

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 760 OF 2019

1. Dr. Santosh S/o Harishchandra Patil
Age :42 years, Occu: Medical Officer,
R/o : Tambari Division, Osmanabad,
Tq. and District Osmanabad
2. Shri Harishchandra Raosaheb Patil,
Age : 75 years, Occu : Pensioner,
R/o : Tambari Division, Osmanabad,
Tq. and District Osmanabad
3. Sau. Sunanda Harishchandra Patil,
Age : 68 years, Occu.: Household,
R/o : Tambari Division, Osmanabad,
Tq. and District Osmanabad
4. Smt. Mangal S/o Vitthal More,
Age : 50 years, Occu.: Household,
R/o : Barshi Naka, Osmanabad,
Tq. & Dist. Osmanabad.
5. Sau. Pramodini Tanajirao Bichkule,
Age : 47 years, Occu.: Service,
R/o : Akluj, Tq. Malshiras,
Dist. Solapur

... Applicants

Vs.

1. The State of Maharashtra
Through the Police Inspector,
Anandnagar Police Station, Osmanabad,
District Osmanabad.
2. Dr. Shaila W/o Santosh Patil,
Age : 35 years, Occu.: Household,
R/o : Plot No. 12, Yashwant Building, near Ramnagar,
Balewadi, Pune, District Pune.

Advocate for the Applicants : Mr. Y. B. Bolkar
APP for the Respondent - State : Mr. M. M. Nerlikar
Advocate for the Respondent No. 2 : Mr. S. J. Salunke

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ
DATE : 18TH JUNE, 2019.**

ORAL JUDGMENT [PER K. K. SONAWANE, 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. 399 of 2018 registered at Anandnagar Police Station Osmanabad for the offence punishable under Sections 498A, 323, 504 and 506 read with Section 34 of the Indian Penal Code (“IPC”).

3] It has been alleged on behalf of prosecution that the first informant – Dr. Shaila W/o Santosh Patil, approached to the police of Anandnagar PS. Osmanabad on 19.11.2018 and filed the report that she is a Dentist by profession and residing with her parents and son – Shashwat at Pune. Her marriage was solemnized with the applicant – Santosh on 17.4.2018. After marriage, she joined the company of husband for cohabitation. It has been alleged that

during cohabitation at matrimonial home with husband, her sister-in-law applicant No.4 Mangal cast the allegations that her marriage was not performed in proper manner, as they expected from the parents of complainant. The applicant No.4 Mangal used to instigate husband and in-laws for not giving sufficient gold ornaments, four-wheeler car in the marriage. The husband and in-laws of the complainant and applicant No.4 Mangal started demanding of Rs. 1 Crore from the complainant Dr. Shaila W/o Santosh Patil for construction of hospital of her husband. They subjected the complainant to mental and physical torture and harassment. It has been contended that due to poor financial condition, her parents could not satisfy the demand. The understanding was given to the applicants, but it did not evoke result. There was demand of Rs. 1 Crore for construction of hospital of the applicant Dr. Santosh. According to complainant, she cohabited with the husband for about 5 years and she begotten one son Shashwat during the wedlock from the husband, but following physical and mental torture, the applicants driven out the complainant from the matrimonial home. Eventually, the hapless complainant Dr. Shaila started residing with the parents. There

were endeavour for re-conciliation of marital dispute between the spouses, but found unavailing. The applicant initiated divorce proceeding before the Family Court at Osmanabad. It has been alleged that during the process of conciliation, the husband – Dr. Santosh assaulted wife Shaila, in presence of Conciliator, in the court. He also given threats of life to the complainant. At last, the complainant approached to the police and filed the present complaint.

4] The learned counsel for the applicant submits that the applicants did not torture or harass the wife Shaila for demand of money as alleged in the complaint. They are innocent of the charges pitted against them. The applicant No.1 is the Medical Officer discharging the duty in the Government hospital. The applicant Nos. 2 and 3 are in-laws of the complainant and senior citizens. The applicant Nos. 4 and 5 are the married sisters of husband and residing separately at their matrimonial home. They have no concern at all with the marital dispute in between the spouses. According to learned counsel, all the allegations are fake, omnibus and not believable one. The family of the applicant is

educated and well cultured. Therefore, there would not be any demand of money for construction of hospital as alleged by the complainant. All the allegations are imaginary and vague one. The learned counsel requested to quash and set aside the impugned FIR in exercise of powers under Section 482 of Cr.P.C.

5] The learned counsel for respondent No.2 and learned APP raised the objection and submit that the complainant wife is highly educated and Doctor by profession. She cohabited with the husband Santosh for about 5 years. There was physical and mental torture to her on the part of the applicants and eventually, the circumstances constrained her to file the present FIR . The applicant husband has also filed the proceeding for divorce in the family court. The applicant also initiated proceeding for restitution of conjugal rights. The complainant - wife filed criminal proceeding before the learned Magistrate under the Domestic Violence Act against the husband and in laws as well as applicant No.4 Mangal. The learned Magistrate appreciated the circumstances on record and allowed the application. The learned Magistrate passed the preventive order to restrain the applicant Nos. 1 to 4 from

committing any act of domestic violence against the complainant etc. According to learned counsel for respondent No. 2 the interference to quash and set aside the impugned FIR is unwarranted.

6] We have given anxious consideration to the arguments advanced on behalf of both sides. During the course of arguments, this court expressed the opinion that no relief can be granted in favour of applicant Nos. 1 to 4 in exercise of powers under Section 482 of Cr.P.C. Eventually, the learned counsel for the applicants seeks leave to withdraw the application to the extent of applicant Nos. 1 to 4. Accordingly, leave was granted and the application to the extent of applicant Nos. 1 to 4 came to be disposed of as withdrawn.

7] In regard to the allegations nurtured on behalf of complainant against the applicant No.5 – Pramodini Bichkule, we find that the allegations made against her are vague, ambiguous and sweeping in nature. At the fag end of the FIR, the complainant cast aspersions that since the day of 17.4.2018 up till this date, there was continuous demand of money and to satisfy the demand,

she was being beaten up and abused by her husband, in-laws and both sisters in law. She was physically and mentally tortured and driven out of the house by them. Therefore, she has filed penal proceedings against these applicants. It is to be noted that except these allegations, omnibus and general in nature, there are no any other sort of aspersions cast against applicant No.5 Pramodini on behalf of complainant. Therefore, we do not find any impediment to exercise inherent powers under Section 482 of Cr.PC in favour of applicant No.5 to quash and set aside the impugned FIR, to her extent.

8] It would be reiterated that there were no specific allegations attributing overt act, or participation of applicant No.5 in the episode of harassment and maltreatment given to the complainant. There were no detail particulars given in the FIR about involvement of applicant No.5 for the torture to respondent wife or for demand of money from her parents. All the allegations are found stray and sweeping in nature.

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 Punjab 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** referred above 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] In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicant No. 5. It would be an futile efforts and would cause injustice to her. It would also dissipate the precious time of Court of law as the possibility of ultimate conviction of applicant No.5 Pramodini is totally bleak. The ends of justice would be served by ensuring that the applicant No. 5 may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against these applicant No. 5 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

1. The Criminal Application is partly allowed.
2. Application of applicant Nos. 1 to 4 is disposed of as withdrawn. Application of applicant No. 5 Pramodini is allowed. Relief is granted to her in terms of prayer clauses B, B1 and B2.
3. Rule is made absolute in those terms.
4. Criminal application is disposed of in above terms. No order as to costs.

[K.K. SONAWANE]
JUDGE.

[T. V. NALAWADE]
JUDGE

Grt/-