 The application stands disposed of as withdrawn to the extent of applicant No.1.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 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. 94 of 2018, registered with Begumpura Police Station, Aurangabad, for the offences punishable under Section 498-A, 313, 323, 504, 506 read with 34 of the Indian Penal Code.

5. Respondent No.2 got married to applicant No.1 on 27-11-2016 at Aurangabad. 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 and applicant No.5 is husband of applicant No. 4. Applicant No. 1 is serving as clerk in K. E. M. Hospital at Mumbai.

6. Respondent No.2 – informant has contended that, she started residing with her husband and his parents at Jaybhim Nagar, Aurangabad after the marriage. She was not treated properly even for two days. Applicants used to ask her as to why she is not touching their feet and not talking with them. She was mentally harassed. Thereafter, they started beating her. Applicant No. 2 used to say that they will not send her to Mumbai, where applicant No. 1 was serving. Applicant No. 3 used to abuse daily by consuming liquor. He used to say that she should obey them as they have brought her for doing household work. She will not be allowed to take up a job. Applicant No. 1 used to come to Aurangabad on every Saturday and Sunday. Applicants No. 2 and 3 used to instigate applicant No. 1 and were not allowing her to speak with him. He used to beat her after listening to parents. Respondent No. 2 came to know that prior to her marriage, engagement of applicant No. 1 with another girl was cancelled. When she was asked about the said

fact, applicant No. 1 asked her to shut her mouth. She was taken to Ulhasnagar, where applicant No. 1 was staying. He treated her properly for some days, but that fact was not approved by his parents. Applicant No. 2 gave threat that respondent No. 2 would stay there for 6 months only. Respondent No. 2 could find articles of black magic and when made inquiry, she was threatened. On the instigation given by applicants No. 2 and 3, No. 1 used to beat her by making demands. Applicants No. 4 and 5 used to visit Ulhasnagar and instigate applicant No. 1, thereupon he used to beat informant. In the mean time, respondent No. 2 became pregnant. When this fact was told to applicants, applicant No. 2 and 4 told applicant No. 1 that he should force respondent No. 2 to abort the child as they have no desire to have child from her. Respondent No. 2 refused to get aborted. Applicant No. 1 brought some medicine from hospital and asked her to consume it. She consumed them for 8 days. She used to get much pains after consumption of pills and asked him to take her to hospital. But he refused. There was quarrel between her and applicant No. 2 on 1-12-2017, when applicant No. 2 had come to Ulhasnagar. Applicant No. 1 and 2 took her to the house in Ambarnath after shifting their belongings. Then there was again quarrel between applicants No. 4, 5 and respondent No. 2. Applicant No. 5 rushed towards her person by abusing her in filthy language. Applicant No. 4 had pressed her neck. She was assaulted by

applicant No. 4. Her gold ornaments were taken out forcibly. She was driven out of the house at night time. She gave report about the incident to Ambarnath Police Station. She came to Aurangabad on 05-12-2017. Thereafter, it was transpired that there was abortion. It was the result of the medicines given to her by applicant No. 1. When she told the said fact to him, he asked her to shut her mouth. She had tried to lodge the report, but it was not taken. Hence she gave report via post. It was also lodged with the office of Commissioner of Police. Thereafter her report was taken.

7. The applicants have contended that, the FIR is false and frivolous. There is delay in lodging FIR. Applicant No. 3 works as Asstt. Superintendent in Audit and Account Department of Treasury, Aurangabad. Applicants No. 2, 3 and 4 are residing separately from applicant No. 1. Applicant No. 4 and 5 got married much prior to the marriage between applicant No. 1 and respondent No. 2 and they reside in Mumbai since 2012. Applicant No. 5 is serving as Electrical Engineer with B. E. S. T. Respondent No. 3 was in fact, suffering from Pulmonary T. B. She was under treatment since prior to marriage. Her radiology report shows that right kidney is not visualized. She had not disclosed the said medical problem prior to marriage. She was never ready to cohabit with husband. She has not produced any medical report to show that she was ever pregnant. No offence has been committed by any applicant.

Therefore, they have prayed for quashment of the FIR.

8. Respondent No. 2 has filed affidavit-in-reply. She has also filed certain documents. The affidavit-in-reply contain same contentions. Hence, they are not reproduced here.

9. Heard learned Advocate Mr. A. N. Kakade appearing on behalf of applicants, learned Addl. Public Prosecutor Mrs. V. S. Choudhary and learned Advocate Mr. M. V. Ghatge, appearing on behalf of respondent No.2. When it was pointed out to the learned advocate for the applicants that, this Court is not inclined to grant any relief to applicant No.1, he prayed for withdrawal of the application as against them.

10. The application was considered only for the allegations against the parents-in-laws, married sister-in-law applicant No.5 and her husband applicant No.5. The contents of the FIR would show that allegations have been made with per-determined notion. She alleges that she was not treated properly even for two days. No reason has been assigned as to what could have been the reason behind such behaviour on the part of applicants No. 2 and 3. The incidents are stated in such a way that she was brought by applicants just to harass her. She does not say that when she found applicants were behaving such fashion with her, she had disclosed the said fact to her parents. Her parents also reside in Aurangabad. Even

approximate month is also not quoted as to when such incidents took place. Important point to be noted is that there are no allegations of demand of money made by her against applicants. Except her own statement that she was harassed physically, there is nothing, in respect period till she shifted to Mumbai. Admittedly, applicants No. 4 and 5 got married much prior to the marriage between applicant No. 1 and respondent No. 2 and they are residing separately. Applicants No. 3 is also serving at Aurangabad. So, it appears that, as a routine all the relatives of the husband have been roped. Applicant No. 1 was residing with respondent No. 2 and main allegations are against him. Applicants have produced on record, the medical reports of respondent No. 2. It was got clarified from her as to whether she had taken treatment from Dr. Anand Deshmukh. Report is dated 3-11-2016. That means prior to her marriage. It has been categorically stated that Right kidney not visualized in right renal fossa. Report also shows that she was suffering from tuberculosis and there was old history of the same. Her sonography was also done at Ulhasnagar on 29-11-2017. In that report also it was stated that the right kidney not visualized. In her affidavit-in-reply, respondent No. 2 has stated that applicant No. 1 had knowledge about the said fact and he had even met Dr. Deshmukh prior to marriage. She says that she was fully cured prior to marriage. Thus, those allegations are against husband again. In fact

the other documents on record would show that she resided at Aurangabad in her matrimonial home for few days only. She got married in November 2016 and went to Mumbai in December 2016. If at all there was harassment from day one of marriage, why she did not disclose it to her parents? In her entire report she does not say that she had ever tried to convey the fact to her parents. It appears from reference that her father had expired long back. In that case, she could have conveyed it to her mother and other near relative. Photograph of alleged black magic has been filed, but perusal of the same would show that such photograph can be taken by anybody. She had given some report at Ambarnath Police Station. She was referred for medical examination, but the report has not been produced. When such allegations are made, which can be said to be with some intention, then, the report can not be said to be bona fide. The case is squarely covered under the principles laid down in ***State of Haryana v/s. Ch. Bhajanlal*** reported in AIR 1992 SC 604. Under such circumstance relief is required to be granted to the applicants No. 2 to 5 by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure. Hence, following order.

#### **ORDER**

- 1) Application of applicant No. 1 is disposed of as withdrawn.

- 2) Application of applicants No. 2 to 5 is hereby allowed.
- 3) Relief is granted in terms of prayer clause "B" to the applicants No. 2 to 5 only.
- 4) Rule made absolute in the above terms.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

**(T. V. NALAWADE)**  
**JUDGE**

*vjg/-.*