

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

CRIMINAL APPLICATION NO. 363 OF 2019

1. Madhav s/o. Kashinath Gadambe,
Age 25 years, Occu. Labour,
2. Kashinath s/o. Mahadu Gadambe,
Age 45 years, Occu. Agri.,
3. Ujwala w/o. Kashinath Gadambe,
Age 40 years, Occu. Agri.,

All R/o. Mangdara (Sidarthwadi),
Taluka Bhokar, District Nanded.
4. Sushma Uttam Waghmare,
Age 28 years, Occu. Household,
5. Dasganu Kashinath Gadambe,
Age 17 years, Occu. Education,
U/g. His sister Sushma Uttam Waghmare,
Both R/o. Machhiwali Chal, Bhola Nagar,
Kalwa (E)., Thane, Dist. Thane. .. Applicants

VERSUS

1. The State of Maharashtra,
Through the Police Station Officer,
Bhagya Nagar Police Station, Nanded,
District Nanded.
2. Deepali w/o. Madhav Gadambe,
Age 20 years, Occu. Household,
R/o. C/o. Anil s/o. Piraji Bhagyawant,
Prem Nagar, Near Water Tank, Tarod (Khu)
Taluka and District Nanded. .. Respondents

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Mr. N. D. Kendre, Advocate for Applicant.
Mr. K. S. Patil, APP for Respondent No.1 - State.
Mr. S. P. Brahme, 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 resorting to remedy under Section 482 of the Code of Criminal Procedure ("Cr.P.C.") to get quash and set aside the impugned First Information Report ("FIR") bearing Crime No. 342 of 2018 registered at Bhagya Nagar Police Station, Nanded, District Nanded, for the offence punishable under Sections 498-A, 323 and 294 read with Section 34 of the Indian Penal Code ("IPC") and criminal proceeding bearing RCC No. 191 of 2019 initiated pursuant to aforesaid FIR.
3. The prosecution case, in nutshell, is that the complainant – Deepali w/o. Madhav Gadambe, approached to Police of Bhagya Nagar Police Station, Nanded, District Nanded, on 06-11-2018, and filed report that her marriage was solemnized with applicant No.1 Madhav s/o. Kashinath Gadambe, on 10-05-2018. Applicant No.1- Madhav was driver by profession and considering his earning capacity, complainant was given in marriage to him. The cash amount of Rs.2,00,000/- and other domestic articles were given in marriage by the maternal uncle of the complainant. Initially for about 10 days after marriage, everything was normal. But, thereafter, she was being harassed and tortured by inmates of matrimonial home. They insisted to bring amount of Rs.5,00,000/- from her parents and on that count she was subjected to maltreatment and harassment. They used to keep her unfed. The applicant - Sushma, sister-in-law, used to instigate applicant No. 1 –

husband for harassment. The complainant also cast allegation that her husband left employment at the instance of parents and came to Nanded for doing labour work for livelihood. There were beating and abusing to the complainant. Eventually, complainant filed complaint to the police for penal action against husband, in-laws, sister-in-law and brother-in-law. Pursuant to the complaint, Police of Bhagya Nagar Police Station, Nanded, registered the crime under Sections 498-A, 323 and 294 read with section 34 of IPC and set the penal law in motion. Pending the 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 Madhav. Learned counsel submits that all allegations are vague and ambiguous and not sustainable to prove the charges of cruelty against the applicants. Applicants No. 4 and 5 have no concern with marital life of applicant No.1 and respondent No.2-complainant Deepali. They have no reason to cause interference into domestic affairs of the spouses.

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. The complainant categorically described

the episode of her maltreatment and torture at the hands of applicants. There was unlawful demand of money by the applicants from complainant. There are incriminating circumstances on record, therefore, interference by exercising inherent powers under Section 482 of Cr.P.C. is unwarranted.

6. During the course of arguments, when this Court expressed opinion that relief cannot be granted in favour of applicants No. 1 to 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. 1 to 3. Therefore, application filed on behalf of applicants No. 1 to 3 came to be disposed of as withdrawn.

7. 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 has been alleged that husband of complainant occupied the room on rent adjoining to the residence of applicant No. 4 Sushma. According to the complainant, there were beating and abusing at the instance of applicant No.4 Sushma – sister-in-law and applicant No.5 Dasganu goaded her husband to return to village and make the complainant- wife to work in the agricultural land for earning. It has been contended that, her husband left the employment as driver at the instance of sister-in-law Sushma. However, the period of stay of complainant with husband at Thane, Mumbai was very short and that too immediately after marriage. There are no specific allegations against the applicants and their participation in the marital affairs of the spouses for any cruelty as envisaged under Sections 498-A of IPC.

8. In regard to allegations in respect of applicants No. 4 and 5, we find that allegations nurtured on behalf of complainant are vague and general in nature. No specific events referred in the FIR to point out the involvement of applicants No. 4 and 5 in the marital affairs of the spouses. They have no reason to cause any interference in the marital discord in between the spouses.

9. 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 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 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."

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. 4 and 5. 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 applicants No. 4 and 5 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 applicants, namely, (1) Madhav s/o. Kashinath Gadambe, (2) Kashinath s/o. Mahadu Gadambe, and (3) Ujwala w/o. Kashinath Gadambe, stands disposed of as withdrawn.

- iii. Application in respect of applicants, namely, (4) Sushma Uttam Waghmare and (5) Dasganu Kashinath Gadambe, is hereby allowed.
- iv. The penal proceeding initiated against applicants No. (4) Sushma Uttam Waghmare and (5) Dasganu Kashinath Gadambe, vide FIR No. 342 of 2018, for the offences punishable under Sections 498-A, 323 and 294 read with Section 34 of IPC registered with Bhagya Nagar Police Station, Nanded, District Nanded, and criminal proceeding bearing RCC No. 191 of 2019 initiated pursuant to aforesaid FIR, pending before the learned Judicial Magistrate, First Class, (Court No.6), Nanded, District Nanded, is ordered to be quashed and set aside.
- v. Rule is made absolute partly in terms of prayer clauses "C and C-1".
- vi. Criminal Application is disposed of in above terms.
- vii. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

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