

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 565 OF 2019

1] Mirza Anwar Baig s/o. Mirza Yasin Baig,
Age 74 years, Occ. Retired.

2] Mirza Afzal Baig s/o. Mirza Anwar Baig,
Age 46 years, Occ. Advocate.

3] Mirza Ashraf Baig s/o. Mirza Anwar Baig,
Age 43 years, Occ. SERvice,

All R/o. Krati Chowk, Parbhani,
Tq. and Dist. Parbhani.

.. APPLICANTS
[ORI. ACCUSED]

VERSUS

1] The State of Maharashtra,
Through Police Station Officer,
Nanal Peth Police Station Parbhani,
Tq. and Dist. Parbhani.

2] Sana Fatema Mohammad Naimoddin Kadri,
Age 21 years, Occ Household,
R/o. Near Sifa Hospital, Madina Pati,
Parbhani Tq. and Dist. Parbhani.

.. RESPONDENS.

Mr. R.J. Nirmal, Advocate for the applicants,2
Mr. N.L. Chaudhari, Advocate for respondent No.2

...

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

DATE : 4TH JUNE, 2019.

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

1] Heard. Rule made returnable forthwith and matter was taken up for final adjudication on merit with the consent of both sides.

2] The applicant, taking recourse of remedy under Section 482 of Cr.P.C. preferred the present application seeking relief to quash and set aside the FIR bearing Crime No. 465 of 2018 registered against them with the Nanal Peth Police Station, Dist. Prabhani for the offence punishable under Sections 498-A, 323, 504, 506 r/w 34 of IPC and consequently, criminal proceeding initiated on the basis of said FIR bearing RCC No. 37 of 2019 pending before the learned Magistrate, at Parbhani.

3] It has been alleged that the First Informant - Sana Fatema Mohd. Moinuddin Kadri on 1.12.2018, approached to the police of Nanal Peth Ppolice Station, Prabhani and ventilated the grievances that her marriage was solemnized with Mohd. Naimoddin on 25.12.2016 at Parbhani. Her husband was employed as a Police Constable in RIB at Aurangabad. According to the first informant, after the marriage, members of the matrimonial home behaved with her in proper manner for some days. But, thereafter the applicants being grand-father and maternal uncles of her husband, used to instigate her husband that he had received meager amount of dowry in marriage. He would have get more dowry amount if he would have performed marriage with another girl. In the result, her husband used to abuse the wife Sana Fatema on account of bringing very less dowry in the marriage. She was being physically and mentally tortured by the husband and other inmates of matrimonial home. There was a demand of Rs. 5 Lakhs

to the wife Sana and on that count, she was subjected to maltreatment by husband and his relatives. When the first informant had been to Parbhani for delivery purpose, that time her in-laws, cousin sister in law etc., asked her to bring Rs. 5 Lakhs from her parents, as they had given less dowry in the marriage, otherwise, she would not be allowed to cohabit at her matrimonial home. There was endeavour to persuade the husband and other inmates, but it did not evoke result. Eventually, the first informant wife approached to the police and filed report pursuant to which the police of Nanal Peth Police station registered crime NO. 465 of 2018 against the husband, in-laws and other relatives of the husband of first informant Sana Fatima, including the present applicant and set the penal law in motion.

4] I.O. carried out the investigation. He recorded statements of witnesses acquainted with the facts of the case. He collected relevant documents and on compliance of procedural formalities, I.O. preferred charge sheet against in all seven accused persons, including the present applicants for offence punishable under Sections 498-A, 323, 504, 506 r/w. 34 of IPC. Being aggrieved by the act of registration of crime, the applicant, by resorting to remedy under Section 482, preferred the present application to quash and set aside the criminal proceeding initiated against them.

5] The learned counsel for the applicant submits that the applicants are innocent of the charges pitted against them. They have not committed any crime. The applicant No.1 is the 70 years old senior citizen and grand-father of the husband of the first informant. The applicant Nos. 2 and 3 are the maternal uncles of husband of first informant. The learned counsel explained that there was a marital discord in between the spouses. The first informant was reluctant to cohabit with the husband. Therefore, the proceeding for restitution of conjugal rights bearing RCC No. 239 of 2018 was filed against the first informant and applicant No.2 appeared in the proceeding as an advocate on behalf of husband. Taking umbrage of the same, the first informant, implicated the applicant No.2 and his brother applicant No.3 in this case by making false allegations.

6] According to learned counsel, a complaint was also filed before the Women's Grievance Redressal Cell, at Parbhani on behalf of first informant. In the complaint, there were no allegations about cruelty against the present applicants. There were efforts for amicable settlement of dispute between the spouses but the husband did not receive any response from the wife - respondent No.2 - Sana Fatema. It is further submitted that the present complaint came to be filed against the petitioner with ulterior motive to harass them. There were vague and general allegations

made against the applicants in the FIR. These applicants are implicated with intention to harass them. The present criminal proceeding against the applicant is nothing but an abuse of process of law. Therefore, it is essential to quash and set aside the proceeding against the applicant by exercising inherent powers under Section 482 of Cr.P.C.

7] Per contra, the learned APP and the learned counsel appearing for the respondent No.2 wife raised objection to the contentions propounded on behalf of the applicant and submits that there are allegations nurtured on behalf of first informant-wife about the demand of money by the applicant. They used to instigate the husband against respondent No.2 Sanata Fatema. The police completed the investigation into the crime and filed charge sheet. Therefore, it would be unjust and improper to cause any interference by exercising inherent powers under Section 482 of Cr.P.C.

8] Having given anxious consideration to the arguments advanced on behalf of both sides, we find that there are vague and general allegations nurtured on behalf of prosecution against the applicants. The First informant, respondent No.2 Sana Fatema did not cast specific allegations or overt act of the applicant for the allegations of cruelty meted out to her at the instance of applicants.

In the FIR, there were sweeping and general allegations against the applicants that they used to say to the husband of the respondent No.2 Sana Fatema that he has received very meager dowry in the marriage and more dowry would have received to him if he performed marriage with another girl and on that count, her husband used to abuse and harass her. He was insisting the first informant wife to bring Rs. 5 Lakhs as he had received very meager dowry in the marriage.

9] It is to be noted that except the aforesaid allegations, there were no other overt acts attributed to the present applicants in the FIR. It is also essential to take into consideration the fact that first informant had an occasion to ventilate her grievances before the Womens Grievances Redressal Forum Parbhani against the husband and other inmates of the matrimonial home. But, there were no allegation against these applicant. Had there been any involvement of the present applicants in the domestic affairs of the spouses, certainly, there would have been an occasion to the respondent No.2 - Sana Fatema to make allegations about the participation of these applications for cruelty during her cohabitation with the husband at matrimonial home.

10] At this juncture, the question that arises, whether the FIR registered against applicant 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 a rule of law that the inherent powers under Section 482 of Cr.P.C. are essential to be exercised so as to prevent an abuse of process of law or otherwise to secure ends of justice. It has also delineated that the powers should be exercised sparingly and that too in rarest of rare case. The Honourable Apex Court in the case of “***State of Haryana and others Vs. Bhajanlal***” ***reported in AIR 1992 SC 604***, held that the court can exercise its inherent jurisdiction to quash a criminal proceeding only when the allegations made in the FIR do not constitute the offence. In the instant case, it would be reiterated that there are vague and general allegations cast against the applicants in the FIR. There were no details about the participation of present applications for the allegations of cruelty meted out to respondent No.2 - wife - Sana Fatema during her cohabitation with the husband at her

matrimonial home. It is evident from the circumstances on record that if the allegations in the FIR against the applicants are taken at their face value and accepted in its entirety, it would not constitute any offence or make out any case against the present applicants. In such circumstances, there would not be any propriety to allow the prosecution to proceed further against the applicants for the charges of cruelty etc. The ends of justice will be served better by ensuring that the applicants may not be forced unnecessarily to go on litigation before the criminal court nor any useful purpose would be served by going ahead with the prosecution. Hence, the application deserves to be allowed.

14] In view of aforesaid discussion, the application stands allowed in terms of prayer clause (C) . The FIR bearing crime No. 465 of 2018 dated 1.12.2018 registered with Nanal Peth Police Station District Parbhani against the applicant No. 1 - Mirza Anwar Baig s/o. Mirza Yasin Baig, applicant No.2 - Mirza Afjal Baig s/o. Mirza Anwar Baig and applicant No.3 Mirza Ashraf Baig s/o. Mirza Anwar Baig, for the offence punishable under Sections 498-A, 323, 504,506 r/w. 34 of IPC and consequently, the proceeding of charge sheet filed against the applicants bearing RCC No. 37 of 2019 stands quashed and set aside. The names of the applicants from the array of accused in the aforesaid criminal proceeding be deleted.

15] Rule is made absolute in above terms. Criminal Application stands disposed of accordingly.

[K.K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

grt/-