

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 766 OF 2019

1. Sanghmitra w/o. Pravin Magre,
Age 35 years, Occ. Household.
2. Pravin S/o. Kisan Magre,
Age 36 years, Occ. Service,
Both R/o. Kakandi,
Tq. and Dist. Nanded,
At present residing at Pankaj Nagar,
Dhanegaon, Tq. and Dist. Nanded.

... Applicants

Versus

1. The State of Maharashtra
Through Investigation Officer,
Ramtirth Police Station, Nanded.
2. Trishala Sangram Dhage,
Age 29 years, Occ. Household
R/o. At present Ramtirth, Biloli,
Tq. Biloli, Dist. Nanded.

... Respondents

Advocate for the Applicants : Shri. M.V. Thorat
APP for the Respondent No. 1 : Mrs. A.S. Shinde.
Advocate for the Respondent No. 2 : Shri A.P. Gawade.

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ**
DATE : 23rd JULY, 2019.

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

1. Heard. Rule. Rule is made returnable forthwith. Matter is taken up for finality 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 Crime No.218/2018 registered at Ramtirth Police Station, Nanded, for the offence punishable under Sections 498-A, 323, 504, 506 r/w. Section 34 of the Indian Penal Code ("IPC").

3. It has been alleged that the First Informant Trishala Dhage, on 2nd December, 2018, visited to the Ramtirth Police Station, Nanded and filed a complaint that her marriage was solemnized with one Sangram Dhage on 15th June, 2012 at Shankar Nagar. At the time of marriage, her parents had given an amount of Rs. 3 Lakhs and gold ornaments, towards dowry. After marriage, she joined the company of her husband in joint family comprising in-laws, brother-in-law and sister-in-law etc. After the marriage, for about a year, she was treated in proper manner by the husband and in-laws. In the year 2013, she gave birth to a female child. After delivery, when she returned to her matrimonial home in the month of February 2014, that time, the in-laws and other inmates of the matrimonial home picked up quarrel with her on account of gifts etc. given to her while returning to matrimonial home after delivery. They alleged that her husband works as a driver on the vehicles of others. So, for purchase of new vehicle, they insisted her to bring Rs. 3,00,000/- from

her parents. When she refused to bring the said amount, as financial condition of her parents was not so sound, they started harassing and ill-treating her. The inmates of the matrimonial home instigated her husband to harass her, and in the aftermath the husband used to beat her with wooden log and belt. She was kept unfed. On 29.5.2014, when there was celebration of first birthday of her daughter, the inmates of the matrimonial home asked her to bring Rs. 3 Lakhs from her father for purchase of vehicle. She was again beaten-up by her husband. Thereafter she was driven out of the matrimonial home and since then till 2017, the complainant was residing at her parental home. Meanwhile, the dispute between spouses was settled amicably after giving assurance by the husband and mother-in-law for giving proper treatment to complainant. Thereafter, once again the complainant came to matrimonial home for cohabitation. But, her ordeal did not come to an end. She was again driven out of the house after taking away her gold ornaments. On 1st April, 2018, when the relatives of complainant asked the inmates of matrimonial home as to why they are not allowing the complainant for cohabitation, they picked up quarrel with them and drove them out of the house. On 28.11.2018, at about 1.30 p.m., the husband, alongwith in-laws, brother-in-law, sister in law came to the parental house of the complainant and attempted to take the daughter of complainant forcibly with them. When the members of parental home resisted, these people hurled abuses and jostled them. They had also given threats of life to complainant and her parents. Eventually, the complainant approached to the police and filed the report.

4. Pursuant to FIR, Police of Ramtirth Police Station, 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 penal proceeding initiated against them.

5. Learned counsel for applicants vehemently submits that the allegations made in the FIR against the present applicants are vague and general in nature. The allegations are totally false and baseless. It has been alleged that the applicants used to maltreat the complainant and insisted her for bringing money to purchase vehicle for husband. According to learned counsel, the husband of complainant has already his own car and he is doing business of travel agency in Nanded city. The first informant has filed present penal proceeding with ulterior motive to harass the applicants. The learned counsel further submits that the present applicants Nos. 1 and 2 are sister-in-law and her husband, respectively. They are the distant relatives. They are residing separately at Dhanegaon, Taluka and Dist. Nanded which is at a distance of more than 10 Kms. from matrimonial house of complainant. They have no reason to cause interference in marital life of complainant nor they are any way beneficiaries from the marital discord of the spouses.

6. The learned APP as well as learned counsel for respondent No. 2-first informant vociferously opposed the contentions put-forth on behalf of

applicants and submit that the allegations of assault and demand of money nurtured on behalf of complainant in the FIR discloses commission of crime punishable under Sections 498-A, 323, 504, 506 of the IPC. The complainant categorically described the episode of assault and cruelty at the hands of husband and others including present applicants to satisfy unlawful demand of money.

7. Having given anxious consideration to the arguments advanced on behalf of both sides, we find that the allegations cast against the applicants are all vague and general in nature. They are residing separately at Dhanegaon, Taluka and Dist. Nanded. The allegations against these applicants are that they accompanied with husband and other inmates of matrimonial home of complainant insisted her to bring Rs. 3 Lakhs for purchase of vehicle and on 28th November, 2019 the applicant No.1 came to Shankarnagar at parental home of the complainant alongwith husband, father-in-law and brother-in-law of complainant. They attempted to take away the minor daughter of complainant forcibly from her. These allegations found general and sweeping in nature. There is no specific role attributed to the applicants to ascertain the act of cruelty to the complainant as per Section 498-A of IPC. There is no impediment to perceive that the present FIR against applicants would be an abuse of process of law. The circumstances on record reflect that the accusation made against applicants all are baseless, imaginary and cast with an ulterior motive to harass the applicants. They have no any reason to cause interference in the marital affairs of the spouses nor they are beneficiaries

following marital discord between spouses. Definitely, if the applicants are compelled to face agony of trial, it would cause injustice and prejudice to them.

8. 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."*

9. 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.

10. 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.*”

11. It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Schindia** 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.”

12. 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.

13. In the light of aforesaid exposition of law and factual aspect of the matter in hand, it would be unjust and improper to allow the prosecution to proceed against applicants. It would be an futile efforts and would cause injustice if the applicants are compelled to face the agony of trial. 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 litigations before the Criminal Court. Hence, penal proceeding initiated against these applicants deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

1. The Criminal Application is allowed .
2. The penal proceeding initiated against applicants bearing FIR No. 218 of 2018, for the offences punishable under Sections 498-A, 323,504, 506 read with Section 34 of IPC registered with Police Station, Ramtirth, Nanded and consequential proceeding of charge sheet filed pursuant to impugned FIR, all the proceeding are hereby ordered to be quashed and set aside, to the extent of present applicants.
5. Rule is made absolute partly in terms of prayer clauses "A".
6. Criminal Application is disposed of in above terms.
7. No order as to costs.

[K.K. SONAWANE]
JUDGE.

[T. V. NALAWADE]
JUDGE

grt/