

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

CRIMINAL APPLICATION NO. 920 OF 2019

- 1 Bhagwat s/o. Babasaheb Bhandarge,
Age : 48 years, Occu. Service,
R/o. Nariman Nagar, Near Railway Station,
Old Jalna, Jalna, District Jalna.
- 2 Vishnu s/o. Babasaheb Bhandarge,
Age : 45 years, Occu. Service,
R/o. Sanalnagar, Near Railway Station,
Jalna, Taluka and District Jalna.

APPLICANTS
(Original accused
No.4 and 5)
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VERSUS

- 1 The State of Maharashtra,
Through Police Station, Ashti,
District Jalna.
- 2 Rekha W/o. Mahesh Taur,
Age : 25 years, Occu. Household,
R/o. Hadap Sawargaon,
Taluka and District Jalna.

RESPONDENTS
(R.No.2 - Original
Complainant)
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Mr. S. S. Shinde h/f. Mr. S. J. Salunke, Advocate for Applicants.
Mr. R. D. Sanap, APP for respondent No. 1-State.
Mr. S. K. Chavan, Advocate for Respondent No. 2.

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

DATED : 30th SEPTEMBER, 2019.

ORAL JUDGMENT :- (Per: K.K. SONAWANE, J.)

1. Rule. Rule made returnable forthwith. Heard finally, with the consent of learned counsel appearing for the parties.

2. The applicants - original accused No. 4 and 5 preferred the 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. 148 of 2018 registered at Ashti Police Station, Taluka Partur, District Jalna, for the offence punishable under Sections 498-A, 323 and 504 read with Section 34 of Indian Penal Code (IPC) and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

3. The prosecution case in short compass is that the first informant – complainant Sou. Rekha Mahesh Taur, on 11-10-2018 approached to the Police of Ashti Police Station, Taluka Partur, District Jalna, and ventilated the grievance that her marriage was solemnized on 18-01-2013 with one Mahesh Annasaheb Taur. The applicants No. 1 and 2 are the maternal uncle of her husband. After marriage, complainant-wife joined the company of husband for cohabitation at village Changatpuri, Taluka Partur, District Jalna. Initially, for about two years, the husband and other inmates of matrimonial home behaved with complainant in proper manner. During that period, she begotten female child from the wedlock with husband Mahesh. Thereafter, husband and other inmates of matrimonial home started mental torture to complainant. According to complainant, her husband used to remain out of home for about 8 to 15 days without any reasonable cause. The complainant-wife made enquiry about the same. The husband scolded her that he dislike her, but, he performed the marriage at the instance of his maternal uncles i.e. present applicants. The husband started maltreatment to complainant-wife as he was not liking her. Therefore,

complainant disclosed her ordeals to parents and brother. They made endeavour to give understanding and requested to inmates of matrimonial home to treat the complainant in proper manner. But, husband disclosed the complainant-wife that if she wanted to cohabit with him in proper manner, she should bring Rs.5 Lakhs as dowry from her parents. The husband further disclosed that he has an immoral relation with one lady and for amicable settlement of such illicit relation, he is in need of such huge amount from her parents, and on that count, he abused and beaten-up the complainant-wife. Prior to one and half month of lodging the complaint, her husband and other inmates of matrimonial home in collusion with each other driven her out of the house. Since then, complainant-wife was residing with her parents. Eventually, she filed report to the Police of Ashti Police Station for penal action against the husband, in-laws and present applicants.

4. Pursuant to FIR, the Police of Ashti Police Station, Taluka Partur, District Jalna, registered the crime and set the penal law in motion. Pending the investigation, the 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 and prayed to absolve from the charges pitted against them.

5. Learned counsel for applicants vehemently submits that there were no physical and mental cruelty to the complainant on the part of applicants. But, the complainant has filed present false 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. Learned counsel further added that the

applicant No.1 is serving as Bank Officer in District Central Co-operative Bank, Jalna. The applicant No.2 is working as Teacher in Zilla Parishad School, Bathan (Budruk), Taluka and District Jalna. Both the applicants are residing separately at Jalna. The applicants have no any concern with the marital life of complainant-wife and her husband. They have no any reason to cause interference into the domestic affairs of the spouses. The complainant did not mention any specific instance of maltreatment at the hands of present 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 on the part of applicants. He submits that 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.

6. The learned APP as well as learned counsel for respondent No. 2-first informant opposed the contentions put-forth on behalf of applicants. They submit that the allegation of ill-treatment nurtured on behalf of complainant in the FIR discloses commission of crime under Sections 498-A, 323 and 504 etc. of IPC. The Sections 3 and 4 of the Dowry Prohibition Act, 1961, are also applied in this crime. The complainant categorically described the episode of her maltreatment at the hands of applicants. There were allegations of physical and mental torture to the complainant for demand of amount of dowry on the part of applicants.

7. Having given anxious consideration to the arguments advanced on behalf of both sides and the allegations nurtured in the FIR against applicants, we find that the allegations cast on behalf of complainant - wife against present applicants are totally vague and general in nature. There are no specific allegations attributing overt-act of these applicants to maltreat and harass the complainant-wife. There were no detail particulars given in the FIR about participation of applicants for their act of cruelty to the complainant or for demand of money, etc. The allegations about cruelty at the hands of applicants are found stray and sweeping in nature. The applicants are maternal uncle of husband of complainant-wife and distant relatives. They are residing separately from the spouses. They have no any reason to cause interference into the domestic affairs of the spouses. Therefore, it can not be perceived that these applicants have any reason to cause interference in the marital life of spouses. In contrast, they were mediators at the time of settlement of marriage. It is fallacious to appreciate that they are beneficiaries from the marital discord between the spouses.

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 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."*

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 Scindia 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."

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 expositions of law, in the instant case, it would be unjust and improper to allow the prosecution to proceed

further against applicants. 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 applicants deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is allowed.
- ii. The penal proceeding initiated against present applicants bearing FIR/Crime No. 148 of 2018, for the offences punishable under Sections 498-A, 323 and 504 read with Section 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961, registered with Asthi Police Station, Taluka Partur, District Jalna, is ordered to be quashed and set aside to their extent only.
- iii. Rule is made absolute in terms of prayer clause "B".
- iv. The Criminal Application is disposed of in above terms.
- v. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE