

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

CRIMINAL APPLICATION NO. 480 OF 2019

- 1 Amit Harising Rathod, Age 37 years, Occupation-Service, resident of Flat No. 04, Build C-34, Sector 10, Shanti Nagar, Mira Road, Mumbai – 401 107, Presently residing at 30 Ishwar Colony, Taloda Road, Nandurbar, Tehsil and District Nandurbar.
- 2 Usha W/o Harising Rathod, Age 57 years, Occ- housewife,
- 3 Shailendrasing Harising Rathod, Age 39 years, Occ-Service.
- 4 Nishingandha Shailendra Rathod, Age 39 years, Occ.- Housewife, Petitioners No.2 to 4 are residents of 30 Ishwar Colony Taloda Road, Nandurbar, Tehsil and District Nandurbar.
- 5 Rajesh Harising Rathod, Age 36 years, Occ.- Service
- 6 Dipti Rajesh Rathod, aged 31 years, Occ. Housewife, petitioner No. 5 and 6 are residents of Flat No. 106, Sukhram 5, Samajsawli Road, Baroda, Gujarat.

..APPLICANTS
(Ori. Accused)

VERSUS

- 1 The State of Maharashtra, Through the Police Station, Nanded (Rural) Tq. And Dist. Nanded.
- 2 Jagruti Amit Rathod W/o Amit Harising Rathod, Age – 31 years, R/o Flat No. 404, Build C-34, Sector-10 Shant Nagar, Mira Road, Mumbai - 401 107.

RESPONDENTS

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Smt. Kirti Ahuja, Advocate for Applicants.
Mr. K.S. Patil, APP for Respondent No. 1
Mr. A.S. Radikar, Advocate for Respondent No. 2

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

DATED : 11th JULY, 2019.

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

1. Rule. Rule made returnable forthwith. Heard finally, 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 No. 116 of 2018 registered at Upnagar Police Station, Nandurbar District Nandurbar, for the offences punishable under Sections 498-A, 315, 323 and 504 read with Section 34 of Indian Penal Code ("IPC") and all other consequential proceeding arising thereof including final Report under Section 173 of Cr.P.C. dated 02-01-2019.

3. The prosecution case in short compass is that, the first informant Jagruti Amit Rathod W/o Amit Harising Rathod on 14-07-2018 visited to the Police of Upanagar, Police Station, Nandurbar, District Nandurbar and filed the report that when she was studying in College, she developed intimacy with applicant Amit. It has been alleged that while examination of Engineering was going on, the applicant- husband and complainant on 05-04-2004 eloped to Pune and got married on 08-04-2004. Since then complainant had no relations with her parents. According to complainant, her husband got employment in railways, and therefore, the couple started residing in Mira Road area, Mumbai. When complainant-wife was pregnant of nine months, applicant-

mother-in law took her to Nandurbar for delivery. According to complainant-wife, she was admitted in the hospital and doctors recommended a cesarean delivery but mother-in-law, brother-in-law and husband did not pay any heed to the advice of doctor and brought her to home. The applicants gave some liquid (Kaadha) saying that it will ease her pain and it would facilitate for easy delivery. The complainant did not know that the bottle of liquid (Kaddha) containing castor oil. Unfortunately, she delivered a stillborn baby girl in the month of October-2012. It has been contended that, in the year 2015, she was again pregnant and delivered a baby girl Viva. Meanwhile, the applicant-husband was transferred to Nandurbar. On 02-04-2018, in the wee hours of night, when complainant was woke up for drinking water at about 11.00 p.m. she saw all the applicants were sitting in the drawing room and chatting about the abortion of complainant. However, on following day, the complainant attempted to make confront about her abortion with husband and in-laws. The applicants became furious and beaten up her with fists. She was also driven out of the house. Thereafter, she started residing with her parents. On 01-06-2018, at about 11.00 p.m. all the applicants visited to the parents of complainant and demanded Rs.15 Lakhs to purchase a bungalow. When the father of complainant expressed inability to pay such huge amount due to financial crises, they assaulted and threatened her for divorce. According to complainant, all the applicants subjected her to physical and mental torture. Eventually, she approached to the Police and filed report for penal action against the applicants.

4. Pursuant to FIR, Police of Upnagar Police Station, Nandurbar, District Nandurbar registered the crime and set the penal law in motion. Investigating Officer recorded statements of witnesses acquainted with the facts of the case. He collected relevant documents of matrimonial dispute between the spouses. The Investigating Officer after completion of investigation filed the charge-sheet under Section 173 of Cr.P.C. The applicants prayed to absolve from the charges pitted against them and quashed and set aside the consequential proceedings arising from impugned FIR bearing No.116 of 2018.

5. Learned counsel for applicants vehemently submits that applicants are innocent of the charges pitted against them. They have not committed any crime, but they are falsely implicated in this case. According to learned counsel, the complainant was not interested in cohabiting with applicant-husband. She was insisting for separate residence from in-laws and other inmates of matrimonial home. Her behaviour was also objectionable one and she was keeping adulterous relationship. There were no unlawful demand of money. According to learned counsel, there was no any specific allegations against applicants for cruelty as contemplated under Section 498-A of the IPC. The learned counsel submits that applicant No. 2 is mother-in-law, applicants No. 3 to 6 are brother-in-law and sister-in law of respondent No. 2 respectively. Learned counsel submits that all the applicants are residing separately. Applicants No. 2 to 6 have no any concern with the marital life of applicant No. 1 and complainant. They have no any reason to cause interference into the domestic affairs of the spouses. All the allegations are general and vague in nature. The present

complaint filed only to give counter blast to the proceedings filed by the applicant-husband for divorce and it is nothing but an abuse of process of law. It would unjust and improper to compel the applicants to face the agony of trial. Hence, learned counsel explained the attending circumstances on record in detail and urged to quash and set aside the penal proceeding initiated against the applicants.

