

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

CRIMINAL APPLICATION NO. 590 OF 2019

1. Prahaldrao S/o Sangram Patil,
(Pralhad Samgram Patwari" as
mentioned in FIR)
Age: 62 years, occ. Agriculture,
R/o: At Rampur Thadi, Post Thadi
Hipargga, Dist. Nanded.
2. Dattatrya S/o Laxman Kotnod,
("Datta Kotnar" as mentioned In FIR)
Age 38 years, Occ. Agriculture,
R/o: at post Sagroli, Tq. Biloli,
Dist. Nanded. ... Applicants

V E R S U S

1. The State of Maharashtra
Through Mukhed Police Station,
Tq. Mukhed, Dist. Nanded.
2. Shakuntalabai W/o Narsingrao Patil,
Age: 62 years, Occ. Household,
R/o Walmiknagar, TQ. Mukhed,
District Nanded. ... Respondents

...

Mr. Gajanan S. Shembole, Advocate for Appellant
Mr. D.R. Kale, APP for respondent- State
Mr. A.A. Mukhedkar, Advocate for respondent No. 2

...

**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. 0362 of 2018 registered at Mukhed Police Station, Mukhed, District Nanded, for the offence punishable under Sections 143, 147, 149, 323, 504 and 306 of the Indian Penal Code ("IPC").

3. It has been alleged on behalf of prosecution that the first informant – Shakuntalabai W/o Narsingrao Patil approached to Police of Mukhed Police Station, District Nanded on 04-12-2018 and ventilated the grievance that the marriage of her son Shivshankar was solemnized on 14-06-2013 with one Ashwini @ Pooja daughter of Sanjay Kale resident of Kasrali, Taluka Biloli, District Nanded. After the marriage, Ashwini @ Pooja joined the company of her husband Shivshankar at her matrimonial home, located in Mukhed town for cohabitation. It has been alleged that Ashwini @ Pooja had an immoral relations with one Datta Bhimrao Chintalwad, resident of Mukhed. She had also insisted to install banner of paramour Datta Chintalwad in front of her house on the occasion of his birthday. The immoral character of Ashwini @ Pooja caused frequent quarrel between the spouses. There were attempts to give understanding to Ashwini @ Pooja, but it did not evoke result. The son- Shivshankar of the first informant always remained under mental stress. It has been contended that during period of 24-11-2018 to 27-11-2018, the in-laws of son - Shivshankar as well as present applicants served the excessive liquor to Shivshankar under pretext of increase in the salary of his father-in-law. On 27-11-2018, the in-laws of deceased Shivshankar including applicants visited to house of complainant. They

reprimanded the son Shivshankar for what reason he used to suspect the character of wife-Ashwini @ Pooja. They hurled abuses and caused damage to the domestic articles in the house. Thereafter, they took the wife Ashwini @ Pooja with them. In view of frequent quarrel following marital discord, the deceased Shivshankar became frustrated. Fed up with the daily harangue, the deceased – Shivshankar consumed poisonous insecticide. After alleged suicidal attempt the wife Ashwini @ Pooja rushed to the Police Station for lodging complaint and at that time mother, paramour- Datta Chintalwad, father Bhimrao as well as both the applicants were accompanied with her. The husband deceased Shivshankar saw all three persons in the Police Station with the wife Ashwini and thereafter he once again gulped the poisonous insecticide in front of premises of Police Station. He was admitted in the Hospital for medical treatment. Unfortunately, he succumbed to the poison on very same day i.e. on 27-11-2018, at about 3.30 p.m. According to first informant, her daughter-in-law Ashwini @ Pooja had an illicit relations with her paramour Datta Chintalwad. It has been alleged that on the day of incident, mother of Ashwini @ Pooja as well as both the applicants and others manhandled and roughed up the deceased Shivshankar for the reason why he has suspected character of his wife - Ashwini @ Pooja. Fed-up with the humiliation and frequent dispute following marital discord, the Shivshankar committed suicide by consuming poisonous substance and the applicants and others abetted the commission of suicide by the deceased Shivshankar.

4. Pursuant to FIR, Police of Mukhed Police Station registered the crime and set the penal law in motion. Both the applicants are

arraigned for the offence of abetment to commit suicide as well as assault to deceased Shivshankar by committing riot.

