

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

CRIMINAL APPLICATION NO. 954 OF 2019

1 Nitin Vishwas Deore,
Age: 33 years, Occ. Medical
Practitioner,

2 Viswas Pandit Deore,
Age : 65 years, Occ: retired
Teacher.

3 Chitra Vishwas Deore,
Age : 60 years Occ: Housewife,

1 to 3 R/o: Plot No. 27A, Bijali
Nagar, Gondur Road, Deopur,
Dhule.

4 Girish Vishwas Deore, Age : 36
years, Occ. Service, R/o Texas
USA

..APPLICANTS
(Ori.
Accused)

VERSUS

1 The State of Maharashtra

2 Neha Nitin Deore,
Age: 25 years, Occ: Medical
Practitioner
R/o: C/o - Hemant Shamrao
Ahirrao, Ujjwal Colony, Bhadgaon,
Taluka Bhadgaon, Dist. Jalgaon.

RESPONDENTS
(Non-
applicants)

...
Mr. N.B. Suryawanshi, h/f Mr. Amit S. Savale, Advocate for
Applicants.

Mr. K.S. Patil, APP for Respondent No. 1.

Mr.H.P. Randhir, Advocate for Respondent No. 2.

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

DATED : 28th 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.

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. 103 of 2018 registered at Bhadgaon Police Station, Taluqa Bhadgaon, District Jalgaon for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code ("IPC") and criminal proceeding bearing RCC No. 05 of 2019 initiated pursuant to aforesaid FIR.

3. The prosecution case in short compass is that, first informant Neha W/o Nitin Deore on 12-08-2018 visited to the Police of Bhadgaon Police Station and filed the report that her marriage was solemnized on 16-05-2017 with applicant No. 1- Nitin Deore. Applicants No. 2 and 3 are in-laws whereas applicant No. 4 is her brother-in-law. According to complainant, after marriage she joined the company of husband in the joint family comprising in-laws and brother-in-law at Dhule. The husband - Nitin was employed as Doctor in Civil Hospital, Dhule. The first informant was also used to accompany with husband - Nitin for medical practice. The complainant begotten one son Priyansh five months old during wedlock from husband. It has been alleged that initially for about a month of marriage, husband and other inmates behaved with her in proper manner. But, thereafter, her mother-in-law used to tease her on flimsy reasons. Her husband also mentally and physically tortured her after being instigated by the mother-in-law. There was a demand of Rs.50,000/- for installing sprinkle equipments-in

agricultural land. When the complainant disclosed to her husband about demand of Rs.50,000/- on the part of her mother-in-law, that time her husband took her to matrimonial home at Dhule, but her ordeals were continued. Her husband also placed demand of money of Rs. 10,00,000/- to establish new hospital. They gave threat of abortion, in case, she did not bring money from her parents. There were beating and abusing to the complainant by her husband and in-laws. In the month of August-2017, the complainant came to her parents home and at that time, she was asked to bring Rs.10,00,000/- for hospital purpose. There were endeavour to give understanding to the husband and in-laws of complainant. The parents gave assurance to make necessary arrangements for money. Thereafter, the complainant was allowed for cohabitation with husband at matrimonial home. It has been alleged that on 30-11-2019, her brother-in-law Girish Deore returned from Landon (U.K.) and he instigated the husband and her-in-laws that she should not be allowed for cohabitation till satisfaction of the demand of Rs.10,00,000/-. Eventually, the mother-in-law took out a gold ornaments from her person and driven her out of the house. The complainant came to the parents home and since then she is residing at their mercy. At last, she approached to the Police and filed report for penal action against the applicants.

4. Pursuant to FIR, Police of Bhadgaon Police Station District Jalgaon registered the crime and set the penal law in motion. Investigating Officer recorded statements of witnesses acquainted

with the facts of the case. He collected relevant documents of matrimonial dispute between the spouses. After completion of procedural formalities, Investigating Officer filed charge-sheet bearing RCC No. 05 of 2019, which is pending before the learned Magistrate at Bhadgaon.

5. Learned counsel for applicants vehemently submits that applicants are innocent of the charges pitted against them. They have not committed any crime, but they are falsely implicated in this case. There were no unlawful demand of money. According to learned counsel, the complainant was not interested in cohabiting with applicant-husband. She used to pick up the quarrels with husband and other inmates of matrimonial home. She was insisting for separate residence. She was reluctant to perform her domestic obligation like cooking etc. The complainant-wife used to give threat of suicide to her husband and other members of matrimonial home. The applicant-husband in order to avoid untoward incident started residing separately with wife from his parents. But, there were no improvement in her behaviour. Learned counsel further submits that since March, 2017 applicant No. 4-Girish Deore employed in the company located at U.K. The learned counsel produced the documents of Employment Agreement as well as Pass-port and Visa etc. on record. Learned counsel for the applicants contended that during the relevant period, the PW 4- Girish Deore was not available at the matrimonial home for cruelty to the complainant. There was no any specific allegations against applicants for cruelty as

contemplated under Section 498-A of the IPC. All the allegations are general and sweeping in nature. 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, 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 establishment of Hospital.

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. We find that there is no scope for exercise of inherent powers under Section 482 of the Cr.P.C. in favour of applicants No. 1 to 3. Therefore, we expressed that this Court is not inclined to nod in favour of applicants No. 1 to 3 for grant of relief in their favour. Eventually, learned counsel for applicants No. 1 to 3 seeks leave to withdraw the proceeding to their extent. Accordingly, leave was granted and application to the extent of applicants No.1 to 3 came to be disposed off as withdrawn.

8. In regard to the allegations made against applicant No. 4, we find that during crucial period of co-habitation of complainant with husband, the applicant No. 4 was not available at matrimonial home of complainant. He was employed in the Company located at UK. The entire allegations about cruelty are against husband and in-laws. There was reference that applicant No. 4 instigated for mental and physical torture to the complainant, but all aspersion against the applicant No. 4 are vague, and general in nature. There was no specific instance or participation of applicant No. 4 in the alleged act of cruelty was mentioned for adverse inference about his involvement into the crime. In supplementary statement, the complainant made allegation that her brother-in-law applicant No. 4-Girish Deore on 30-11-2017 returned to Dhule from Landon, at that time, he stated that when complainant did not bring Rs.10,00,000/- from her parents, why she was allowed for cohabitation and because of his instigation her husband and in-laws mentally and physically tortured her for demand of money. We find that this sort of allegations are totally omnibus and general in nature. There were no allegations that applicant No. 4 himself placed unlawful demand to the complainant and her parents for the sake of his brother applicant - Nitin etc.

9. Be that as it may, there are no specific allegations attributing overtact of applicant No. 4 about maltreatment and harassment to the complainant-wife. There were no particulars given in the FIR for his participation into the crime. The circumstances demonstrate

that, it would difficult for the prosecution to establish the charges against applicant No. 4 for the allegations nurtured on behalf of complainant against him. It would cause injustice to him, in case, he is compelled to face agony of the trial.

10. 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."*

11. 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.

12. 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."

13. 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."

14. 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.

15. In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicant No. 4. It would be an futile efforts and would cause injustice to him. 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 these applicant No. 4 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 stands disposed of as withdrawn.
- iii. Application in respect of applicant No. 4 is hereby allowed.
- iv. The penal proceeding initiated against applicant No. 4, bearing FIR No. 103 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Bhadgaon Police Station, Tq. Bhadgaon District Jalgaon, and criminal proceeding bearing RCC No. 05 of 2019 initiated pursuant to aforesaid FIR, 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

MTK