

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

CRIMINAL APPLICATION NO. 591 OF 2019

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| 1 | Dattatray S/o Ajinath Mastud,
Age : 33 years, Occ: Pvt. Service, | |
| 2 | Ajinath S/o Shankar Mastud,
Age: 60 years, Occu: Nil, | |
| 3 | Mahananda W/o Ajinath Mastud,
Age : 55 years, Occu: Household,
Applicant No. 1 to 3 R/o: D-8, Room
No. 04, B.M.C. Colony, S.G.Barve
Nagar, R.D. Kadam Marg, Opp.
Samaj Kalyan Kendra, Bhatwadi,
Ghatkopar(West), Mumbai. | |
| 4 | Varsha W/o Vinod Sonwane,
Age: 30 years, Occu. Household, | |
| 5 | Vinod S/o Ashok Sonawane,
Age : 36 years, Occu. Service,
Applicant No. 4 & 5
R/o:Salpadevipada, Sai-Krupa
Society, Room No. 101, Near Asha
Nagar, Mulund (West) | |
| 6 | Shobha W/o Shantilal Mastud,
Age: 49 years, Occu. Household,
R/o: Mahavir Nagar, A-wing, Flat No.
107, Khadakpada, Ghandhar Nagar,
Tulshi Tower, Kalyan (West), Dist.
Thane. | ..APPLICANTS
(Ori. Accused) |

VERSUS

- | | | |
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| 1 | The State of Maharashtra,
Through Investigation Officer,
Pathardi Police Station, Tq. Pathardi,
Dist. Ahmednagar. | |
| 2 | Rohini Dattatray Mastud,
Age: 31 years, Occu. Household,
R/o: Indira Nagar, Pathardi,
Tq. Pathardi, Dist. Ahmednagar. | RESPONDENTS |

...
Mr. Narayan B. Narwade, Advocate for Applicants.
Smt. D.S. Jape, APP for Respondent No. 1
Mr. M.V. Nawander Advocate for Respondent No. 2
...

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

DATED : 12th 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. 0030 of 2018 registered at Pathardi Police Station, Taluka Pathardi District Ahmedagar, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code ("IPC").

3. The prosecution case in short compass is that, the first informant Rohini W/o Dattatray Mastud on 12-01-2019 visited to the Police of Pathardi Police Station, Tq. Pathardi, District Ahmednagar and filed the report that her marriage was solemnized on 04-12-2017 with applicant No. 1 - Dattatray Ajinath Mastud. Applicants No. 2 and 3 are in-laws whereas applicant No. 4 is the sister-in-law, applicant No. 5 is husband of applicant No. 4. Applicant No. 6 is the distant relative. According to complainant,

after marriage she joined the company of husband in the joint family comprising in-laws and sister-in-law at Mumbai. She received the proper treatment for a period of one month of the marriage from the husband and in-laws. But, thereafter, the husband, in-laws and other applicants used to mentally harassed complainant wife on trifling reasons. There were abusing and beating to complainant. It has been alleged that when complainant-wife came to know that her husband has immoral relations and therefore she protested about the same but her husband and others assaulted her. The applicant also placed demand of Rs.1,00,000/- and 14 tolas gold for purchasing four wheeler and for business purpose. It has been alleged that on many occasions the complainant wife was kept unfed and harassed her mentally and physically. According to complainant, when she tried to convince the husband that her parents are not in a position to pay the amount, the applicant-husband assaulted and abused her. The complainant-wife continued to cohabit with husband only with hope of better future marital life. However, there was no change in the behaviour of husband and in-laws. It has been alleged that on 10-05-2018 the applicant assaulted the complainant wife and driven her out of the house. They threaten the complainant that she should come with aforesaid amount and gold, otherwise they will not allow her for cohabitation. Since then she started residing separately with the parents. It has been alleged that on 26-12-2018, the applicants came to parents home of the complainant and made demand of amount and gold and

assaulted the complainant, as well as parents of complainant when they tried to intervene in the fight. There were endeavour to give understanding to the husband and in-laws of complainant, but all the efforts did not evoke result. Eventually, she approached to the Police and filed report for penal action against the applicants.

4. Pursuant to FIR, Police of Pathardi Police Station, Taluka Pathardi District Ahmednagar registered the crime and set the penal law in motion. Pending the investigation, the applicants moved the present application to quash and set aside the F.I.R. and prayed to absolve from the charges pitted against them in the aforesaid crime.

5. Learned counsel for applicants vehemently submits that applicants are innocent of the charges pitted against them. There was delay in lodging the complaint. They have not committed any crime, but they are falsely implicated in this case. According to learned counsel, the marriage of spouses was solemnized on 04-12-2017 and within a span of 1½ years, the respondent-wife indulged in litigation with husband and other inmates of matrimonial home. She has also filed proceeding under the Protection of Women under Domestic Violence Act, 2005. The complainant was not interested in cohabiting with applicant-husband. She was reluctant to perform her domestic obligation. Her behaviour was adamant and arrogant one. There were no unlawful demand of money. According to learned counsel, the complainant wife on suspicion made sweeping allegation against applicant-husband that he has an

illicit relations with other lady. There was no any specific allegations against applicants for cruelty as contemplated under Section 498-A of the IPC. The learned counsel submits that applicants No. 4 is married sister and she is residing with her husband i.e. applicant No. 5. Learned counsel submits that all the applicants are residing separately. Applicants No. 4 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 is nothing but an abuse of process of law. It would be unjust and improper to compel the applicants to face the agony of trial. Hence, learned counsel 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 establishment of shop and purchasing the four wheeler. There were allegation 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 contention.

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. It is to be noted that the learned counsel for the applicants did not press the application for the applicants No.1 to 3. Accordingly, the application to the extent of applicants No. 1 to 3 came to be rejected as "Not pressed."

8. In regard to allegations made against applicants No. 4 to 6 we find that during crucial period of co-habitation of complainant with husband, applicant No. 4 was not available at matrimonial home of complainant. She was residing with husband-applicant No. 5 at her matrimonial home. The applicant No. 6 is the distant relative and residing separately. The applicant No.6 has no concern with the day to day affairs of the spouses. The entire allegations about cruelty are against husband and in-laws. There was reference that applicants No. 4 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. 4 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. 4 to 6 to maltreat and harass the complainant. There are allegations that the applicants No. 4 to 6 used to instigate husband to maltreat her. But, these allegations are stray and omnibus in nature. Therefore, it would unjust and improper to

compel the applicants No. 4 to 6 to face the agony of trial before criminal court following marital discord between the spouses.

9. 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."*

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 Chandrojirao 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 instant case, it would be unjust and improper to allow the prosecution to proceed against applicants No. 4 to 6. 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 the applicants No. 4 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 applicants No. 1 to 3 is rejected being "Not pressed".
- iii. Application in respect of applicants No. 4 to 6 is hereby allowed.
- iv. The penal proceeding initiated against applicants No. 4 to 6 bearing FIR No. 0030 of 2018, for the offences punishable under Sections 498-A, 323 and 504 read with Section 34 of IPC, registered with Pathardi Police Station, Taluka Pathardi, District Ahmednagar, is ordered to be quashed and set aside.
- v. Rule is made absolute in terms of prayer clause "B".
- 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

MTK