

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3047 OF 2018

- 1) Vasudha Ghanshyam Malewar,
Age 73 years, occupation Household,
R/o Sambhajinagar, Parbhani
Tq. Dist. Parbhani.
- 2) Nitin Ghansham Malewar,
Age 47 years, occupation Business,
R/o Sambhajinagar, Parbhani
Tq. Dist. Parbhani.
- 3) Vandana d/o Ghansham Malewar @
Vandana w/o Mohan Ranbaware,
Age 50 years, occupation Household,
R/o 43A, Mithila Saket, Kapri,
Hyderabad.
- 4) Vidya w/o Nitin Malewar,
Age 38 years, occupation Household,
R/o Sambhajinagar, Parbhani
Tq. Dist. Parbhani.

...Applicants

Versus

- 1) The State of Maharashtra,
Through Police Station Nava Mondha,
Parbhani Tq. Dist. Parbhani.
- 2) Meenakshi Raosaheb Raut @
Meenakshi Pravin Malewar,
Age 40 years, Occupation Doctor and
Business, R/o. C/o Raosaheb Raut,
Near Sarang Swami School, Bhagyalaxmi
Nagar, Vasmat Road, Parbhani Tq. Dist.
Parbhani.

...Respondents

Mr. S. J. Salunke, Advocate for applicants.
Mr. A. A. Jagatkar, Addl .Public Prosecutor, for respondent

No.1 – State.

Mr. S. T. Shelke, Advocate for respondent No.2.

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

DATE : 19-12-2018.

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

1) Present application has been filed by the original accused invoking the powers of this Court under Section 482 of Code of Criminal Procedure to quash and set aside First Information Report (FIR) No. 61 of 2018, dated 08-03-2018, registered with Police Station Nava Mondha, Parbhani Tq. Dist. Parbhani, for the offences punishable under Section 498-A, 323, 504 read with 34 of the Indian Penal Code.

2) Respondent No.2 filed the said report stating that, she has daughter from her first husband. There is legal divorce between her and her first husband. Her father was well acquainted with one Dr. Ghanshyam Urkuda Malewar. Dr.Ghamshyam's son Pravin Ghamshyam Malewar was serving as Assistant General Manager in a company at Indore. His wife had expired in accident. He had one daughter and one son. There was a proposal that the respondent No.2 should marry with Pravin and the said proposal was put by applicant No.1 and the father of respondent No.2. It was impressed on her that, Pravin is required to move continuously in connection

with his service. His children are growing and therefore she should take charge of such house. It was also told by the respondent No.2 that, Pravin should accept her daughter which was begotten from her first husband. With consent of the respondent No.2 and Pravin, the marriage was performed. After marriage, respondent No.2 and her daughter, Pravin and his two children went to Indore. The flat in which Pravin was earlier residing was small, and therefore, they took another flat on rent and started the work of shifting. At that place the differences arose. Pravin had categorically told her that, she should do the packing as per her capacity but she should not tell any work to his children. The children were not talking with respondent No.2 and her daughter. The children were also not taking food which was prepared by her. Thereafter, Pravin started saying that, she is unable to cook food. He then started abusing her, assaulting her by saying that, she is unable to do household work. Pravin's children used to inform each and every fact including the quarrels to applicant No.1. They were giving insulting treatment to her daughter, they used to tell about her father. Because of the behaviour of the Pravin and his children, her blood pressure shoot up and instead of giving medical treatment he started saying that, instead of doing household work she is just sleeping. Ultimately she requested to Pravin to take her to doctor. Doctor explained that, because of sudden rise in blood pressure she is suffering. In spite of

the same he was abusing her and misbehaving with her. When she started complaining about the behaviour of the Pravin with applicant No.1, applicant No.1 told her that, Pravin used to assault more to his first wife. All the applicants were taking side of Pravin though he was misbehaving with the respondent No.2, and they were instigating him to assault her. He started saying that, she should leave the house. When she told all those facts to her father, her father sent her brother to Indore. After Pravin saw her brother, he did not say anything but told that he should get bond paper and take signature on divorce paper. Thereafter, the respondent No.2 and her daughter was assaulted. Pravin did not help her in getting transfer certificate of her daughter from school. She sent notice through advocate to Pravin for restitution of conjugal rights but it was refused. She had also given application to Superintendent of Police, Parbhani for arriving at a compromise with Pravin but there was no proper response. Therefore, the report was lodged.

3) The applicants have contended that, they were not residing with respondent No.1 and Pravin, admittedly they both were residing at Indore. Respondent No.2 has also filed proceedings under Protection of Women From Domestic Violence Act, 2005. She has intentionally not given date of marriage in the FIR but it has been given in the another proceeding as 10-07-2016. She had represented to Pravin that she is a divorcee but the facts were

otherwise. After performing the second marriage with Pravin the decree of divorce has been passed by Civil Judge, Senior Division, Parbhani on 27-02-2017. Under such circumstance the alleged marriage between Pravin and informant was not legal at all, and therefore, the offence under Section 498-A of Indian Penal Code is not tenable.

4) Applicant No.2 who is the brother of Pravin and applicant No.3 who is the married sister of Pravin are residing separately. They have been involved in the matter just to harass them. Therefore, they have prayed for quashment of the FIR.

5) Heard Mr. S. J. Salunke, Advocate for applicants, Mr. A. A. Jagatkar, Addl .Public Prosecutor, for respondent No.1 – State, and Mr. S. T. Shelke, Advocate for respondent No.2. Perused the documents.

6) The affidavit-in-reply is filed by respondent No.2 is nothing but reproduction of the contents of the FIR, and therefore they are not reproduced again.

7) The contents of the FIR would make it clear that, immediately after the marriage respondent No.2 went to Indore where her husband was residing. Therefore, whatever things had happened at Indore were not within the knowledge of the applicants. Even in the

FIR it is clearly stated that, she had resided with Pravin for about three to four months only. There is substance in the say of the applicants that, in the proceedings under Domestic Violence Act, the date of the marriage between respondent No.2 and Pravin is given as 10-07-2016, and the decree of divorce between the respondent No.2 and her earlier husband is dated 27-02-2017. We may not enter the point as to whether the marriage between respondent No.2 and Pravin was legal or not but the facts remains that, the decree appears to be subsequent to the date of marriage given in the pleadings under Domestic Violence Act.

8) Applicant No.1 is aged 73 and resides at Parbhani with applicant No.2. Applicant No.3 is the married sister who resides at Hyderabad. Applicant No.4 is the wife of applicant No.2. There was no reason and it is hard to believe that, within the period of three to four months applicants would have subjected respondent No.2 to cruelty as contemplated under Section 498-A of Indian Penal Code. Though Section 323 is also invoked, it is against Pravin and not against the applicants who had no occasion to physically contact respondent No.2. Under such circumstance, it would be a futile exercise to ask the applicants to face the trial. Definitely they have been implicated as they are the relatives of Pravin. Therefore, case is made out for invoking the inherent powers of this Court under Section 482 of Code of Criminal Procedure to grant the relief to the

applicants. Hence, following order.

ORDER

- 1) The application is allowed.
- 2) The relief is granted in terms of prayer clause 'B'.
- 3) Rule made absolute in those terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.