

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

Criminal Writ Petition No. 01503 of 2017

District : Latur

1. Parmeshwar s/o. Chandrakant Yenge,
Age : 33 years,
Occupation : Service & Agriculture.

2. Chandrakant s/o. Vyankatrao Yenge,
Age : 59 years,
Occupation : Agriculture.

3. Suvarna w/o. Chandrakant Yenge,
Age : 56 years,
Occupation : Household.

.. Petition dismissed as withdrawn as against petitioner nos. 01 to 03 by order dated 08.11.2017.

4. Kamlakar s/o. Vyankat Yenge,
Age : 47 years,
Occupation : Agriculture.

5. Usha w/o. Kamlakar Yenge,
Age : 53 years,
Occupation : Household.

6. Shilpa w/o. Krushna Dandime,
Age : 31 years,
Occupation : Household.

.. Petitioner nos.04 to 09

7. Krushna s/o. Ramkishan Dandime,
Age : 36 years,
Occupation : Agriculture.

8. Supriya w/o. Santosh Bembade,
Age : 26 years,
Occupation : Agriculture.

9. Santosh s/o. Suryakant Bembade,
Age : 31 years,
Occupation : Agriculture.

...Continued

10. Rajkumar s/o. Vitthal Madde,
Age : 46 years,
Occupation : Agriculture.

All R/o. Chimachiwadi,
Taluka Udgir, Dist. Latur.

.. Petitioner
no.10.

versus

01. The State of Maharashtra,
Through Police Station,
Ahmedpur, Taluka Ahmedpur,
District Latur.

02. Reshma w/o. Parmeshwar Yenge,
Age : 27 years,
Occupation : Household,
R/o. Yengewadi,
Taluka Chakur,
District Latur.

.. Respondents
(No.02 - Original
complainant)

At present,
R/o. Nagesh Colony,
Ahmedpur, Taluka Ahmedpur,
District Latur.

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Mr. V.D. Gunale, Advocate, for the petitioners.

*Mr. K.S. Patil, Addl. Public Prosecutor, for
respondent no.01.*

*Mr. S.K. Mathpati, Advocate, for respondent
no.02 (Absent).*

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**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 20TH MARCH 2018

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

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

02. Present petition has been filed by the original accused persons invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973, and also under Articles 226 and 227 of the Constitution of India, in order to get the first information report and the charge-sheet based upon the said report quashed and set aside. It will not be out of place to mention at the first place, that by order dated 08.11.2017 of this Court, the writ petition has been withdrawn on behalf of petitioner nos.01 to 03. Therefore, only the petition in respect of petitioner nos.04 to 10 is for consideration now at the final stage.

03. Present petitioner nos.04 to 10 have come with a case, that FIR vide C.R. No. 300/2016 came to be filed at the instance of respondent no.02 - informant, at Police Station, Ahmedpur, District Latur, contending that the accused persons have committed offences punishable under Sections 498A, 324, 323, 504, 506, read with Section 34 of the Indian Penal Code. Petitioner no.04 is the cousin father-in-law of the informant. Petitioner no.05 is the wife of petitioner no.04 (cousin mother-in-law). Petitioner nos.06 and 08 are the married sisters-in-law. Petitioner nos.07 and 09 are the husband of

petitioner nos.06 and 08, respectively. Petitioner no.10 is the paternal cousin brother of the husband of respondent no.02 - informant.

04. It is necessary to consider the contents of the FIR first and then the other material that has been collected. It has been contended by the informant, that she got married to petitioner no.01 on 04.05.2012 at Yengewadi, Taluka Chakur, District Latur. They have daughter by name Mayuri. After the marriage, informant was treated properly for about six months. Thereafter accused nos.01 to 03 started demanding amount of Rs. 10,00,000/- for the purchase of plot at Shirur Tajband and 10 Tola gold. When this fact was informed by the informant to the parents and relatives, they had pacified accused nos.01 to 03. Accused nos.01 to 03 did not pay any heed but they had beaten informant. In the meantime, Mayuri was born. The informant was under the impression that after birth of the daughter, she will not be harassed. However, accused nos.01 to 03 used to harass her for the said demand. They had kept her starved and confined in the house. Accused nos.04 to 10 i.e. petitioner nos.04 to 10 used to instigate accused nos.01 to 03 in order to harass her by beating. All of them used to insult the informant. It is the case of the informant, that she was mentally and physically harassed. She was driven out of the house in February 2016, by taking out her *Stridhan*. Since then she is residing with her parents. All the accused persons came to her

