

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

Criminal Writ Petition No. 01252 of 2018

District : Hingoli

1. Yogesh Rajendra Bhalerao,
Aged 34 years,
Occupation : Nil,
40 % Physical Handicapped.
2. Mrs. Manda Rajendra Bhalerao,
Aged 50 years,
Occupation : Housewife.
3. Rajendra Govind Bhalerao,
Aged 65 years,
Occupation : Retired.
4. Sanjay Ramesh Bhalerao,
Aged 40 years,
Occupation : Business.
5. Kunal Rajendra Bhalerao,
Aged 32 years,
Occupation : Service.
6. Radhika Kunal Bhalerao,
Aged 30 years,
Student.
7. Poonam Pravin Sharsath,
Aged 34 years,
Occupation : Housewife

(Petitioner nos.02 to 07,
R/o. 7/84 B Ward,
Matunga Labour Camp,
Mumbai 400 019).
8. Sujata Vikas Gade,
Aged 38 years,
Occupation : Housewife,
Residing at : 21/51,
B.D.D. Chawl,

N.M. Josi Marg,
Mumbai - 400 013.

9. Surekha Ashok Landge,
Aged 41 years,
Occupation : Housewife,
R/o. Room No.13,
Chawl No.120,
Dr. Ambedkar Nagar,
Dr. Ambedkar Road,
Matunga, Mumbai - 400 019.

10. Bhushan Satish Gaikwad,
Age 25 years,
Occupation : Service,
R/o. Room No.270,
Ground Floor,
Dr. Ambedkar Nagar,
Dr. Ambedkar Road,
Mumbai - 400 019.

.. Petitioners.

versus

1. The State of Maharashtra,
Hingoli Police Station (Rural),
District Hingoli.

2. Seema Yogesh Bhalerao,
Age 25 years,
Occupation : Housewife,
Balura Guthe,
Taluka & Dist. Hingoli.

.. Respondents.

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Mr. Nitin S. Satpute, Advocate, for the petitioners.

*Mr. A.A. Jagatkar, Additional Public Prosecutor, for
respondent no.01.*

*Mr. Sharad S. Solanke, Advocate, holding for
Mr. V.H. Solanke (appointed), for respondent no.02.*

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**CORAM : T.V. NALWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 15TH OCTOBER 2018

JUDGMENT *[Per Smt. Vibha Kankanwadi, J.] :*

1. Rule. Rule made returnable forthwith. By consent, heard. finally.

2. Present Petition has been filed by original accused persons invoking the inherent powers of this Court under Art. 226 of Constitution of India in order to quash the First Information Report vide Crime No. 64 of 2018, registered with Hingoli (Rural) Police Station, Dist. Hingoli, for the offences punishable under Section 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code. Now, the charge-sheet is also filed. Oral Prayer is made to amend the petition, which is allowed.

3. Respondent No.2 got married to petitioner No.1 on 15-05-2016. Petitioner No.1 is the husband of respondent No.2. Petitioner Nos.2 and 3 are the parents. Petitioner No.4 is the cousin brother. Petitioner No.5 is the real brother of petitioner No.1.

Petitioner No.6 is the wife of petitioner No.5. Petitioner Nos. 7 to 10 are the cousins of petitioner No. 1.

4. Respondent No.2 – informant has contended that, her marriage was settled with the mediation by uncle of petitioner No. 6. Father of respondent No. 2 had given amount of Rs. 50,000/- towards expenses of marriage. Petitioner No. 1 is serving in a private firm. Respondent No. 2 is handicap. She was treated properly after marriage. Then she became pregnant and therefore came to her native place at Belura Gutte in March 2017 for delivery. She gave birth to a female child on 11-06-2017. When she informed the fact to petitioners, they had talked only on phone. Nobody came to see her and the child. She was left at her matrimonial home in August. Petitioners started saying that since she is now having a daughter, it would be expensive for them. Therefore, they asked her to bring amount of Rs.50,000/- from her father. It was told to her that if she fails to bring the amount, then she will not be allowed to cohabit. She had informed the said fact to her parents, who gave her advice to stay.

After her daughter was ill, her husband started saying that she should bring amount from her father and then treat her daughter. He had then assaulted her. All the other petitioners started abusing her and told petitioner No. 1 that his wife is not good, she want to stay away from family. There were efforts to resolve the dispute, but were not successful. She was assaulted on 07-01-2018 and therefore she went to stay with her mother. She gave Petition in Court in February. Thereafter, petitioners went to her mother's place and abused her. They threatened her and asked her to take back the Petition. They flatly refused to take her back for cohabitation. Therefore, she has lodged the report.

5. The petitioners have contended that, the contents of the FIR are false and based on concocted story. Petitioner No. 1 himself is also 40% handicap. His parents are senior citizens. Hingoli police had no jurisdiction to take the FIR. Respondent No. 2 had filed Petition under Domestic Violence Act. In that Petition she had made different allegations. FIR has been lodged only to harass them. Therefore, they have prayed for quashment of the proceeding.

6. Heard learned Advocate Mr. Nitin Satpute appearing on behalf of petitioners, learned Addl. Public Prosecutor Mr. A. A. Jagatkar and learned Advocate Mr. Sharad S. Solankhe h/f Shri. V. S. Solankhe, appointed for respondent No.2. All of them have argued in support of their respective contentions.

7. There are specific allegations against petitioner Nos. 1 to 3 and 5. It has been specifically stated that they had demanded money and had harassed respondent No. 2 by assault or by words. They are residing in one house. The Petition can be considered only for the allegations against petitioner Nos. 4 and 6 to 10. No specific role has been attributed against them in respect of offence under Section 498-A of the Indian Penal Code. If at all there would have been a demand 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 the petitioners had made the demand in chorus which is not possible, when elders are there. Nothing was demanded by petitioner Nos. 4 and 6 to 10 for themselves as per the allegations in the FIR itself. Moreover petitioner Nos. 4, 7 to 10 are

residing at different place, though in Mumbai itself. Their casual visits to the place of petitioner Nos. 1 to 3 can not be taken as only with intention to commit any offence. Petitioner No. 6 is sister-in-law of respondent No. 2, but no serious allegations have been made against her. Perusal of statements of witnesses would also show that main allegations are in respect of petitioner Nos. 1 to 3 and 5. So, it appears that, as a routine all the relatives of the husband have been roped. It would be a futile exercise to ask petitioner Nos. 4 and 6 to 10 to face the trial. Under such circumstance, relief is required to be granted to the petitioner Nos. 5 and 6 by invoking the powers of this Court under Art. 226 of the Constitution of India. When there is *prima facie* evidence collected against petitioner Nos. 1 to 3 and 5; then we can not exercise the same powers in favour of these persons. We do not intend to deal with the point of jurisdiction as it is dependent on the evidence also. Parties are at liberty to raise it before appropriate forum. Some other reliefs have also been claimed by petitioners, but we consider this, to be premature stage to pray for those reliefs. Hence, following order.

ORDER

- 1) The learned Advocate for Petitioners is allowed to carry out amendment to the prayer clause to get the charge-sheet set aside. Amendment be carried out forthwith.
- 2) Writ Petition stands rejected in respect of petitioners No. 1 to 3 and 5.
- 3) Writ Petition in respect of petitioners No. 4, 6 to 10 is hereby allowed. Relief is granted to them in terms of prayer clause "a" and relief is also granted in respect of charge-sheet. The charge-sheet is also quashed and set aside in respect of petitioners No. 4, 6 to 10.
- 4) Rule made absolute in the above terms.

8. The fees of the learned Advocate appointed for respondent No. 2 is quantified at Rs.3,000/- (Rupees Three Thousand Only). The same shall be paid through High Court Legal Services Authority, Sub Committee, Aurangabad.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE

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