

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1223 OF 2017

- 1] Kantilal S/o Zamu Gaikwad,
Age : 57 years, Occu. : Service,
R/o 5/2 Bhushan Colony,
Jalgaon, Dist. Jalgaon.
 - 2] Sau. Sunita Kantilal Gaikwad,
Age : 47 years, Occu. :
Household,
R/o As above.
 - 3] Niraj S/o Kantilal Gaikwad,
Age : 25 years, Occu. : Student,
R/o As above.
Now at Present Pune.
 - 4] Jagdish S/o Zamu Gaikwad,
Age : 39 years, Occu. : Service,
R/o Anand Nagar, Bodhwad,
Tq. & District Jalgaon.
 - 5] Anil S/o Narayan Ingale,
Age : 43 years, Occu. : Service,
R/o Samata Nagar, Jalgaon,
District Jalgaon.
 - 6] Manoj S/o Kantilal Gaikwad,
Age : 30 years, Occu. : Service,
R/o Vasant Nagar, Sangli,
District Sangli.
- ...Petitioners.

Versus

1] The State of Maharashtra,
Through Police Station,
Ramanand Nagar, Jalgaon.

2] Sau. Madhuri w/o Manoj Gaikwad,
Age : 33 years, Occu. Household,
R/o C/o Pandit Tulshiram Tayde,
R/o N Ramarao Society,
Bazar Road,
12-A, Pimprala, Tq. & Dist.
Jalgaon.

...Respondents.

Mr. Sant Kishor C., Advocate for Petitioners.
Mr. S. B. Pulkundwar, Addl. Public Prosecutor, for
Respondent No. 1 / State.
Mr. M. K. Deshpande, Advocate for Respondent No. 2.

**CORAM : PRASANNA B. VARALE &
SMT.VIBHA KANKANWADI. JJ.**
DATE : 23-04-2018.

JUDGMENT : [Per Smt. Vibha Kankanwadi, J]

Present writ petition has been filed
invoking the powers of Court under Article 226 and
227 of the Constitution of India and Section 482 of
Code of Criminal Procedure for quashment of the first
information report lodged at the instance of
respondent No. 2.

02. Rule. With consent of the parties, matter is taken for final hearing at the admission stage.

03. Respondent No. 2 is the wife of petitioner No. 6. They got married on 19.2.2015 at Alandi, District Pune as per Hindu rites and customs. Petitioner No. 1 and 2 are the parents of the petitioner No. 6. Petitioner No. 3 is the real brother of petitioner No. 6. Petitioner No. 4 is the uncle of petitioner No. 6 and petitioner No. 5 is distant relative.

04. Petitioners have contended that at the time of marriage, the respondent No. 2 had represented before the petitioner No. 6 that her earlier marriage with one Pravin Sapkale is dissolved. Believing her representation, the petitioner N. 6 had performed the marriage. However, later on it was revealed to him that the earlier marriage of respondent No. 2 was still subsisting. He got married to respondent No. 2. Therefore, petitioner No. 6 has filed H. M. P. No. 601/2016 before the Civil Judge, Senior Divison, Jalgaon for divorce. The respondent No. 2 has

appeared in the proceeding and has raised preliminary issue regarding maintainability of the petition. An order has been passed on that application on 14.2.2017. The said order is under challenge before this Court in Writ Petition No. 3334/2017. It has been further submitted that the respondent No. 2 is daughter of maternal uncle of petitioner No. 6. Therefore, they were knowing each other. Petitioner No. 1 and 2 reside at Akola. Petitioner No. 3 is residing at Pune since 2014. Petitioner No. 4 resides at Muktainagar as he is serving in M. S. R. D. C. After marriage petitioner No. 6 and respondent No. 2 were residing at Sangli. It has been further stated that respondent No. 2 got decree for divorce from her earlier husband under Special Marriages Act on 5.3.2015. She had not disclosed to the petitioner No. 6 that she has daughter from her husband and in fact in the said petition, it is stated that the custody of her daughter would be with earlier husband of the respondent No. 2. The respondent No. 2 has been given right to visit her daughter. Therefore, petitioners say that as marriage of respondent No. 2 is based on mis-representation by respondent No. 2

and therefore, null and void. The respondent No. 2 has lodged a false information report stating that she has been ill-treated by the petitioners. The petitioners have submitted that even going through contents of first information report, it would reveal that no offence has been made out against them. Respondent No. 2 has leveled allegations of demand of dowry and stated that behind her back, the petitioners had asked amount of Rs. 1,50,000/- from her brother. So also petitioners have taken Rs. 15,000/- from her for purchase of a new Refrigerator. On the contrary, the petitioner No. 6 was regularly transferring amounts in the account of respondent No. 2. Petitioner No. 6 is serving with Bank of Maharashtra at Sangli. In all, he has transferred amount of Rs. 1,50,000/- in the account of respondent No. 2. He has given said account of transfer of amounts in the petition. On earlier two occasions, the respondent No. 2 had filed complaint with Women Grievances Redressal Cell in the office of Superintendent of Police, Jalgaon. But, she had not leveled any allegation about demand of money from her brother when the petitioner No. 6 and respondent No.

