

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

CRIMINAL APPLICATION NO. 05 OF 2019

- 1 Sandip S/o Govind Popalghat,
Age: 31 years, Occ. Service,
R/o : Balaji Complex, Manor,
Tq. & Dist. Palghar.
- 2 Sushilabai W/o Govind Popalghat,
Age: 55 years, Occu.: Housewife,
- 3 Dattatraya S/o Govind Popalghat,
Age: 60 years, Occu. Private Service,
- 4 Vaishali W/o Dattatraya Popalghat,
Age: 25 years, Occu. Nil

No. 2 to 4 are R/o Lohar Galli,
Pimpalgaon Mali, Tq. and Dist.
Ahmednagar.
- 5 Manoj @ Sarjerao S/o Ramkisan Gadekar,
Age : 42 years, Occu. Private Service,
- 6 Suman W/o Manoj Gadekar,
Age: 40 years, Occu. Housewife,
- 7 Revannath S/o Maruti Gadekar,
Age: 43 years, Occu. Traditional
Business.
- 8 Chaya W/o Ravannath Gadekar,
Age: 40 years, Occu. Housewife,

No. 5 to 8 are R/o Tilak Chowk,
Wambhori, Tq. & Dist. Ahmednagar.
- 9 Ramesh S/o Vishwanath Kalaskar,
Age: 50 years, Occu. Labourer,
- 10 Shakuntala W/o Ramesh Kalaskar,
Age: 48 years Occu. Housewife,
- 11 Harishcnadra S/o Ramesh Kalaskar,
Age: 35 years, Occu. Business,

- 12 Jyoti W/o Harischandra Kalaskar,
Age: 30 years, Occu. Housewife,
- 13 Vasant S/o Ramesh Kalaskar,
Age: 45 years, Occu. Labour,
- 14 Jaya W/o Vasant Kalaskar,
Age: 40 years, Occu. Private Service,
- 15 Appasaheb S/o Ramesh Kalaskar,
Age: 48 years, Occu. Business,
- 16 Bhagyashri W/o Appasaheb Kalaskar,
Age: 45 years, Occu. Private Service,

APPLICANTS

No. 09 to 16 R/o Gulwanch, Tq. Sinnar,
Dist. Nasik.

VERSUS

- 1 The State of Maharashtra
Through Investigating Officer,
Shirpur City Police Station,
Tq. Shirpur, Dist. Dhule.
- 2 Sonali W/o Sandip Popalghat,
Age: 30 years, Occu: Service,
R/o: C/o Bhagwan Shankar Lohar,
Balapur, Post. Fagane, Tq. & Dist. Dhule,
At present Shirpur, Dist. Dhule.

RESPONDENTS

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Mr. N.B. Narwade, Advocate for Applicants.
Mr. R.D. Sanap, APP for Respondent No. 1.
Mr. V.B. Anjanwatikar, Advocate for Respondent No. 2.

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**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 21st JUNE, 2019.

ORAL JUDGMENT :- (Per: K.K.SONWANE, J.)

1. Rule. Rule made returnable forthwith. Heard finally, with the consent of learned counsel for parties at admission stage.

2. The applicants preferred present application under Section 482 of the Code of Criminal Procedure ("Cr.P.C.") seeking relief to quash and set aside the First Information Report ("FIR") bearing No. 252 of 2018 registered at Shirpur City Police Station, Taluka Shirpur, District Dhule for the offence punishable under Sections 498-A, 406, 323, 504 and 506 read with Section 34 of the Indian Penal Code ("IPC").

3. The prosecution case in nutshell is that the complainant - wife Sonali Popalghat approached to the Police of Shirpur City Police Station, Taluka Shirpur, District Dhule, on 20-10-2018 and ventilated the grievance that her marriage was solemnized with applicant No. 1 – Sandip Popalghat on 04-02-2014. Applicant No. 2 is the mother-in-law of complainant – whereas applicant No. 3 is the brother-in-law and applicant No. 4 is the wife of brother-in-law. Applicants No. 5 to 16 are the relatives of her husband. It has been alleged that after marriage, complainant-wife joined the company of husband for cohabitation. She was residing in the joint family of her husband, mother-in-law, brother-in-law and his wife etc. It has been alleged that initially for about two to three months of marriage she received proper treatment from the husband and other inmates of matrimonial home. But, thereafter, she was being maltreated and harassed on account of domestic reason. It has been alleged that complainant-wife is working as Teacher in private School, at Shirpur whereas her husband applicant No. 1 is working as teacher in Zilla Parishad in Palghar District. According to complainant, on account of transfer of spouses from place of employment there was quarrel in between the complainant and applicant No. 1. It has been alleged that inmates of matrimonial home sold the plot purchased by

complainant-wife and her husband applicant No. 1, from their own funds. The husband and others did not take consent from complainant-wife. According to complainant, both brother-in-law and his relatives used to instigate her husband resulting into abuses and beating to the complainant-wife by the husband. Consequently, complainant was subjected to mental and physical torture. The complainant ventilated the grievance that she had given birth to female child, but no one else from her matrimonial home turned up to see the child or to fetch her for cohabitation. Eventually, she approached to the Police Station and filed report.

4. Pursuant to FIR, Police of Shirpur Police Station, Taluka Shirpur District Dhule registered the crime and set the penal law in motion. Pending the investigation, applicants moved present application by invoking remedy under Section 482 of the Cr.P.C. for relief to quash and set aside the penal proceeding initiated against them.

5. Learned counsel for applicants vehemently submits that there were no physical and mental cruelty to the complainant on the part of applicants. But, she has filed present penal proceeding with ulterior motive to harass the applicants. There were no specific allegations about maltreatment and torture meted out to the complainant - wife. According to learned counsel, all the applicants No.2 to 16 are residing separately and eking livelihood by doing the work at their respective work places. Learned counsel further added that wife - respondent No. 2 resided separately since year 2018 at her parents house. Applicants No. 2 to 16 have no any concern with the marital life of applicant No. 1

- husband and complainant- wife. They have no any reason to cause interference into the domestic affairs of the spouses. Learned counsel submit that at no point of time applicant No.1 had misused the amount of Rs. 3,10,000/-, on the contrary, applicant No.1 husband had transferred the amount of Rs.8,64,000/- in the account of respondent No. 2-wife. Therefore, the allegation that after selling the plot, the consideration amount had not been given to complainant is false. The complainant did not mention any specific incidence of maltreatment at the hands of applicants. According to learned counsel, the allegations made in the FIR are vague and general in nature. It would unjust and improper to compel the applicants to face the agony of trial. The present complaint is nothing but an abuse of process of law. In case, the present penal proceeding is not quashed, it would cause serious prejudice and injustice to the applicants.

6. The learned APP as well as learned counsel for respondent No. 2- first informant vociferously opposed the contentions put-forth on behalf of applicants and submit that the allegations of ill treatment nurtured on behalf of complainant in the FIR discloses commission of crime under Sections 498-A, 406, 323, and 504 etc. of the IPC. The complainant categorically described the episode of her maltreatment and torture at the hands of applicants. It has also been alleged that after delivery she gave birth to female child, but no one else from the applicants visited to the complainant to see the child.

7. Having given anxious consideration to the arguments advanced on behalf of both sides, this Court was not inclined to nod in favour of

applicant No. 1 for exercising inherent powers under Section 482 of Cr.P.C. Eventually, learned counsel for applicants seeks leave to withdraw the proceedings to the extent of applicant No. 1. Accordingly, leave was granted for withdrawal of application to the extent of applicant No. 1- husband.

8. In regard to allegations nurtured against applicants No. 2 to 16, we find that the allegations cast on behalf of complainant - wife against these distant relatives are vague and general in nature. There are no specific allegations attributing overt-act of all these applicants to maltreat and harass the complainant - wife. There were no detail particulars given in the FIR about the participation of these applicants No. 2 to 16 for their act of humiliation or insult to the complainant on account of demand of money. The allegations about cruelty by these applicants are also found stray and sweeping in nature.

9. At this juncture, the question that arises, whether the FIR registered against applicants can be quashed and set aside by exercise of powers under Section 482 of Cr.P.C. It is worth to mention that the Honourable Apex Court in the case of - **Kansraj Vs. State of Punja and others** reported in **(2000) 5 Supreme Court Cases, 207** observed that, *"a tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged is likely to affect the case of the prosecution even against the real culprits.* In the cases, where accusations are made, the overt-acts attributed to persons other than husband, are required to be proved beyond reasonable doubt. Their

Lordships of Apex Court further observed that, *"in their over-enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused."*

10. In the case of - **Preeti Gupta and another Vs. State of Jharkhand and another,** reported in **(2010) 7 Supreme Court Cases 667,** it has been delineated that *ultimate object of justice is to find out truth and punish the guilty and protect the innocent. A serious relook of the entire provision of Section 498-A of Cr.P.C. is warranted by the legislature. It was observed that the exaggerated versions of the incidents are also reflected in a very large number of complaints.*

11. Likewise, in the case of - **Arnesh Kumar Vs. State of Bihar and another,** reported in **(2014) 8 Supreme Court cases, 273,** the Honourable Apex Court elucidated the fact that, *"Section 498-A of IPC is a cognizable and non bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provisions."*

12. It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Schindia and another Vs. Sambhajirao Chandrojirao Angre and others etc.** reported in **AIR 1988 SC 709** referred above categorically elucidated in paragraph No. 7 as under:

"7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

13. The Honourable Apex Court in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others** reported in **MANU/SC/0115/1992 : 1991(1) RCR(Cri), 383 (SC)** held that *"where the proceedings is instituted with an ulterior motive or were the allegations made in the complaint are absurd and improbable, the Court would be within its power to quash the complaint/FIR"*. Moreover, if the allegations in the FIR against the applicants are taken at their face value and accepted the same in its entirety would not constitute any offence or make out case against applicants, in such circumstances, there would not be any propriety to allow the prosecution to proceed further into the matter.

14. In the matter in hand, it would be unjust and improper to allow the prosecution to proceed against applicants No. 2 to 16. It would be an futile efforts and would cause injustice to them. It would also

dissipate the precious time of Court of law as the possibility of ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicants may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against these applicants deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is partly allowed.
- ii. Application in respect of applicant No. 1 stands disposed of as withdrawn.
- iii. Application in respect of applicants No. 2 to 16 is hereby allowed.
- iv. The penal proceeding initiated against applicants No. 2 to 16, bearing FIR No. 252 of 2018, for the offences punishable under Sections 498-A, 406, 323, 504 and 506 read with Section 34 of IPC registered with Shirpur City Police Station, District Dhule is ordered to be quashed and set aside.
- v. Rule is made absolute partly in terms of prayer clause "B".
- vi. Criminal Application is disposed of in above terms.
- vii. No order as to costs.

Sd/-

**[K. K. SONAWANE]
JUDGE**

Sd/-

**[T.V. NALAWADE]
JUDGE**