6. The learned APP as well as learned counsel for respondent No. 2-first informant 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, 323 and 504 etc. of the IPC. The complainant categorically described the episode of her maltreatment and torture at the hands of applicants. There was unlawful demand of money from applicants for purchasing bungalow. There were allegations of physical assault to the complainant on the part of applicants. The respondent wife filed the affidavit in reply on record in support of her contentions.

7. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into the relevant documents produced on record as well as factual aspects of the matter. We find that there is no scope for exercise of inherent powers under Section 482 of the Cr.P.C. in favour of applicant No.1 – husband. It appears from the FIR that *prima facie* case is made out against him. The specific allegations are cast against husband about cruelty as envisaged under Section 498-A of I.P.C. There was unlawful demand as well as physical and mental torture to the complainant following marital

discord. We do not find force in the submission of learned counsel for the applicants to absolve the applicant-husband from charges pitted against him. Therefore, we are not inclined to grant any relief in favour of applicant No. 1. 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.

8. In regard to allegations made against applicants No. 2 to 6, we find that during crucial period of co-habitation of complainant with husband, the applicants No. 2 to 6 were not available in the company of complainant. The entire allegations about cruelty are against husband. There was reference that applicants No. 2 to 6 harassed the complainant mentally and physically, but all the aspersion against them are vague, and general in nature. There was no specific instance or details of participation of applicants No. 2 to 6 in the alleged act of cruelty available on record for adverse inference about their involvement into the crime. There are no specific allegations attributing overt-act of applicants No. 2 to 6 to maltreat and harass the complainant. But, these allegations are stray and omnibus in nature. Therefore, it would unjust and improper to compel the applicants No. 2 to 6 to face agony of trial before criminal court following marital discord between spouses.

9. It is to be noted that marriage of the complainant was solemnized with applicant No.1-husband in the year 2004. Since marriage uptill April, 2018, she was cohabiting with the husband at

matrimonial home. The complainant cast allegation against mother-in-law that she attempted to administered castor oil for her miscarriage. But, learned counsel for the applicants drawn attention towards document of opinion of medical expert filed accompanied with the charge-sheet, in which, concerned Dr. Seema Shah opined that castor oil if given orally would not kill the baby in the uterus in III semester. It has also asserted that at the time of first delivery, the complainant was admitted in the hospital and her delivery was conducted by the same Dr. Seema Shah on 11-10-2012. According to Dr. Seema Shah there was retardation of growth of the child and from Sonography report the water level in the womb was seen considerable low, which could have been reason for the stillborn baby of the complainant. The applicants also vociferously raised objection about the discussion amongst the applicants for abortion of the complainant in the wee hours of the night on 02-04-2018 as well as their attempt of assault on the following day i.e. on 03-04-2018. According to applicants, on 02-04-2018 and 03-04-2018 the complainant was available in Meera road locality at Mumbai and not at Nandurbar. The applicants produced the document of attendance of minor daughter of the complainant, namely, Viva in the School known as "Todlars Township Square Play School", at Meera road Mumbai. This document is also produced along with the charge-sheet in the Court. The applicants also raised objection about presence of complainant on 03-04-2018 at Nandurbar because on that day she deposited demand draft of Rs.20,000/- towards fees of admission of the daughter in the Holi Cross School at Meera Road, Mumbai. These documents belies the story of conspiracy amongst the

applicants for her abortion and also about assault on the complainant after she made enquiry about discussion of abortion on the following day. The document of CDR also produced on record which fortify the contentions propounded on behalf of applicants about involvement of applicants No. 2 to 6 in this matter. It has been alleged that on 01-06-2016, applicants No. 2 to 6 were at the house of parents of complainant and made a demand of Rs. 15 lakhs for purchasing immovable property and on refusal they manhandled the complainant and threatened her for divorce. These attending circumstances *prima facie* conjures up an image that applicant No. 1 husband has filed proceeding for divorce on the ground of adultery of the wife and with an ulterior motive to give counter blow to the proceeding, complainant attempted to embroil these near and dear of applicant No.1- husband in this case.

10. 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."

11. 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.*

12. 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."

13. 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."

14. 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.

15. In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicants No. 2 to 6. It would be an futile efforts and would cause injustice to them, if they are compelled to face agony of trial before criminal Court. 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 No. 2 to 6 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 dismissed as withdrawn.
- iii. Application in respect of applicants No. 2 to 6 is hereby allowed.
- iv. The penal proceeding initiated against applicants No. 2 to 6 bearing FIR No. 116 of 2018, for the offences punishable under Sections 498-A, 323 and 504 read with Section 34 of IPC, registered with Upnagar Police Station, Nandurbar District Nandurbar, and the consequential proceedings arising from impugned FIR bearing No. 116 of 2018, is ordered to be quashed and set aside.
- v. Rule is made absolute partly in terms of prayer clause "16 (i)" to the extent of applicants No. 2 to 6.
- 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