2 were separately residing at Sangli. Allegations against the petitioner Nos. 1 to 5 are concocted and totally un-believable.

05. During the pendency of the present petition, it appears that the charge-sheet has been filed and by way of amendment petitioners have challenged the proceedings and prayed for quashment of the proceedings on the ground that the evidence that has been collected by the Investigating Officer is not making out any offence as alleged in the charge-sheet.

06. Respondent No. 2 has filed affidavit-in-reply, which is nothing but reproduction of her first information report. She has tried to make out that earlier, immediately after the marriage when she had tried to meet her husband i.e. Petitioner No. 6, she was prevented by the petitioner No. 1 to 3. In fact, at that time petitioner No. 6 was hospitalized as petitioner No. 1 and 2 had objected to the marriage that was performed by petitioner No. 6 and respondent No. 2 behind their back and petitioner No. 6 had

tried to commit suicide by consuming poisonous substance. The petitioners have threatened her at that time. It is stated that the petitioner No. 6 has all of sudden filed petition for divorce. Petitioner No. 1 to 3 were not happy with their marriage and for that purpose it appears that the step has been taken by petitioner No. 6 to file the divorce petition. She has been harassed and ill-treated by the petitioners and, therefore, she has lodged the first information report. In her affidavit-in-reply, at the end, she has stated that all the petitioners in general and petitioner No. 1 to 3 and 6 in particular have committed the offence punishable under Sections 498A as well as 323, 504 read with 34 of Indian Penal Code and, therefore, she has prayed for rejection of the petition.

07. Heard learned Advocate K. C. Sant for petitioner, learned Addl. Public Prosecutor Mr. S. B. Pulkundwar and learned Advocate Mr. M. K. Deshpande for respondent No. 2. It has been submitted on behalf of the petitioners that respondent No. 1 to 5 were residing at a different place. Only the

petitioner No. 6 and respondent No. 2 used to reside at Sangli. If we peruse the contents of the FIR, there is, in fact, absolutely nothing against the petitioner No. 6 whatever acts in respect of petitioner No. 1 to 3 have been stated are immediate to the alleged marriage which was in fact not made aware to them. When petitioner No. 6 was hospitalized, respondent No. 2 says that she was restrained by petitioner No. 1 to 5 from meeting husband and in fact she says that she had lodged a report about the same with Ramanand Nagar Police Station. However, it is to be noted that the report itself shows that after the health of the petitioner No. 6 was improved, they had performed marriage again and went to stay at Sangli. It is her say that when she was at Sangli, petitioner No. 1 to 3 used to visit frequently, were instigating petitioner No. 6 that to perform second marriage and she was harassed on the ground of demand of four wheeler. The allegations are very vague. The evidence that has been collected is nothing but only the statements of her parents, sister and brother. On the contrary, the statement of the landlady at Sangli shows that

the relation between petitioner No. 6 and respondent No. 2 were very much co-ordial and she can be said to be an independent witness. Therefore, under such circumstance, if the petitioners are required to face the trial, then it would be abuse of process of law. He relied on the decision in **Shakson Belthissor V/s State of Kerala and Anr., AIR 2010 SC (Supp) 864.** In this case it has been held that :

"The scope and power of quashing of first information report and the charge-sheet under Section 482 of Code of Criminal Procedure is well settled. The said power is exercised by the Court to prevent abuse of the process of law and Court. But such power could be exercised only when the complaint filed by the complainant or a charge-sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive."

08. Similar view is taken in **Sanapareddy**

Maheedhar Seshagiri and Anr. V/s State of A. P. and Anr., 2008 AIR SCW 11. Further, reliance has been placed on the decision in **Somnath s/o Ashok Darekar V/s State of Maharashtra and Anr., 2017 (4) Mh. L. J. (Cri.) 164** decided by the Division Bench of this Court. Here, in this case also, taking into consideration the allegations in the first information report, the first information report for the offence under Sections 306, 498-A, read with 34 of Indian Penal Code was quashed and set aside.

09. It has been submitted on behalf of the respondents that a specific allegation has been made that the respondent No. 2 was subjected to cruelty on the ground that she should bring amount for purchasing four wheeler. However, an amount of Rs. 1,50,000/- was demanded from the brother of the respondent No. 2. The amount of Rs. 17,800/- was given by the mother of respondent No. 2 for purchasing fridge on demand.