5. Being aggrieved by registration of crime, the applicants preferred the present application invoking remedy under Section 482 of the Cr.P.C. seeking relief to quash and set aside the penal proceeding initiated against them bearing FIR No. 0362 of 2018.

6. Learned counsel for applicants submits that the applicants had no concern at all with alleged crime nor they have any involvement in it. The applicants are falsely implicate in this case. There are no *prima facie* circumstances on record to get involve the present applicants in this crime. There are vague and sweeping allegations in the FIR against applicants. Both the applicants had no occasion to interfere in the marital affairs of the spouses. 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 concerned at all with the domestic affairs of spouses nor they have any benefit from it. The applicants are residing separately from the parents of wife - Ashwini. The applicant No. 1 is the distant relative of wife Ashwini @ Pooja, whereas, applicant No.2- Datta Kotnod has an cordial relations with the mother-in-law of the deceased Shivshankar. According to learned counsel, these applicants were roped into the matter just to widen the net. The impugned FIR came to be filed

against applicant only to wreak vengeance. There were no specific allegations against them. Hence, he requested to quash the proceedings against the applicants.

7. The learned APP as well as learned counsel for respondent No. 2- first informant raised objections and submit that the applicants were accompanied with mother-in-law, other relatives of the Ashwini @ Pooja, wife of the deceased and they all on 27-11-2018 barged into the house of son-in-law Shivshankar. They hurled abuses and caused damage to the valuable articles in the house of deceased Shivshankar. The applicants also visited to the Police Station accompanied with Ashwini @ Pooja to file complaint against husband- Shivshankar.

8. 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-act 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. Similarly, 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."

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 IPC 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. Before advertng to the merits of the matter, it is worth to mention that during the course of argument, this Court expressed the opinion that the Court is not inclined to grant relief in favour of applicant No. 1 – Pralhadrao Sangram Patil, as the allegation made against him in the FIR, *prima facie*, constitute offence against him. Therefore, learned counsel for applicants seeks leave to withdraw the application to his extent only. Ultimately, leave was granted and petition was, accordingly, disposed of as withdrawn to the extent of applicant No. 1- Pralhadrao Sangram Patil.

12. So far as applicant No. 2 is concerned, on perusal of FIR, it reveals that there are no specific allegations against him. He was not the relative of the wife Aswhini or the in-laws of deceased Shivshankar. However, it has been alleged that he had an cordial relations with family of in-laws of deceased Shivshankar. According to prosecution, on the day of incident i.e. on 27-11-2018, the applicant No.2 had been to the house of deceased Shivshankar accompanied with in-laws of Shivshankar and other accomplices. They manhandled the deceased Shivshankar for what reason he had suspicion about infidelity of wife Ashwini @ Pooja. It is to be noted that, applicant No. 2 Dattatray Kotnod had no blood relations with the family of parents of wife Ashwini @ Pooja. Therefore, it cannot be said that he had any reason to cause interference in the marital life of spouses. Moreover, there were no specific overtact attributed to applicant No. 2 in regard to abuses or act to cause damage to the domestic articles, etc. Obviously, these circumstances indicate that applicant No. 2 Dattatraya has been embroiled in this case with ulterior motive to expand gravity of the allegations and widen the net. 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*". It has also observed that the penal proceeding can be quashed and set aside if the allegations in the FIR against applicants are taken at their face value and accepted the same in its entirety would not constitute

offence.

13. In the matter in hand, it would unjust and improper to allow the prosecution to proceed against applicant No. 2. It would be an futile efforts and cause injustice to applicant No. 2. It would also dissipate the precious time of Court of law. 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 him 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 No. 1- Pralhadrao Sangram Patil stands disposed of as withdrawn.
3. Application in respect of applicant No. 2-Dattatrya S/o Laxman Kotnod is hereby allowed.
4. The penal proceeding initiated against applicant No. 2 - Dattatrya S/o Laxman Kotnod bearing FIR No. 0362 of 2018 dated 04-12-2018 for the offences punishable under sections 143, 147, 149, 323, 504 and 306 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 "C".
6. Criminal Application is disposed of in above terms.
7. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE