

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

CRIMINAL APPLICATION NO. 432 OF 2019

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| 1 | Shakuntala w/o. Narsing Patil,
Mukhedkar, Age 65 years, Occu. Nil, | |
| 2 | Narsing s/o. Erwantrao Patil Mukhedkar,
Age 72 years, Occu. Pensioner,
Both R/o. Walmik Nagar, Lokhande
Chowk, Mukhed, Taluka Mukhed,
District Nanded. | |
| 3 | Sanjay s/o. Narsing Patil Mukhedkar,
Age 42 years, Occu. Secondary Teacher,
Manik Smarak Arya Vidyalaya,
Hingoli, Taluka and District Hingoli. | |
| 4 | Vishnukant s/o. Narsing Patil Mukhedkar,
Age 32 years, Occu. Service,
Extension Officer, Panchayat Samiti,
Selu, Taluka Selu, District Parbhani. | |
| 5 | Shobha s/o. Sanjay Patil Mukhedkar,
Age 40 years, Occu. Service,
Primary Teacher, Zilla Parishad,
Hingoli, Taluka and District Hingoli. | |
| 6 | Sangita w/o. Bhaskar Parbate,
Age 40 years, Occu. Service,
O.N.G.C. Uran Project, Mumbai. | .. Applicants |

VERSUS

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| 1 | The State of Maharashtra
Through Police Station, Mukhed,
Taluka Mukhed, District Nanded. | |
| 2 | Aswini @ Pooja Shivshankar Patil,
Age 26 years, Occu. Housewife,
At present R/o. Biloli, Taluka Biloli,
District Nanded. | .. Respondents
(No.2 – original
complainant) |

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Mrs. Sanghmitra Wadmare, Advocate for Applicants.

Mr. D. R. Kale, APP for Respondent No.1 - State.

Mr. D. R. Kale, Advocate for Respondent No.2

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**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.
DATED : 4th 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. 0365 of 2018 registered at Mukhed Police Station, Mukhed, District Nanded, for the offence punishable under Sections 498-A, 323, 504 and 506 of the Indian Penal Code ("IPC").

3. The prosecution case in short compass is that, the complainant Ashwini @ Pooja W/o Shivshankar Patil approached to the Police of Mukhed Police Station, District Nanded on 05-12-2018 and ventilated the grievance that her marriage with deceased accused Shivshankar was solemnized on 14-06-2013. After the marriage, complainant Ashwini @ Pooja started cohabiting with her husband Shivshankar at her matrimonial home, located in Mukhed town. According to complainant, the husband and her in-laws used to suspect about her character. They cast allegation of infidelity of wife Ashwini @ Pooja, which caused frequent quarrel between the spouses. It has been alleged that all the accused subjected her to mental and physical cruelty on account of suspicion of her character. The complainant used to divulge about cruelty to her parents. There were efforts to give understanding to the husband and other inmates of her matrimonial home. But, all efforts found unavailing. There were threats to the life of complainant. Eventually, complainant – Ashwini rushed to the Police Station Mukhed and filed the complaint for penal action against applicants including her deceased husband. Pursuant to FIR, Police of Mukhed Police Station registered the crime and set the penal law in motion against the applicants.

4. Being aggrieved by registration of crime, the applicants preferred present application by invoking remedy under Section 482 of the Cr.P.C. for seeking relief to quash and set aside the penal proceeding initiated against them bearing FIR No. 0365 of 2018.

5. Learned counsel for applicants submits that the applicants had no concern at all with the alleged crime nor they have any involvement in it. But, they are falsely implicated in this case. There are no *prima facie* circumstances on record to implicate the present applicants in this crime. There are sweeping allegations in the FIR. Learned counsel for applicants submitted that Ashwini @ Pooja on 12-07-2017 filed complaint before Women Redressal Forum at Nanded against her husband Shivhsnakar. There was also FIR filed against wife Ashwini and her husband Shivshankar under Section 309 of the IPC for attempt to commit suicide. These circumstances demonstrate strain relations between the spouses following marital discord. However, the applicants have no concern at all with the domestic affairs of spouses. The applicants No. 1 and 2 are in-laws, however, applicants No. 4 to 6 are distant relatives of her husband and residing separately from the family of husband of complainant and her in-laws. There were no specific allegations against them. They had no any occasion to cause interference in the marital life of spouses and in no manner they could be beneficiaries of the alleged mental and physical cruelty to complainant Ashwini. He further submitted that allegations nurtured on behalf of complainant in the FIR are vague and general in nature. The learned counsel also submit that in order to give counter-blow to the FIR lodged by present applicant No. 1 against the complainant and

others, the impugned FIR came to be filed to embroil all the family members and distant relatives as accused in this case. Hence, he requested to quash the proceedings against the applicants.

6. The learned APP as well as learned counsel for respondent No. 2-first informant raised objections to the contention propounded on behalf of applicants and submit that recitals in the FIR disclose the mental and physical cruelty meted out to the complainant Aswhini at the hands of applicants. The complainant specifically made allegation that there was physical and mental torture at the hands of husband and in-laws on account of suspicion on her character. The other applicants-accused use to scold and humiliate the complainant Ashwini on the allegation of infidelity. They used to instigate husband for cruelty to complainant Aswhini.

7. Before going into to the merits of the matter, it is worth to mention that during the course of argument, this Court has expressed the opinion that the Court is not inclined to grant relief in favour of applicants No. 1 and 2, therefore, learned counsel for applicants seeks leave to withdraw the application to their extent only. Ultimately, leave was granted and application was, accordingly, disposed of as withdrawn to the extent of applicant Nos. 1 and 2.

8. In regard to allegations nurtured against applicants No. 3 to 6, we find that allegations cast on behalf of complainant Aswhini @ Pooja against these distant relatives are vague and general in nature. There are no specific allegations in regard to overt-act for maltreatment and harassment to the complainant Aswhini @ Pooja. There were no detail

particulars given in the FIR about participation of these applicants No. 3 to 6 for their act of humiliation or insult to the complainant on account of her character. Allegations about scolding are also stray and sweeping in nature.

9. The question that arises is, whether the FIR registered against applicant can be quashed and set aside in 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. 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 unjust and improper to allow the prosecution to proceed against applicant Nos. 3 to 6. It would also dissipate the precious time of court of law. It would be an futile efforts and cause injustice to applicant Nos. 3 to 6. 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 them deserves to be quashed and set aside. Therefore, we proceed to pass following order:

ORDER

1. The Criminal Application is allowed partly.
2. Application in respect of applicant Nos. 1 and 2, namely, Shakuntala W/o Narsing Patil, Mukhedkar and Narsing S/o Erwantrao Patil Mukhedkar, stands disposed of as withdrawn.
3. Application in respect of applicant Nos. 3 to 6 Sanjay S/o Narsing Patil, Mukhedkar, Vishnukant S/o Narsing Patil, Mukhedkar, Shobha S/o Sanjay Patil Mukhedkar and Sangita W/o Bhaskar Parbate is hereby allowed.
4. The penal proceeding initiated against a applicant Nos. 3 to 6 Sanjay S/o Narsing Patil, Mukhedkar, Vishnukant S/o Narsing Patil, Mukhedkar, Shobha S/o Sanjay Patil Mukhedkar and Sangita W/o Bhaskar Parbate bearing FIR No. 0365 of 2018 dated 05-12-2018 for the offences punishable under Sections 498-A, 323, 504 and 506 read with section 34 of the IPC registered with Mukhed Police Station, District Nanded, is hereby quashed and set aside.
5. Rule is made absolute partly in terms of prayer clause "B".
6. Criminal Application is disposed of in above terms.
7. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE