

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

CRIMINAL APPLICATION NO. 650 OF 2019

- 1 Madhukar s/o Dattatrao Jadhav,
Age: 36 years, Occupation: Govt.
Servant
- 2 Kantabai wd/o Dattarao Jadhav,
Age: 65 years, Occupation: Household,
- 3 Ratan s/o Dattarao Jadhav,
Age: 40 years, Occupation : Govt.
Servant
- 4 Sunita W/o Jaiprakash Jadhav,
Age: 40 years, Occupation : Household
- 5 Ravibhushan s/o Dattatrao Jadhav,
Age : 38 years, Occupation: Labour,
- 6 Prema d/o Dattarao Jadhav,
Age: 34 years, Occupation: Household,
- 7 Bhagyashri w/o Ravibhushan Jadhav,
Age: 29 years, Occupation: Household,
All above accused residing at
Row House No. 60, Apratim Vastu,
Near Chate School, Satara Parisar,
Beed By-pass Road, Aurangabad.

..APPLICANTS
(Ori.
Accused)

VERSUS

- 1 The State of Maharashtra,
Through the Police Station, Manatha,
Taluka Hadgaon, Dist. Nanded,
Through its Police Station Officer,
- 2 Manisha w/o Madhukar Jadhav,
Age: 21 years, Occupation: Household,
Residing at ND-42, J-2 J-3, Vaibhav
Nagar Near Krishna Temple HUDCO,
Kautha, Nanded – 431 603

RESPONDENTS

...
Mr. K.H. Surve, Advocate for Applicants.
Mr. R.D. Sanap, APP for Respondent No. 1
Mr. Ashok L. Saudagar, holding for
Mr. H.V. Waghamre, Advocate for Respondent No. 2

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

DATED : 19th 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. 06 of 2019 registered at Manatha Police Station, Taluqa Hadgaon, District Nanded for the offence punishable under Sections 498-A, 504 and 506 read with Section 34 of Indian Penal Code ("IPC").

3. It has been alleged on behalf of prosecution that the first informant – complainant Manisha Madhukar Jadhav approached to the Police of Manatha Police Station, District Nanded, on 10-01-2019 and ventilated the grievance that her marriage was solemnized on 17-02-2017 with applicant No. 1 – Madhukar. The applicant No. 2 is mother-in-law, applicants No. 3 and 5 are brother-in-law, applicant No. 4 is widow of deceased brother-in law and applicant No. 6 is the sister-in-law of the complainant-wife. The applicant No. 7 is wife of applicant No. 5. After marriage,

complainant - wife joined the company of husband for cohabitation at Aurangabad, as he in Government Servant at Aurangabad. She was residing in the joint family comprising of her husband and all the applicants etc. According to complainant, initially, for about one month, inmates of matrimonial home treated her properly. According to complainant, the applicant-husband in inebriated condition used to maltreat and harass the complainant-wife on account of domestic reason. The applicant-husband also used to scold her that she has black spot on her face. She was being assaulted and abused by the applicant-husband on trifle reasons. The other inmates of her matrimonial home used to instigate the applicant-husband for ill-treatment to the complainant-wife. It has been alleged that, the applicant husband was behaving with applicant No. 4 in proper manner as she was taking more care of him. The act of applicant No. 4 -Sunita created aloofness between spouses. The inmates of matrimonial home also used to maltreat and harass the complainant-wife on account of domestic reason as well as black spot on her face. She was also assaulted and abused by other applicants. It has been alleged that, in-mates of matrimonial insisted the husband to desert her and perform the marriage with another beautiful lady. The husband under the influence of liquor used to assault and abused the complainant. According to complainant, the applicant-husband placed demand of Rs. Three lakhs for construction of house and asked her if she wants to cohabit with him, she should come with such amount, otherwise

she will not be allowed for cohabitation. It has been alleged that when parents, uncle and other relative of complainant-wife tried to give understanding to the inmates of matrimonial home for not to ill-treat her. But, they did not pay any heed to their request. According to complainant, for satisfaction of demand of Rs. Three lakhs she was being harassed and maltreated by the applicants. At last, the inmates of matrimonial home left the complainant-wife at her parents house and since then the complainant is residing with her parents at their mercy. Eventually, she approached to the Women's Grievance Redressal Forum, but found unavailing and thereafter, she filed the report to Police Station for penal action against applicants.

4. Pursuant to FIR, Police of Manatha Police Station, taluqa Hadgaon District Nanded registered the crime and set the penal law in motion. Pending the investigation, applicants moved present application by invoking remedy under Section 482 of the Cr.P.C. for relief to quash and set aside the impugned FIR.

5. Learned counsel for applicants vehemently submits that there were no physical and mental cruelty to the complainant on the part of applicants. But, she has filed present penal proceeding with an malafide intention to harass the applicants. There were no specific allegations about maltreatment and torture meted out to the complainant - wife. According to learned counsel, all the applicants are residing separately. Learned counsel further added that

respondent No.2-complainant was not willing to continue martial relation with the applicant-husband. According to learned counsel, the couple also filed a petition for annulment of their marriage by consent before the learned Family Court. The rest of the applicants have no any concern with the marital life of applicant No. 1 and complainant-wife. They have no any reason to cause interference into the domestic affairs of the spouses. The complainant did not mention any specific instances of maltreatment at the hands of other applicants. The learned counsel submits that the allegations made in the FIR are vague and general in nature. There was no demand of any kind. The present complaint is nothing but an abuse of process of law. It would unjust and improper to compel the applicants to face the agony of trial. In case, the present penal proceeding is not quashed, it would cause serious prejudice and injustice to the applicants. Learned counsel for applicants placed reliance on the Judgments in the case of ***Preeti Gupta and another Versus State of Jharkhand and another*** reported in ***2010 All MR (Cri)2947 and Kailash Chandra Agrawal and another Versus State of U.P. and others*** reported in ***2014 ALL MR(Cri)4134(SC)***.

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, 504 and 506 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 the applicants for construction of the house. The respondent No. 2 complainant filed the affidavit in-reply and submits that her husband obtained her signatures forcibly on the stamp paper showing her consent for divorce. She did not give any consent for mutual divorce. But, applicant-husband attempted to obtain the order from Family Court, fraudulently.

7. Having given anxious consideration to the arguments advanced on behalf of both sides, this Court was not inclined to nod in favour of applicant No. 1 for exercise of inherent powers under Section 482 of Cr.P.C. 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 nurtured against applicants No. 2 to 7, we find that the allegations cast on behalf of complainant - wife against applicants No. 2 to 7 are vague and general in nature. There are no specific allegations attributing overt-act of the applicants No. 2 to 7 to maltreat and harass the complainant - wife. There were no detail particulars given in the FIR about participation of applicants No. 2 to 7 for their act of cruelty to the complainant or for demand of money. The allegations about cruelty by applicants No. 2 to 7 are found stray and sweeping in nature. The applicant No.2 mother-in-

law Kantabai is the 65 years old senior citizen. The applicant No.3-brother-in-law is the Government Servant. The applicants No.2 to 7 have no reason to cause interference in the marital life of spouses. It is fallacious to appreciate that they are the beneficiaries from the marital discord of 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 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."

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 light of aforesaid exposition of law, in the instant case, it would be unjust and improper to allow the prosecution to proceed against applicants No. 2 to 7. 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 their 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 litigation before the Criminal Court. Hence, penal proceeding initiated against these applicants No. 2 to 7 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 disposed of as withdrawn.
- iii. Application in respect of applicants No. 2 to 7 is hereby allowed.
- iv. The penal proceeding initiated against applicants No. 2 to 7, bearing FIR No. 06 of 2019, for the offences punishable under Sections 498-A, 504 and 506 read with Section 34 of IPC, registered with Manatha Police Station, Tq. Hadgaon District Nanded, is ordered to be quashed and set aside.
- v. Rule is made absolute partly 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