

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

CRIMINAL APPLICATION NO. 65 OF 2019

- 1 Ashutosh S/o Chandrakant Awale,
Age: 30 years, Occu. Service,
R/o : Flat No. 404, Vighaharta Tower,
Near Indian Oil Petrol Pump, Katraj,
Tq. and Dist. Pune.
- 2 Chandrakant S/o Maroti Awale,
Age:- 52 years, Occu-Service,
R/o: A-1 Mahanand Niwas, Siba Road,
Near Are Naka, Goregaon East,
Mumbai.
- 3 Lata W/o Chandrakant Awale,
Age-50 years, Occu- Housewife,
R/o: as above.
- 4 Neha W/o Chandrakant Awale,
Age-21 years, Occu- Student,
R/o: Flat No. 404, Vignaharta Tower,
Near Indian Oil Petrol Pump, Katraj,
Tq. and Dist. Pune

APPLICANTS

VERSUS

- 1 The State of Maharashtra
- 2 Komal W/o Ashutosh Awale.
Age: 30 years, Occu: Service,
R/o: C/o Laxmibai Ashokrao Pardikar,
Shivnagar, Sangvi (Bk) Tq. And Dist
Nanded.

RESPONDENTS

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Mr. V.P. Kadam, Advocate for Applicants.
Mr. K.S. Patil, APP for Respondent No. 1.
Mr. G.G. Kadam, Advocate for Respondent No. 2.

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

DATED : 14th JUNE, 2019.

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. 282 of 2018 registered with Vimantal Police Station, Nanded, for the offence punishable under Sections 498-A, 323 and 506 read with Section 34 of the Indian Penal Code ("IPC") and Section 4 of the Dowry Prohibition Act, 1961.
3. The prosecution case, in nutshell, is that the complainant -Kamal Awale rushed to Police of Vimantal Police Station, Nanded, District Nanded and filed report that when she was in service at Pandit Automotive, Pune, at that time, she came in contact with applicant No. 1 Ashutosh Chandrakant Awale. He was also employed in the said Automotive Company. Thereafter, spouses performed register marriage with consent of parents on 13-04-2016 at Pune. The religious rites and customs of marriage were performed on 21-04-2016 at Nanded. After the marriage for about six months, she received proper treatment at her matrimonial home; but, thereafter, her in-laws and sister-in-law used to instigate her husband for not cooking properly. There were beating and abusing to her. Her husband developed habit of drinking liquor. The husband, in-laws and sister-in-law started demanding Rs. 2,00,000/- for purchasing flat. They used to insist complainant - Komal to bring Rs.2,00,000/- from her parents. It has been alleged

that her father paid Rs.2,00,000/- to the husband of complainant-wife at Nanded. Thereafter, she received proper treatment for some days. But, the husband and in-laws again placed the demand of amount Rs.2,00,000/-. They gave threats that she would not be allowed for cohabitation, if demand is not fulfilled. The parents of complainant could not cough-up the demand due to financial crises. The understanding was given to the husband and in-laws, but all efforts did not evoke result. At last, she was driven out of the house on 10-09-2017 for bringing money from her parents. Hapless complainant - Sau Komal Awale started residing at Sangvi (Bk), District Nanded, at the mercy of her parents. Eventually, she filed complaint against husband, in-laws and sister-in-law for physical and mental torture during cohabitation with them. Pursuant to complaint, Police of Vimantal Police Station, Nanded registered the crime under Sections 498-A, 323 and 506 read with section 34 of IPC as well as Section 4 of the Dowry Prohibition Act and set the penal law in motion. Pending investigation, applicants moved present application by invoking remedy under Section 482 of Cr.P.C. for relief to quash and set aside the penal proceeding initiated against them.

4. Learned counsel for applicants vehemently submits that the applicants are innocent of the charges pitted against them. They have not committed any crime. But, they are falsely implicated in this case. There was no ill-treatment and harassment to the wife during her cohabitation with husband Ashutosh. Learned counsel submits that all allegations are vague and ambiguous and not sustainable to prove the charges of cruelty against the applicants.

5. Learned APP and learned counsel for respondent No. 2 wife raised objections and submit that allegations nurtured on behalf of complainant- wife are sufficient to bring home the guilt of applicants - accused. The complainant – wife was subjected to mental and physical cruelty for demand of money. According to learned counsel for respondent No. 2 - wife, father of respondent No. 2 - complainant paid amount of Rs.2,00,000/- to applicant No.1 - husband for purchasing flat. After payment of Rs.2,00,000/-, complainant – wife received proper treatment for some days; but, thereafter, her ordeals were continued. There are incriminating circumstances on record, therefore, interference by exercising inherent powers under Section 482 of Cr.P.C. is unwarranted.

6. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into recitals of FIR and other relevant documents produced on record. It is to be noted that, pending present application, learned counsel for the applicants, on instructions, submit that he does not want to pursue the application for applicant No. 1 - husband. Therefore, this Court under order dated 10-01-2019 proceeded to dispose of application to the extent of applicant No. 1 'as not pressed'. Moreover, during the course of arguments, when this Court expressed opinion that relief cannot be granted in favour of applicants No. 2 and 3 to exonerate from the charges pitted against them, the learned counsel for applicants seeks leave to withdraw the proceeding filed on behalf of applicants No. 2 and 3. Therefore, application filed on behalf of applicants No. 2 and 3 came to be disposed of as withdrawn.

7. In regard to allegations in respect of applicant No. 4, we find that allegations nurtured on behalf of complainant are vague and general in nature. No specific events referred in the FIR are sufficient to point out involvement of applicant No. 4 in the marital affairs of the spouses. Applicant No. 4 is unmarried sister of husband of the complainant-wife. She has no reason to cause any interference in the marital discord in between the spouses.

8. At this juncture, the question arises that, whether the FIR registered against applicants can be quashed and set aside by exercising 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 Punjab 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."*

9. 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.

10. 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."

11. It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Schindia and another Versus Sambhajirao Chandojirao Angre and others**, reported in **AIR 1988 SC 709**, 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."

12. 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.

13. In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicant No. 4. It would be an futile efforts and would cause injustice to her. 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 applicant may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against the applicant No. 4 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 – Ashutosh S/o Chandrakant Awale stands disposed of as not pressed.
- iii. Application in respect of applicants No. 2 and 3, namely, Chandrakant S/o Maroti Awale, Lata W/o Chandrakant Awale stands disposed of as withdrawn.

- iv. Application in respect of applicant No. 4 Neha Chandrakant Awale, is hereby allowed.
- v. The penal proceeding initiated against applicant No. 4-Neha Chandrakant Awale vide FIR No. 282 of 2018, for the offences punishable under Sections 498-A, 323 and 506 read with Section 34 of IPC and Section 4 of the Dowry Prohibition Act registered with Vimantal Police Station, Nanded, District Nanded, is ordered to be quashed and set aside.
- vi. Rule is made absolute partly in terms of prayer clause "B".
- vii. Criminal Application is disposed of in above terms.
- viii. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

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