parent's house on 08.08.2016 at about 01.00 p.m. The informant felt that they all have come to take her back but all the accused persons immediately started abusing informant and her parents. They were asking as to why they are not fulfilling their demand, otherwise informant should take divorce. The informant, her parents and brother were beaten. Threat was given to them and thereafter all the accused persons left. The informant has also stated that she had tried to lodge a report with Ahmedpur Police Station and sent a complaint by registered post when her oral complaint was refused. She had also given complaint to District Superintendent of Police, Latur. However, no action was taken and therefore she had filed private complaint before Judicial Magistrate (F.C.), Ahmedpur. The said complaint was sent for investigation under Section 156(3) of the Cr.P.C. and on the basis of the said order, FIR came to be lodged.

05. Investigation has been carried out in the nature of statements of witnesses and collection of certain documents and after completion of the investigation, charge-sheet has been filed before Judicial Magistrate (F.C.), Ahmedpur. The present petitioner nos.04 to 10 have prayed for quashing the proceedings against them.

06. Heard learned Advocate Shri V.D. Gunale for petitioner nos.04 to 10 and learned Addl. Public Prosecutor Shri K.S. Patil for respondent no.01.

Respondent no.02 was served and she appeared through Advocate Shri S.K. Mathpati. He was absent at the time of hearing.

07. It has been submitted on behalf of petitioner nos.04 to 10, that the perusal of the FIR would show that only omnibus statements regarding instigation have been made against them. The informant had knowledge that petitioner nos.04 to 10 were not the residents of Yengewadi. Though petitioner nos.04 and 05 are shown as residents of Yengewadi, they reside separately. The other petitioners are residents of different places and documents regarding their residence at the said places have been produced on record. Even married sisters are arrayed when they were not residing with parents. The husbands of married sisters are also roped in. Statements of the witnesses are only in echo with the FIR and on the contrary, some different reason has been given for alleged harassment. He relied on the decision of the Hon'ble Apex Court in the matter of *Varala Bharath Kumar & others Vs. The State of Telangana & others* [2017(11) SCALE 131].

08. Learned Addl. Public Prosecutor submitted that taking into consideration the FIR and statements of witnesses to whom immediate disclosure has been made and also who were the eye witnesses to the incident dated 08.08.2016 would show that the offences have been made out against petitioner nos.04

to 10.

09. As the contents of the FIR are almost reproduced in earlier paragraph, we do not want to reproduce the same. As regards the allegations against petitioner nos.04 to 10 are concerned, it is stated that they used to instigate accused nos.01 to 03. They used to insult the informant. The act of driving her out of the house is attributed to accused nos.01 to 03. Further, as regards incident dated 08.08.2016 is concerned, it is stated that all the accused persons went to the house of parents of the informant and an assault had taken place when the demand was refused. It appears that there was no immediate reporting about the incident with Ahmedpur Police Station on 08.08.2016 itself. Copy of the charge-sheet which has been produced on record also does not show that the written complaint sent by RPAD by the informant was collected during the course of investigation. Therefore, it was only the contents of the criminal complaint which was then sent for investigation under Section 156(3) of the Cr.P.C. was before the police authorities. Statements of the witnesses would show that it was informed by the informant to them, that amount of Rs. 10,00,000/- was demanded for purchasing plot. They have not stated that the said amount was demanded for a plot to be purchased at Shirur Tajband. Further, there is absolutely no mention that the informant told them that there was demand of 10 Tola gold by the accused persons. Only words "*mental and physical harassment*"

have been used and no particular act has been attributed which will amount to harassment. On the contrary, witnesses have improved their statements by saying that the harassment was on the count that the informant is of dark complexion. Parents of the informant have not stated that the ornaments belonging to the informant were forcibly kept by accused nos.01 to 03 with them and then she was driven out of the house. Statements of other witnesses would show that they are relatives of the informant. Thus, it is to be noted that no overt act is attributed to each of the petitioner nos.04 to 10.

10. It has been observed in the matter of *Varala Bharath Kumar & others (supra)*, thus :-

"8. We are conscious of the fact that, Section 498A was added to the Code with a view to punish the husband or any of his relatives, who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. Keeping the afore-mentioned object in mind, we have dealt with the matter. We do not find any allegation of subjecting the complainant to cruelty within the meaning of Section 498A of Indian Penal Code. The records at hand could not disclose any willful conduct which is of such a nature as is likely to drive the complainant to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the complainant. So also, there is nothing on record to show that there was a demand of dowry by the Appellants or any of their relatives, either prior to the marriage, during the marriage or after the marriage. The record also does not disclose anywhere that the husband of the complainant acted, with a view to coerce her or any person related to her to meet any unlawful demand of any property or valuable security.

9. The ingredients of criminal breach of trust are also not forthcoming from the records as against the Appellants. The allegations contained in the complaint and the charge sheet do

not satisfy the definition of criminal breach of trust, as contained in Section 405 of the Indian Penal Code. In view of the blurred allegations, and as we find that the complainant is only citing the incidents of unhappiness with her husband, no useful purpose will be served in continuing the prosecution against the Appellants. This is a case where there is a total absence of allegations for the offences punishable under Section 498A and Section 406 of the Indian Penal Code. In the matter on hand, the allegations made in the First Information Report as well as the material collected during the investigation, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute the offences punishable under Section 498A and 406 of the Indian Penal Code against the Accused / Appellants. So also the uncontroverted allegations found against the Appellants do not disclose the commission of the offence alleged and make out a case against the Accused. The proceedings initiated against the Appellants are liable to be quashed. "

Thus, from the above ratio in respect of the legal position, definitely here in this case also, no case has been made out against present petitioner nos.04 to 10.

11. The petitioners have now invoked the inherent powers of this Court and it has been observed by the Hon'ble Apex Court in the case cited supra, thus :-

"7. It is by now well settled that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the First Information Report / the complaint or the outcome of investigation as found in the Charge Sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the Accused; where the allegations do not disclose the ingredients of the offence alleged; where the uncontroverted

allegations made in the First Information Report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the Accused; where a criminal proceeding is manifestly attended with male fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the Accused and with a view to spite him due to private and personal grudge, the power under Article 226 of the Constitution of India or under Section 482 of Code of Criminal Procedure may be exercised. While exercising power under Section 482 or under Article 226 in such matters, the court does not function as a Court of Appeal or Revision. Inherent jurisdiction under Section 482 of the Code though wide has to be exercised sparingly, carefully or with caution and only when such exercise is justified by the tests specifically laid down under Section 482 itself. It is to be exercised ex debito justitiae to do real and substantial justice, for the administration of which alone courts exist. The court must be careful and see that its decision in exercise of its power is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution. Of course, no hard and fast Rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. "

Therefore, the said ratio of the judgment is definitely applicable to the facts of the present case. Definitely, now-a-days, unhealthy practice of roping the other relatives of the husband has emerged and, therefore, such practice is required to be deprecated. When the evidence that has been collected does not specify any offence made out against petitioner nos.04 to 10, we find that this is a fit case where we should exercise our powers under Section 482 of the Cr.P.C.

12. Hence, the following order :-

(a) The criminal writ petition is hereby allowed.

(b) The impugned first information report registered as Crime No. 300/2016, on 22.10.2016, with Ahmedpur Police Station, District Latur, for offences punishable under Sections 498A, 324, 323, 504, 506, read with Section 34 of the Indian Penal Code and consequential proceedings of Regular Criminal Case No. 290 of 2016 before Judicial Magistrate (F.C.), Ahmedpur, to the extent of petitioner nos.04 to 10, are hereby quashed and set aside. Bail bonds of petitioner nos.04 to 10, if any, stand cancelled.

(c) It is made clear, that R.C.C. No. 290 of 2016 shall proceed as against original accused nos.01 to 03 on its own merits.

(d) Rule made absolute in the above terms.

(Smt. Vibha Kankanwadi)
JUDGE

(Prasanna B. Varale)
JUDGE

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