

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 982 OF 2019

Sattu @ Satyanarayan S/o. Radhulal Kutlyawale (Ahir)
Age 52 years, Occu. Service,
R/o. Varndawan Nagar, Kavtha, Nanded,
Taluka and District Nanded,
At present Umri, Taluka Umri, District Nanded.

.. Applicant
(Original Accused)

Versus

1. The State of Maharashtra
Through Police Station,
Vazirabad, Nanded.
2. Savita W/o. Kundan Kutlyawale,
Age 25 years, Occu. Household,
R/o. Gavlipura, Nanded
At present Holi, Navghat, Nanded
Taluka and District Nanded.

.. Respondents
(Respondent No.2 -
original complainant)

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Mr. Hamzakhan I. Pathan, Advocate for Applicants.
Mr. M.M. Nerlikar, APP for Respondent No.1.
Mr. A. A. Mukhedkar, Advocate for Respondent No.2.

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**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ
DATE : 22nd 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.409/2018 registered at Vazirabad Police Station, Nanded, for the offence punishable under Sections 498-A, 354, 341, 323 504 read with Section 34 of the Indian Penal Code (“IPC”).

3. It has been alleged on behalf of prosecution that the first informant – complainant – Savita approached to the Police of Vazirabad Police Station, Nanded on 27th December, 2018 and ventilated the grievance that her marriage was solemnized on 14/02/2013 with one Kundan Ishwarlal Kutlyawale. The applicant is the cousin father in law of the complainant. According to prosecution, after the marriage, for some days the complainant received proper treatment at her matrimonial home. But, thereafter, the present applicant, who was residing abutting to the matrimonial house of complainant used to instigate and prompted the inmates of her matrimonial home for maltreatment and torture to the complainant. It has been alleged that as the complainant is an disabled lady, the sister-in-laws used to scold her for doing the work slowly. According to complainant though her mother gave an amount of Rs. 5 Lakhs towards dowry and other household articles, the in-laws and other inmates of the matrimonial home were maltreating her for further demand of Rs. One Lakh from parents. It is alleged that this was at the instigation of the present applicant. On some occasions she was kept unfed.

After two/three months of marriage she disclosed this fact to her mother and brother. They attempted to give understanding to the in-laws and other inmates of matrimonial home. But, there was no change in their behaviour. It has been alleged that when there was no one else available in the house, her father-in-law entered in the room of complainant and attempted to cajole her by saying that she is looking beautiful and then he tried to pull her saree. The complainant yelled for help and after hearing shouts other family members rushed there. She tried to verbalize the indecent act of her father-in-law, but they all abused and beat her. She was then confined in the house for about two days. she disclosed about the incident to her husband, but he did not believe her. Thereafter, she was driven out of the house. The hapless complainant took the shelter at her parental home, The complainant disclosed all these facts to her mother and sister. They convened a meeting for deliberation on the issue of marital discord but did not evoke result. In contrast, the in-laws and other inmates asked the complainant to bring Rs. 1 Lakh. Eventually, the complainant approached to the police and filed the report.

4. Pursuant to FIR, Police of Vazirabad 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 applicant vehemently submits that there were no physical and mental cruelty to the complainant on the part of applicants. But, she has filed present penal proceeding with ulterior motive to harass the applicant. There were no specific allegations about maltreatment and torture meted out to the complainant – Savita. The allegations in the FIR are vague and baseless. There are sweeping and omnibus allegations cast against the applicant. There was no direct involvement of the applicant in this crime. The applicant is the cousin uncle of husband of complainant. He is residing separately from husband and other inmates of matrimonial home of complainant. He is distant relative and he has no reason to cause any sort of interference in the marital affairs of spouses. The applicant is employed as Assistant Superintendent in the court of civil Judge, Umri, Dist. Nanded. He is not beneficiary from marital discord between the spouses. According to learned counsel, the present penal proceeding against the applicant is an abuse of process of law.

6. The learned APP as well as learned counsel for respondent No. 2-first informant vociferously opposed the contentions put-forth on behalf of applicant and submit that the allegations of ill treatment nurtured on behalf of complainant in the FIR discloses commission of crime punishable under Sections 498-A, 323, and 504 etc. of the IPC. The complainant categorically described the episode of her maltreatment and torture at the hands of applicant in her complaint.

8. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also perused the documents placed on record including the extract of FIR. We find that the the allegations cast on behalf of complainant – Savita against the applicant are vague and general in nature. There are no specific allegations attributing overt-act of the present applicant to maltreat and harass the complainant – Savita. There were no detail particulars given in the FIR about the participation of the applicant for his act of instigation and cruelty to the complainant on account of demand of money etc. The applicant is the cousin father in law of the complainant. He is residing separately at a distance of 10 Km from the matrimonial home of the complainant. He has no reason to cause interference in the marital life of complainant nor he will be beneficiary from marital discord. It appears that the allegations are made against the applicant with ulterior motive to harass the applicant and other inmates of matrimonial home. The applicant since marriage of complainant in the year 2013, was in service in the court of Civil Judge (J.D.), Umri, Dist. Nanded. It would hard to believe that he would involve in this crime. Definitely, if the applicant – distant relative is compelled to face agony of trial of penal proceeding in the court of law, it would cause injustice and prejudice to him.

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.”

9. It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Schindia & Anr. Vs. Sambhajirao Chadrojirao Angre & Ors. AIR 1988 SC 709** 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.”

10. 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.

11. In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicant. It would be an futile efforts and would cause injustice to them. 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 applicant may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against the applicant deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- 1] The criminal application stands allowed.
- 2] Relief is granted in terms of prayer clause (B). The FIR bearing Crime No. 409 of 2018 registered against the applicant for the offence punishable under Section 498-A, 341, 323, 504 r/w. 34 at Police Station Vazirabad, Nanded is quashed and set aside.
- 3] Rule made absolute in those terms.

[K.K. SONAWANE]
JUDGE.

[T. V. NALAWADE]
JUDGE