

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2820 OF 2018

- 1] Vitthal Dhondiba Tupekar,
Age : 65 years, Occu. Retired,
R/o Phulwal, Tq. Kandhar,
Dist. Nanded.
 - 2] Haribai Vithal Tupekar,
Age : 60 years, Occu. : Household,
R/o as above.
 - 3] Shivsamb Vithal Tupekar,
Age : 42 years, Occu. : Service,
R/o Mukhed, Tq. Mukhed,
Dist. Nanded presently residing at
Ahmedpur, Tq. Ahmedpur,
Dist. Latur.
 - 4] Kamal Shivsamb Tupekar,
Age : 38 years, Occu. : Household,
R/o Ahmedpur, Tq. Ahmedpur,
Dist. Latur.
 - 5] Sachin @ Shivraj Keshavrao Tupekar,
Age : 27 years, Occu. : Driver,
R/o Phulwal, Tq. Kandhar,
Dist. Nanded.
 - 6] Haridas Bhujangrao Supare,
Age : 42 years, Occu. : Agril.,
R/o Takalgaon, Post. Degaon,
Tq. Naigaon (Kh), Dist. Nanded.
 - 7] Sangita Haridas Supare,
Age : 38 years, Occu. : Household,
R/o as above.
- ...Applicants

Versus

- 1] The State of Maharashtra,

Through Police Station,
Mukhed, Dist. Nanded.

- 2] Shivganga Nagnath Tupekar,
Age : 36 years, Occu. : Household,
R/o Phulwal, Tq. Kandhar,
Dist. Nanded. ...Respondents

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Mr. U. B. Bilolikar, Advocate for Applicants.

Mr. A. A. Jagatkar, A. P. P. for Respondent No. 1-
State.

Mr. S. G. Joshi and Mr. S. S. Patil, Advocates for
Respondent No. 2.

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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**
DATE : 14-12-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

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

02. Present application has been filed by the
original accused persons for quashing and setting aside F.
I. R. No. 202 of 2018 dated 13.7.2018 registered with
Mukhed Police Station, Dist. Nanded for the offences
punishable under Sections 498-A, 323, 504, 506 read with

34 of I. P. C.

03. Respondent No. 2 got married to one Nagnath Vitthalrao Tupekar on 8.5.2004. She has a daughter aged 11 years. Applicant No. 1 is father, applicant No. 2 is mother, applicant No. 3 is brother, applicant No. 5 is cousin brother and applicant No. 7 is sister of husband of respondent No. 2, Applicant No. 4 is the wife of applicant No. 3 and Applicant No. 6 is the husband of applicant No. 7.

04. Respondent No. 2 has contended that she was treated properly by the applicants and her husband for about 4 years after marriage. In the meantime, she had begotten a daughter. After the daughter was born, the applicants and her husband started saying that they wanted son, but, she has begotten a daughter. On that count, she was harassed mentally and physically. When she disclosed the said harassment to her mother, her brothers came to her matrimonial home and tried to give advice. At that time, her husband told that if they give Rs. 2,50,000/- for starting a motor garage, then, he will allow the respondent No. 2 to co-habit properly with him. Her brother told that they are poor and unable to give that amount. As the amount was not given, the respondent No. 2

was harassed mentally and physically by the husband and applicants. When her harassment was intensified, her brothers raised loan in anticipation that the applicants and husband will not harass the respondent No. 2., gave Rs. 2,50,000/- to the husband of respondent No. 2. Thereafter, the husband and applicants treated the respondent No. 2 properly for about 3 years. Her husband thereafter sold out the garage and spent the amount. He then started demanding the amount of Rs. 3,00,000/- since 7 months prior to lodging of report. The said amount was asked for the pipeline of agricultural land. On that count, she was harassed mentally and physically. She again told the said fact to her brothers and mother. Again they came to the matrimonial home and tried to give advice. But, the husband was adamant on the demand of Rs. 3,00,000/- for the pipeline. Respondent No. 2 was assaulted in front of her mother and brothers and she was driven out of the house with her daughter. Since then, she is residing with her mother. Many efforts were made for compromise, but, in vain. Hence, report.

05. The applicants have contended that the applicant No. 3 is serving as a Driver in M. S. R. T. C. at Mukhed Depot. Applicant No. 3 and 4 are residing at Ahmedpur for the purpose of education of their children. Applicant No.

5 is also serving as a Driver on private vehicle. Applicant Nos. 6 and 7 are residing at Takalgaon, Tq. Naygaon in Dist. Nanded. It is stated that the informant herself is a quarrelsome lady. She used to pick up quarrels with the husband and applicant Nos. 1 and 2 on account of the share in the landed property belonging to the applicant No. 1. Initially, her husband shifted to Pune due to the quarrelsome attitude of the respondent No. 2 and then performed second marriage in 2010. However, thereafter, he has shifted to Nanded. Because of matrimonial dispute between respondent No. 2 and her husband, the respondent No. 2 is harassing the entire family. Since the applicants are residing separately from the respondent No. 2 and her husband, they have been falsely implicated. It is also stated that because of the harassment at the hands of informant and her brothers, the applicant No. 1 and 2 are residing in a rented premises at Phulwad and she is residing in their house. She is not allowing them to perform agricultural operations in their field and extending threats to life. Applicant Nos. 1 and 2 have made several complaints to the authorities against the respondent No. 2. She has thus grabbed the house property and now intend to grab the agricultural land. Since they have been falsely implicated, they have prayed

for quashment of the report as well as charge-sheet.

06. Heard Mr. U. B. Bilolikar, learned Advocate for Applicants, Mr. A. A. Jagatkar, learned A. P. P. for Respondent No. 1-State, and Mr. S. G. Joshi & Mr. S. S. Patil, learned Advocates for Respondent No. 2. When it was pointed to the learned Advocate appearing for applicants that this Court is not inclined to grant any kind of relief to applicant Nos. 1 and 2 taking into consideration the allegations in the F. I. R., the learned Advocate appearing for the applicants prayed for withdrawal of the application as against them. Hence, the application is disposed of as withdrawn against the applicant Nos. 1 and 2.

07. The application is considered in respect of applicant Nos. 3 to 7 only. The perusal of the F. I. R. as well as the statements of the witnesses in the charge-sheet, it can be seen that no specific role is attributed to applicant Nos. 3 to 7. Applicant No. 3 is serving in M. S. R. T. C. as a Driver though his permanent residence is stated to be Mukhed, he is now residing at Ahmedpur. It is stated by him that for the purpose of education of his son, he and his wife applicant No. 4 are now residing at Ahmedpur. Applicant No. 5 is the cousin brother of the

husband of respondent No. 2. Applicant Nos. 6 and 7 are also residing at different places. They had no reason for harassing the respondent No. 2. Only omnibus statements have been made in the F. I. R. as well as in the statements of the witnesses as against these persons. The most important point is that the respondent No. 2 is stated to have occupied the house belonging to applicant Nos. 1 and 2 by driving them out of the house. It also appears that she has differences with her husband, who is stated to have performed second marriage. It also appears that Nagnath has filed petition for divorce against the respondent No. 2 with Civil Judge, Senior Division, Kandhar, Dist. Nanded. Applicant Nos. 1 to 3 and Nagnath have filed civil suit before Civil Judge, Junior Division, Kandhar, Dist. Nanded against the present respondent No. 2 and her brothers for injunction in respect of agricultural land. It appears that Nagnath is serving at different places like Pune, Nagpur which supports the contention of the applicants No. 3 to 7 that he and respondent No. 2 never resided with them. Under such circumstance, it would be a futile exercise to ask the applicant Nos. 3 to 7 to face the trial. The grounds are made to invoke the powers of this Court under Section 482 of Cr. P. C. to quash the F. I. R. as well as the charge-sheet.

08. Hence, following order;

ORDER

(i)The application of applicants No. 1 and 2
is disposed of as withdrawn.

(ii)Application of applicants No. 3 to 7 is
allowed.

(iii)Relief is granted to them in terms of
prayer clause "B".

(iv)Rule made absolute in those terms.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALAWADE]

JUDGE

Dahibhate/-