

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION No. 278 of 2019

- 1] Prabhakar s/o. Karbhari Kambale,
Age 47 years, Occ. Agri. & Social Worker,
- 2] Vaishali w/o. Prabhakar Kambale,
Age 38 years, Occ. Household,
Both R/o. Khirdi, Tal. Shrirampur,
Dist. Ahmednagar.

.. APPLICANTS.

Versus

- 1] The State of Maharashtra
through Police Station Officer,
Rahuri Police Station, Dist. Ahmednagar.
- 2] Rupali w/o. Rahul Kamble
Age 24 years, Occ. Household,
R/o. Kolhar Khurd,
Tal. Rahuri, Dist. Ahmednagar.

.. RESPONDENTS.

Mr. Rajendra S. Kasar, Advocate for applicants.
Mr. P.S. Dighe, Adv. for respondent No.2.
Mr. D.R. Kale, Additional P.P. for respondent No.1

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ
DATE : 5th JULY, 2019.**

ORAL JUDGMENT : [PER K.K. SONAWANE,J]

1. Heard. Rule. Rule is made returnable forthwith. Matter is taken up for
finality with the consent of learned counsel for parties.

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 Crime No.34/2019 registered at Rahuri Police Station, Dist Ahmednagar for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code (“IPC”).

3. It has been alleged on behalf of prosecution that the first informant – complainant - Rupali approached to the Police of Rahuri Police Station, on 14/01/2019 and ventilated the grievance that her marriage was solemnized on 13/02/2015 with one Rahul Dnyandeo Kamble. The applicant No. 1 is the cousin father-in-law of complainant, whereas, applicant No.2 is cousin mother-in-law. According to prosecution, after marriage, the complainant – Rupali was treated in proper manner by the in-laws for an year when she was residing at Fugewadi, Pune. But, thereafter, she went to Khirdi, Taluka Shirampur to reside with the present applicants. The father-in-law, mother-in-law and present applicants started demanding Rs. 3 Lakhs for construction of the house. However, as her father was not in a position to fulfill their demand, they started causing physical and mental harassment to the complainant. They threatened that if she failed to bring Rs. 3 Lakhs from her parents, she will not be allowed to cohabit with husband Rahul and divorce will be given to her. They abused her and kept her unfed for non-fulfillment of demand. It has been alleged that on 15.8.2018, the husband and other in-laws came to the house of

her parents and threatened that only after satisfaction of demand of Rs. 3 Lakhs, she will be allowed to cohabit with the husband.

4. Pursuant to FIR, Police of Cantonment Police Station, Aurangabad, 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 – Rupali. The allegations in the FIR are vague and baseless. There was no direct and indirect involvement of applicants into the crime.. 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. In case, the present penal proceeding is not quashed, it would cause serious prejudice and injustice to the applicants.

The learned counsel further submits that the present applicants are distant relatives. The applicant No.1 and 2 are cousin uncle and aunt of the husband, respectively. They have no reason to cause interference in marital life of complainant nor they are beneficiaries from marital discord. This Court has

also quashed and set aside the proceeding filed by the complainant against these applicants under Section 12 of the Domestic Violence Act. He produced the order dated 4.3.2019 by this Court passed in Criminal Writ Petition No. 1702 of 2018,.

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 punishable under Sections 498-A, 323, and 504 etc. of the IPC. The complainant categorically described the episode of her maltreatment and torture at the hands of applicants. There were unlawful demand of money from the applicants to construct the house.

7. We have given anxious consideration to the arguments advanced on behalf of both sides. After due consideration of allegations made in FIR and factual aspect, we find force in the submissions propounded on behalf of applicants. It is to be noted that the allegations nurtured against applicants, on behalf of complainant – Rupali are vague and general in nature. There are no specific allegations attributing overt-act of all these applicants to maltreat and harass the complainant – Rupali. There were no detail particulars given in the FIR about the participation of these applicants for their act of humiliation or insult to the complainant on account of demand of money. The allegations about cruelty by these applicants are found stray and sweeping in nature.

Moreover, the applicants are the cousin father-in-law and mother-in-law of complainant. They are residing separately. The allegation is that after return from Pune, complainant resided in their house for about six months and during the said period she was subjected to cruelty. But, in view of their relation with husband of complainant being distant relatives, they have no reason to cause interference in marital life of complainant nor they are beneficiaries from marital discord. It is worth to mention that the applicants were absolved from the charges under Domestic Violence Act by this Court in Criminal W.P. No. 1702/2018. These circumstances are also sufficient to appreciate innocence of the applicants for the charges of cruelty under Section 498-A of I.P.C.

8. 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.”

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.”*

9. It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Schindia AIR 1988 SC 709** 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.”

11. 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.

12. In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicants. It would be an futile efforts and would cause injustice to them if the applicants are compelled to face agony of

trial. 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

- 1] The criminal application stands allowed.
- 2] Relief is granted in terms of prayer clause (B).
- 3] Rule made absolute in those terms.

[K.K. SONAWANE]
JUDGE.

[T. V. NALAWADE]
JUDGE

grt/-