

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

CRIMINAL APPLICATION NO. 981 OF 2019

- 1 Aruna w/o. Tejrav Jadhav,
Age 53 years, Occu. Household,
- 2 Tejrav s/o. Gyanoji @ Dynanoji Jadhav,
Age 62 years, Occu. Retired,
All R/o. Plot No. 77, Gut No. 138,
Kumawat Nagar, Satara Parisar, Aurangabad.
- 3 Mrs. Suvarna w/o. Ajit Wagh,
Age 33 years, Occu. Household,
- 4 Ajit s/o. Chandrakant Wagh,
Age 40 years, Occu. Private Service,
Both Applicants No. 3 and 4 R/o. Konark
Nagar, Panhavati-2, Nashik.
- 5 Shantabai w/o. Kacharu Kale,
Age 69 years, Occu. Household,
R/o. Osmanpura, Aurangabad.

.. APPLICANTS

VERSUS

- 1 The State of Maharashtra
- 2 Mrs. Sujata w/o. Kuldip Jadhav,
Age 34 years, Occu. Household,
R/o. Plot No. 77, Gut No. 138,
Kumawat Nagar, Satara Parisar,
Aurangabad.

.. RESPONDENTS

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Mr. Sachin S. Panale, Advocate for Applicants.

Mrs. V. N. Patil Jadhav, APP for Respondent No. 1 - State.

Mr. A. R. Tapse h/f. Mr. S. S. Choudhari and Mrs. Rekha M. Mohale
Choudhari, Advocates for Respondent No.2.

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

DATED : 07th OCTOBER, 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 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. 61 of 2019 registered at Satara Police Station, Aurangabad, for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code (IPC).

3. The prosecution case in short compass is that the first informant – complainant Sujata w/o. Kuldip Jadhav, on 08-02-2019, approached to the Police of Satara Police Station, Aurangabad, and ventilated the grievance that her marriage was solemnized on 21-11-2010 with one Kuldip Tejrao Jadhav, the son of applicants No. 1 and 2. They are the in-laws, whereas, applicant No. 3 is the sister-in-law of complainant – wife and applicant No.4 is the husband of applicant No.3. The applicant No.5 is paternal aunt of husband of complainant-wife. After marriage, complainant-wife joined the company of husband for cohabitation at Aurangabad. Initially, for about 2 months, the inmates of matrimonial home treated the complainant properly. According to complainant, thereafter, all the applicants started scolding the complainant-wife on flimsy reasons as well as they used to say that her parents did not give domestic articles as well as gold ornaments to her in the marriage. On that count, they mentally tortured her. The complainant and her husband had started Health Club (Gym) at Beed-Bye-Pass Road, Aurangabad. The applicants No. 2 and 5 used to scold and tortured mentally the complainant-wife on account of infertility. The mother-in-law used to say the complainant that she would perform second marriage of her son. Even husband of complainant insisted

complainant-wife for his second marriage with another lady, as she was unable to become pregnant. All the inmates of matrimonial home used to abuse and beat her on trifle reasons. According to complainant, she disclosed her ordeals to parents, however, they made endeavour to give understanding to husband and in-laws to behave with complainant in proper manner. But, there was no progress in the behaviour of husband and others. Therefore, she filed NC report to the Police. The applicants No. 3 and 4 also used to maltreat her on instigation of in-laws of the complainant-wife on account of infertility. The husband also, on their instigation, manhandled and threatened her to kill. Thereafter, she filed complaint with Women Grievance Redressal Forum, Aurangabad, on 12-10-2018, against the applicants. However, it did not evoke any fruitful result. According to complainant, her husband started demanding Rs.2 Lakhs from her parents for opening new Gym. But, complainant refused to bring money from her parents, which resulted into severe maltreatment by applicants. Eventually, she filed complaint with Police of Satara Police Station, Aurangabad, for penal action against the present applicants.

4. Pursuant to FIR, the Police of Satara Police Station, Aurangabad, registered the crime and set the penal law in motion. Pending 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.

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 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. The applicants have no any concern with the marital life of husband 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 instance of maltreatment at the hands of 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. According to learned counsel, respondent No.2 has filed civil suit for injunction and proceeding under provisions of the Protection of Women from Domestic Violence Act, 2005. The present FIR is off-shoot of aforesaid litigations. According to learned counsel, the circumstances compelled the applicants No. 1 and 2 to file an application before the Sub-Divisional Officer under the provision of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, for possession of house property. The respondent No.2 is the lady of dominating nature. The applicant No.3 is married sister-in-law of complainant and she is residing with her husband i.e. applicant No.4 at Nashik. The applicant No.5 is maternal Aunt, aged about 69 years old and suffering from various ailments. They all are residing separately. 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 allegations of ill-treatment nurtured on behalf of complainant in the FIR disclose commission of crime under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC. The complainant categorically described the episode of her maltreatment and torture at the hands of applicants. There were allegations of physical and mental torture to the complainant for unlawful demand of amount on the part of applicants.

7. Having given anxious consideration to the arguments advanced on behalf of both sides and after perusal of contents of FIR and other relevant documents placed on record, this Court is not inclined to nod in favour of applicants No. 1 and 2 for exercise of inherent powers under Section 482 of Cr.P.C. Eventually, learned counsel for the applicants seeks leave to withdraw the proceedings filed on behalf of applicants No.1 and 2. Accordingly, leave was granted to their extent only.

8. In regard to allegations nurtured against applicants No. 3 to 5, we find that the allegations cast on behalf of complainant - wife against applicants No. 3 to 5 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 No. 3 to 5 for their act of cruelty to the complainant on account of her infertility or for demand of money, etc. The allegations about cruelty at the hands

of applicants No. 3 to 5 are found omnibus and sweeping in nature. The applicant No.3 is married sister-in-law of complainant and she is residing with her husband i.e. applicant No.4 at Nashik. The applicant No.5 is maternal Aunt, aged about 69 years old and suffering from ailments. 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 reason to cause interference in the marital life of spouses. It is fallacious to appreciate that they are beneficiaries from the marital discord between the 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 Scindia and another Versus Sambhajirao Chandrojirao 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 expositions of law, in the instant case, it would be unjust and improper to allow the prosecution to proceed further against applicants No. 3 to 5. 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 No. 3 to 5 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is partly allowed.
- ii. The Criminal Application in respect of applicants No. 1 and 2 stands disposed of as withdrawn.
- iii. The Criminal Application in respect of applicants No. 3 to 5 is allowed.
- iv. The penal proceeding initiated against applicants No. 3 to 5 bearing FIR No. 61 of 2019, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Satara Police Station, Aurangabad, is ordered to be quashed and set aside to their extent only.
- v. Rule is made absolute in terms of prayer clause "B".
- vi. The Criminal Application is disposed of in above terms. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

Sd/-

[T.V. NALAWADE]
JUDGE