

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

CRIMINAL WRIT PETITION NO. 1453 OF 2017

Sau. Pushpalata w/o Suresh Zarekar,
age 59 years, occ. housewife,
R/o Anmol Bangla no.5,
Behind Chhatrapati Bajaj Showroom,
Nagar-Pune Road, Ahmednagar ... Petitioner

VERSUS

- 1] The State of Maharashtra,
through Kotwali police Station,
Ahmednagar,
- 2] Renu Ajit Zarekar,
age 29 years, occ. Advocate,
R/o Abhijeet Monot Estate,
Station, Ahmednagar ... Respondents
[No.2 Orig.Complt.]

.....

Mr. R.N.Dhorde, Senior advocate for the petitioner
Mr. A.P.Basarkar, A.G.P for respondent/State
Mr. U.S.Malte, advocate for respondent no.2

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CRIMINAL WRIT PETITION NO. 1456 OF 2017

Milind s/o Suresh Zarekar,
age 38 years, occ. advocate,
R/o Anmol Bangla no.5,
Behind Chhatrapati Bajaj Showroom,
Nagar-Pune Road, Ahmednagar ... Petitioner

VERSUS

1] The State of Maharashtra,
through Kotwali police Station,
Ahmednagar,

2] Renu Ajit Zarekar,
age 29 years, occ. Advocate,
R/o Abhijeet Monot Estate,
Station, Ahmednagar

... Respondents
[No.2 Orig.Complt.]

.....

Mr. S.J.Salunke, advocate for the petitioner
Mr. A.P.Basarkar, A.G.P for respondent/State
Mr. U.S.Malte, advocate for respondent no.2

.....

CRIMINAL WRIT PETITION NO. 1454 OF 2017

Suresh s/o Bajarang Zarekar,
age 65 years, occ. advocate,
R/o Anmol Bangla no.5,
Behind Chhatrapati Bajaj Showroom,
Nagar-Pune Road, Ahmednagar ... Petitioner

VERSUS

1] The State of Maharashtra,
through Kotwali police Station,
Ahmednagar,

2] Renu Ajit Zarekar,
age 29 years, occ. Advocate,
R/o Abhijeet Monot Estate,
Station, Ahmednagar

... Respondents
[No.2 Orig.Complt.]

.....

Mr. A.C.Darandale, advocate for the petitioner
Mr. A.P.Basarkar, A.G.P for respondent/State
Mr. U.S.Malte, advocate for respondent no.2

.....

CRIMINAL WRIT PETITION NO. 1455 OF 2017

Sau. Sarika w/o Milind Zarekar,
 age 33 years, occ. housewife,
 R/o Anmol Bangla no.5,
 Behind Chhatrapati Bajaj Showroom,
 Nagar-Pune Road, Ahmednagar ... Petitioner
VERSUS

- 1] The State of Maharashtra,
 through Kotwali police Station,
 Ahmednagar,
- 2] Renu Ajit Zarekar,
 age 29 years, occ. Advocate,
 R/o Abhijeet Monot Estate,
 Station, Ahmednagar ... Respondents
 [No.2 Orig.Complt.]

.....
 Mr. R.A.Tambe, advocate for the petitioner
 Mr. A.P.Basarkar, A.G.P for respondent/State
 Mr. U.S.Malte, advocate for respondent no.2

CORAM : K.L.WADANE, J.

RESERVED ON : 22.01.2018
PRONOUNCED ON : 25.01.2018

JUDGMENT :

Rule. Rule is made returnable
 forthwith. With the consent of the learned
 counsel for the parties, these four Writ
 Petitions are taken up together for final
 hearing, having common subject matter involved
 in all the Petitions. Heard Mr. R.N.Dhorde,

learned Senior counsel for the petitioner in Writ Petition No. 1453 of 2017, Mr. S.J.Salunke, learned counsel for the petitioner in Writ Petition No. 1456 of 2017, Mr. A.C.Darandale, learned counsel for the petitioner in Writ Petition No. 1454 of 2017, and Mr. R.A.Tambe, learned counsel for the petitioner in Writ Petition No. 1455 of 2017, as also Mr. A.P.Basarkar, learned counsel for respondent no.1/State and Mr. U.S.Malte, learned counsel for respondent no.2 in all the Writ Petitions.

2. Brief facts of the case may be stated as follows.

On 14.5.2011, respondent no.2 married with one Ajit Zarekar, son of the petitioners in Writ Petition Nos. 1453 and 1454 of 2017. Immediately, on 10.7.2011 the couple shifted to Aurangabad, as both were practicing as advocates at Aurangabad.

3. On 14.10.2013, the husband of respondent no.2, namely Ajit committed suicide by hanging himself in his house at Aurangabad. Ajit left the suicide note with certain allegations against respondent no.2. After the suicide, the brother of Ajit lodged complaint with Jawaharnagar police station, Aurangabad, for the offence punishable under Section 306 of the Indian Penal Code against respondent no.2 and her parents.

4. It is alleged that on 18.2.2014, to give counter blast to the complaint under Section 306 of the Indian Penal Code, respondent no.2, after a period of four months, lodged present complaint against the petitioners accused nos. 1 to 4 in these Writ Petitions, for the offences punishable under Sections 498A, 323, 504, 506 r/w 34 of the Indian Penal Code.

5. Criminal Writ Petition No. 1378 of 2014 was filed by the petitioners/accused nos. 1 to 4 on 14.11.2014 for quashing the complaint filed by respondent no.2 and same was disposed of as withdrawn on 24.3.2015. Criminal Writ Petition No. 1151 of 2014 was filed by the sisters-in-law of respondent no.2 namely Smita and Nita i.e. accused nos. 5 and 6, which was allowed and complaint against them came to be quashed.

6. After the investigation, charge sheet was filed in the Court.

7. The petitioners/accused nos. 1 to 4 moved an application under Section 239 of Criminal Procedure Code before the Judicial Magistrate, First Class, Aurangabad seeking discharge, which was rejected. The said order was challenged in appeal before the learned Additional Sessions Judge. Learned Additional

Sessions Judge has also confirmed the finding recorded by the learned Judicial Magistrate, First Class, Aurangabad. Hence, these Writ Petitions.

8. Mr. Dhorde, learned Senior counsel appearing for the petitioner/original accused has pointed out certain infirmities in the statement of witnesses in relation to golden ornaments, its taking away by the accused persons and its places. Mr. Dhorde, learned Senior counsel argued that one of the accused namely Milind Zarekar, after the suicide of his brother Ajit, immediately on the next day of the incident lodged complaint against respondent no.2 and her parents and after about four months, to give counter blast to the said complaint, respondent no.2 filed the first information report, which is the subject matter of the present Petitions.

9. Learned counsel appearing for the petitioners in the connected Writ Petitions have adopted the arguments advanced by Mr. Dhorde, learned Senior counsel.

10. Learned A.P.P. opposed the Petitions on the ground that the offence committed by the petitioners/accused persons is very serious. Mr. Malte, learned counsel appearing for respondent no.2 has pointed out the contents of the first information report in detail and has argued that there are specific allegations against each accused, therefore, there is sufficient material to frame the charge against the petitioners. Mr. Malte, learned counsel further submits that there were series of instances of illtreatment given to respondent no.2 at the hands of petitioners.

11. I have carefully gone through the contents of the first information report and

the statements of witnesses, namely (1) advocate Sujata Kothari, aunt, (2) advocate Mangala Rajesh Kothari, mother, (3) advocate Rajesh Kothari, father and other witnesses namely Ashok Gandhi, Asif Pathan, Vimlesh Gandhi and Rajendra Shinde. From the contents of the first information report/complaint and the statements of these witnesses, it appears that on 20.5.2011 the mother-in-law and sisters-in-law slapped respondent no.2 by saying that there is no custom in their community to go for outing after the marriage. In the month of August, 2011, the mother-in-law and sisters-in-law assaulted respondent no.2 on account of not bringing acquaguard. It further reveals that the mother-in-law and father-in-law also assaulted respondent no.2 on the ground of not bringing golden ring. On 14.5.2012, when respondent no.2 and her husband were intending to go to Mahabaleshwar, they were not allowed to go to Mahabaleshwar. It

further reveals that on number of occasions, the in-laws of respondent no.2 insulted, abused and beat respondent no.2. There are allegations against the brother-in-law about sending certain messages on the mobile of respondent no.2, by which he gave mental torture to respondent no.2. Those messages and photographs were regarding commission of suicide by her husband.

12. From the statements of witnesses, referred above, it appears that respondent no.2 disclosed to the witnesses about the illtreatment given by accused persons to her, particularly the statement of witness Mangala Kothari i.e. mother-in-law of respondent no.2 exactly supports the contents of the complaint/first information report. From the statement of witness Asif Pathan, a rickshaw driver, it appears that respondent no.2 was seen weeping, therefore, he took her in his

rickshaw and left at her house. From the statement of witness Rajendra Shinde, it appears that, after the death of husband of respondent no.2, when he visited the house of parents of respondent no.2, they were threatened not to attend last ceremony of deceased Ajit. So, from the contents of the first information report as well as the statements of other witnesses, prima facie it appears that there is sufficient material to frame charge against the petitioners and to proceed further with the trial.

13. At this stage, it is not necessary to scrutinize the statements of informant and the witnesses minutely as if this Court is sitting in appellate jurisdiction. The Court has to see whether there is sufficient material against the accused persons to frame charge and if it is found so the accused cannot be discharged.

14. Mr. Dhorde, learned Senior counsel tried to harp upon the point of delay in lodging the complaint by respondent no.2. However, it is material to mention that the copy of complaint filed by respondent no.2 on record. On perusal of the same, it appears that on 14.10.2013 respondent no.2 had filed complaint to the police station with allegations of illtreatment at the hands of petitioners. Unfortunately, that was on the day when her husband committed suicide.

15. Mr. Dhorde, learned Senior counsel relied upon the observations in the case of **Savitri Devi vs Ramesh Chand and others**, reported in **2003 CR.L.J. 2759**, particularly para 16 thereof, which reads thus :

" 16. For the purpose of Section 498A IPC which is peculiar to Indian families victim spouse is always the 'wife' and guilty is the husband and his relatives-near or distant, living together or separately. Ingredients of 'cruelty' as contemplated under Section

498A are of much higher and sterner degree than the ordinary concept of cruelty applicable and available for the purposes of dissolution of marriage i.e. Divorce. In constituting 'cruelty' contemplated by Section 498A IPC the acts or conduct should be either such that may cause danger to life; limb or health or cause 'grave' injury or of such a degree that may drive a woman to commit suicide. Not only that such acts or conduct should be "willful" i.e intentional. So to invoke provisions of Section 498A IPC the tests are of stringent nature and intention is the most essential factor. The only test is that acts or conduct of guilty party should have the sting or effect of causing grave injury to the woman or are likely to cause danger of life, limb or physical or mental health. Further conduct that is likely to drive the woman to commit suicide is of much graver nature than that causing grave injury or endangering life, limb or physical or mental health. It involves series of systematic, persistent and willful acts perpetrated with a view to make the life of the woman so burdensome or insupportable that she may be driven to commit suicide because of having been fed up with marital life. "

The observations in the cited case are not applicable to the facts of present case, because from the record it appears that there are certain allegations against the petitioners and there are series of instances with

particulars of illtreatment given by each of the accused to respondent no.2. Therefore, the allegations as to the illtreatment to respondent no.2 are not vague. As such, the petitioners are not entitled for discharge.

16. I have gone through the reasons recorded by the learned Judicial Magistrate, First Class, Aurangabad, as well as the learned Additional Sessions Judge, Aurangabad. Both the Courts below have considered the legal aspect of the matter. Learned Judicial Magistrate, First Class, Aurangabad has rightly rejected the application filed by the petitioners for discharge and same is rightly confirmed by the learned Additional Sessions Judge, Aurangabad.

17. In the result, there is no substance in these Writ Petitions. Consequently, all the Writ Petitions are liable to be rejected.

Accordingly, the Writ Petitions are rejected.
No costs. Rule is discharged accordingly.

(K.L.WADANE, J.)

After pronouncement of the judgment in the aforesaid Writ Petitions, the learned counsel appearing for the petitioners submit that they want to assail the order passed in these Writ Petitions before the Apex Court. Therefore, they prayed to extend the interim relief granted by this Court on 13th October, 2017.

In view of the submissions made on behalf of the petitioners, the interim relief granted by this Court on 13th October, 2017 is extended for a period of two weeks from today.

(K.L.WADANE, J.)

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