

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1082 OF 2019

01. Vishnu S/o Bhagwan Sakhare,
Age : Major years, Occ. Agri.
 02. Narayan S/o Bhagwan Sakhare,
Age : Major years, Occ. Agri.
 03. Sadanand S/o Bhagwan Sakhare,
Age : Major years, Occ. Agri.
 04. Sou. Bhagyashri W/o Narayan Sakhare,
Age : Major years, Occ. H.H.
 05. Sou. Jayshri W/o Sadanand Sakhare,
Age : Major years, Occ. H.H.
 06. Sou. Mangalbai W/o Bhagwan Sakhare,
Age : Major years, Occ. H.H.
 07. Bhagwan Sakhare,
Age: Major years, Occu. Agri,
- All R/o. Kharola, Tq. Renapur Dist. Latur. ... Applicants

Vs.

1. The State of Maharashtra,
Through Police Inspector,
Police Station Renapur, Tq. and Dist. Latur.
2. Sou. Puja W/o Vishnu Sakhare,
Age : Major years, Occu. H.H.,
R/o. Kharola, Renapur, Tq. and Dist. Latur. ... Respondents

Mr. Sandeep C. Swami, Advocate for the applicants.

Mr. K.S. Patil, Advocate for respondent No.2

Mr. R.D. Sanap, APP for respondent No.1.

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ
DATE : 10th 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 No. 59/2019 registered at Police Station, Renapur Police Station, Dist. Latur for the offence punishable under Sections 498-A, 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 Puja approached to the Police of Renapur Police Station, on 10/02/2019 and ventilated the grievance that her marriage was solemnized on 12/6/2017 with applicant No. 1 – Vishnu Sakhare. The applicant Nos. 2 and 3 are the brothers-in-laws of complainant, whereas, applicant No. 4 is wife of applicant No.2 and the applicant No.5 is the wife of applicant No.3. The applicant No. 6 is the mother-in-law of complainant. The applicants No. 7 is the father-in-law. According to prosecution, after marriage, wife – Puja joined the company of husband for cohabitation at Renapur. Since inception of marriage, the mother-in-law and father-in-law used to scold sacrastically to complainant on account of her behaviour with hyusband. After 10 days of the marriage, they went to Pune where the complainant was required to reside with the in-laws in joint family. The applicants started harassing her on the ground that she was unable to cook properly and she was not keeping good health. They

made a demand of Rs. 2 Lakh for enabling the husband to start a new business and on that count, she was mentally and physically harassed by the applicant. Thereafter, she was deserted on the ground of physical ailment. When her father attempted to send her back to the matrimonial home, they made allegations that the complainant is a lunatic and she does not get menses. On 7/2/2019 when all the applicants had been to Kharola, they humiliated the complainant on the ground of her physical ailment. They gave threats that she will not be allowed to cohabit with the husband. Eventually, she approached to the Police Station and filed report.

4. Pursuant to FIR, Police of Renapur Police Station 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 applicants 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 applicants. There were no specific allegations about maltreatment and torture meted out to the complainant - Puja. According to learned counsel, the applicant Nos. 2 to 5 are brothers-in-law and their wives. These applicant Nos. 2 to 5 have no reason to cause interference in the domestic problems of husband and wife. There was no direct and indirect involvement of applicant Nos. 2 to 5 into the crime. These persons are roped in this false case without

any reasonable cause. According to learned counsel, the allegations made in the FIR are vague and general in nature. 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 vociferously 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 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 applicants. There were unlawful demand of money from the applicants to construct the house.

7. Having given anxious consideration to the arguments advanced on behalf of both sides, this Court was not inclined to nod in favour of applicants No. 1, 6 and 7 for exercise of inherent powers under Section 482 of Cr.PC. Eventually, learned counsel for applicants seeks leave to withdraw the proceedings to the extent of applicants No. 1, 6 and 7 Accordingly, leave was granted for withdrawal of application to the extent of applicants No. 1,6 and 7.

8. In regard to allegations nurtured against applicants No.2 to 5, we find that the allegations cast on behalf of complainant - Puja against these distant

relatives are vague and general in nature. There are no specific allegations attributing overt-act of all these applicants to maltreat and harass the complainant - Bhagyashri. There were no detail particulars given in the FIR about the participation of these applicants No. 2 to 5 for their act of humiliation or insult to the complainant on account of demand of money. The allegations about cruelty by these applicants are found stray and sweeping in nature. The learned counsel for applicants No. 2 to 5 produced the relevant documents of Adhar Card, Rent Agreement, Electricity bill etc. The attending circumstances on record adumbrates that these applicants No. 2 to 5 are residing separately from the husband of complainant. They are the distant relatives. It is hard to believe that these applicants are the beneficiaries after causing interference in marital discord of spouses. They have no reason to torture the complainant without any purported motivation. There is no impediment to conclude that the present FIR against applicant Nos. 2 to 5 would be an abuse of process of law.

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.PC. 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.”

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 re-look 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,** relied upon by the applicants, 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 Schindia referred 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.”

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 instant case, it would be unjust and improper to allow the prosecution to proceed against applicants No. 2 to 5. 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 applicants may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against these applicant Nos. 2 to 5 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

1. The Criminal Application is allowed partly.
2. Application in respect of applicants No. 1,6 and 7 stands dismissed as withdrawn.
3. Application in respect of applicants No. 2 to 5 is hereby allowed.
4. The penal proceeding initiated against applicants Nos.2 to 5, bearing FIR No. 59/2019, for the offences punishable under Sections 498-A, 323, 504 read with Section 34 of IPC registered with Police Station, Renapur is quashed and set aside.
5. Rule is made absolute partly in terms of prayer clause "C".
6. Criminal Application is disposed of in above terms.
7. No order as to costs.

[K.K. SONAWANE]
JUDGE.

[T. V. NALAWADE]
JUDGE

grt/-