10. The contents of the first information report have been stated in the earlier paragraphs and

therefore, we do not like to reproduce the same. However, the facts are required to be assessed from a different angle. Petitioners have come with a specific case that respondent NO. 2 had made a representation to the petitioner No. 6 that she has taken divorce from her earlier husband. In fact, respondent No. 2 is the daughter of brother of petitioner No. 2. Therefore, what is normally expected is that the family should know what is going on with the relatives. But still it appears that no such disclosure was made by the respondent No. 2 to the petitioner No. 6 regarding her divorce. It is to be noted that the petition which was filed by respondent No. 2 and her ex-husband for dissolution of marriage by mutual consent came to be allowed on 5.3.2015. Copy of that order has been placed on record. As per petitioners' contention petitioner No. 6 got married to respondent No. 2 on 19.2.2015 at Alandi and this fact was not disclosed to petitioner No. 1 to 5. In the first information report it is stated that the registered marriage was performed between them on 23.4.2015 and then she says that this fact was also not disclosed to the parents and

therefore, husband told that she should reside with her parents. Therefore, it is in fact a questionable point as to why they were required to perform marriage twice. No doubt, she has not denied in her affidavit-in-chief a statement made by petitioner No. 6 that they had married on 19.2.2015 at Alandi. As regards the incident of attempt to commit suicide by petitioner No. 6 is concerned, alongwith her affidavit respondent No. 2 has filed on record a complaint filed by her on 27.4.2015 which was against petitioner No. 1 to 3. However, it is to be noted that in the enquiry of that complaint, it appears that the statements of petitioner No. 6 and respondent No. 2 were recorded wherein she has specifically stated that she was allowed to meet her husband on 27.4.2015 and yet she says that she should not be harassed and she should be allowed to co-habit with her husband. That means whatever dispute had arose between respondent No. 2 and petitioner No. 1 to 3 is concerned, had ended there. By any stretch of imagination even if we take the facts as it is, that she was not allowed to meet her husband will not amount to cruelty as contemplated under Section 498A

of Indian Penal Code as against petitioner No. 1 to 3 is concerned.

11. After petitioner No. 6 recovered, he started co-habiting with respondent No. 2 at Sangli and admittedly petitioner No. 1 to 5 were residing at the respective places far away from Sangli. In the first information report it is then stated that petitioner No. 1 to 6 used to visit the house of petitioner No. 6 at Sangli and were instigating petitioner No. 6 that he should perform second marriage by divorcing the respondent No. 2. Because of the instigation petitioner No. 6 used to assault her and demanded amount for purchasing four wheeler. Her complaint is very much silent as to how and when amount was demanded for purchase of four wheeler. She further says that petitioner No. 6 has taken amount of Rs. 1,50,000/- from her brother behind her back and a new refrigerator worth Rs. 15,000/- from her mother. Even if we accept the aforesaid material, as per her own story, it was behind her back. Therefore, it can not be stated that because she was not fulfilling the alleged demand she was harassed by any of the

petitioners. If we peruse the statements of mother, father and sister of respondent No. 2, they say that brother of respondent No. 2 Prakash Tayde had given them information that petitioner No. 6 has taken amount of Rs. 1,50,000/- from him. If we see statement of Prakash Tayde, he has stated that petitioner No. 6 has not taken Rs. 1,50,000/- from Prakash Tayde and he has given amount of Rs. 36,000/- from Bank of Maharashtra, Jalgaon Branch on 17.2.2016. He has not stated when he has given amount of Rs. 1,50,000/- and why he had not informed it to his sister. Mother of respondent No. 2 says that she has given refrigerator worth Rs. 17,800/- to petitioner No. 6 on the say of petitioner No. 1 to 3. But, she does not say that from where the fridge was purchased, when and where she had met petitioner No. 1 to 3. The statements of mother, father, sister and brother of respondent No. 2 are stereo type, rather copy paste. Interestingly, the statement of landlady of petitioner No. 6 at Sangli says that since about a year she had given her two rooms to petitioner No. 6 wherein petitioner No. 6 and respondent No. 2 were residing, there they used to go to watch movies and

hoteling. She has not seen any quarrel between the couple. Thus, it is to be noted that the independent witness has stated that the relation between the petitioner No. 6 and respondent No. 2 were co-ordial. Some amenable statements have been made in the first information report in order to prove the case under Section 498A and other Sections under Indian Penal Code. It can be seen that lodging of the first information report is outcome of notice for divorce given by petitioner No. 6. That means the report was lodged by respondent No. 2 out of some vengeance and none of the offences as stated in first information report as well as in the charge-sheet are transpired. If we continue and ask the petitioners to face the trial, it would be an abuse of process of law. The ratio laid down in above said authorities is applicable here. When ingredients of offence punishable under Section 498-A, 323, 504 read with 34 of Indian Penal Code are not at all attracted, this is a fit case where not only first information report, but the entire charge-sheet itself deserves to be quashed and set aside.

Hence, following Order;

ORDER

- (i) Writ Petition is allowed.
- (ii) The first information report bearing crime No. 50/2017 dated 20.4.2017 registered with Ramanand Police Station, Jalgaon for the offences under Sections 498-A, 323, 504 read with 34 of Indian Penal Code that the proceedings in R. C. C. No. 323/2017 pending before 5th CJJD and JMFC are hereby quashed and set aside.
- (iii) Rule made absolute in above terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(PRASANNA B. VARALE)
JUDGE