

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

CRIMINAL APPLICATION NO. 1068 OF 2019

Shaikh Mukhtar Shaikh Sattar
Age :-59 years, Occu.: Contractor
R/o Zamzam Colony, Beed
Tq. and Dist. Beed.

... APPLICANT

VERSUS

1 The State of Maharashtra

2 Neha Amen Shaikh
Age : 20 years, Occu.: Household
R/o Islampura, Peth, Beed, Tq.
And Dist. Beed.

RESPONDENTS
(Non-applicants)

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Mr. H. V. Tungar, Advocate for Applicant.
Mr. A. S. Shinde, APP for Respondent No. 1.
Mr. K. F. Shingare, Advocate for Respondent No. 2.

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

DATED : 26th JUNE, 2019.

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

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

2. The applicant 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. 45 of 2019 registered at Peth Beed Police Station, District Beed for the offence punishable under Sections 498-A, 323 and 504 and 506 read with Section 34 of Indian Penal Code ("IPC") and criminal proceeding

bearing RCC No. 1157 of 2019 initiated pursuant to aforesaid FIR.

3. It has been alleged on behalf of prosecution that the first informant – complainant Neha Shaikh approached to the Police of Peth Beed Police Station, District Beed, on 12-03-2019 and ventilated the grievance that her marriage was solemnized with Shaikh Amer on 05-02-2017. The applicant is the maternal uncle of accused No. 1-husband of the complainant. It has been alleged that after marriage, complainant -wife joined the company of husband for cohabitation. She was residing in the joint family of her husband and mother-in-law etc. During the wedlock, she gave birth to male child. However, her husband asked her to bring amount of Rs.1,00,000/- from her parents for business of electrical equipments. It has been alleged that due to poor financial condition, father of complainant - wife could not satisfy the demand of Rs.1,00,000/-. In the result, she was being maltreated and harassed on account of flimsy domestic reason. The complainant grumbled that on 16-08-2018, the accused- husband and his mother driven her out of the house and asked to bring amount of Rs.1,00,000/- from her parents. It has been alleged that her husband threatened that he would perform second marriage without permission of complainant-wife. The husband of complainant also given threats of life to herself, her son and brother, namely, Sayyad Mobin. Eventually, she approached to the Police Station and filed report.

4. Pursuant to FIR, Police of Peth Beed Police Station registered the crime and set the penal law in motion. Pending the investigation applicant moved present application by invoking remedy under Section

482 of the Cr.P.C. for relief to quash and set aside FIR. Meanwhile, police filed chargesheet against applicant, therefore, he also prayed to quash and set aside the penal proceedings initiated against them bearing RCC No. 1157 of 2019.

5. Learned counsel for applicant vehemently submits that there were no physical and mental cruelty to the complainant on the part of present applicant. But, she has filed penal proceeding with an *malafide* intention to harass the applicant. There were no specific allegations about maltreatment and torture meted out to the complainant - wife. According to learned counsel, the present applicant is residing separately in another locality. The applicant has no any concern with the marital life of husband and complainant-wife. He has no any reason to cause interference into the domestic affairs of the spouses. The complainant did not mention any specific instances of maltreatment at the hands of applicant. According to learned counsel, the allegations made in the FIR against applicant are vague and general in nature. The present complaint is nothing but an abuse of process of law. It would unjust and improper to compel the applicant to face the agony of trial. In case, the present penal proceeding is not quashed, it would cause serious prejudice and injustice to the applicant.

6. The learned APP as well as learned counsel for respondent No. 2-first informant 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 offences by the present applicant under the provisions of IPC. The complainant

categorically described the episode of her maltreatment and torture at the hands of applicant. There were unlawful demand of money from the accused husband and his mother to start the business of electrical equipments, and the applicant in furtherance of their common intention subjected the complainant to cruelty.

7. Having given anxious consideration to the arguments advanced on behalf of both sides and the allegations nurtured against applicant on behalf of prosecution. We find that the allegations cast on behalf of complainant - wife against present applicant i.e. maternal uncle of husband of complainant are all vague and general in nature. There are no specific allegations attributing overt-act of the applicant to maltreat and harass the complainant - wife. There were no detail particulars given in the FIR about participation of the applicant for his act of cruelty to the complainant or for demand of money. The allegations about cruelty by the applicant are found stray and sweeping in nature. He was also residing separately in another locality and it cannot be said that he would be one of beneficiary from the marital discord between spouses.

8. At this juncture, the question that arises, whether the FIR registered against applicant 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 Schindia 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."

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 applicant are taken at their face value and accepted the same in its entirety would not constitute any offence or make out case against applicant, in such circumstances, there would not be any propriety to allow the prosecution to proceed further into the matter.

13. 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 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 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

- i. The Criminal Application is allowed.
- ii. The penal proceeding initiated against applicant, bearing FIR No. 45 of 2019, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Peth Beed Police Station, District Beed, and criminal proceeding bearing RCC No. 1157 of 2019 initiated pursuant to aforesaid FIR, is ordered to be quashed and set aside.
- iii. Rule is made absolute in terms of prayer clause "B and B-1".
- iv. Criminal Application is disposed of in above terms.
- v. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE