

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

CRIMINAL APPLICATION NO. 1804 OF 2019

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| 1 | Haji S/o Saipan Jatkar,
Age: 51 years, Occu: Deputy
Commissioner | |
| 2 | Vahida W/o Haji Jatkar,
Age: 41 years, Occup: Housewife,

Both R/o Plot No. 19, Sector 8A,
Near Gitanjali Building, CBD Belapur,
(New Mumbai), Konkan Bhavan, Thane. | ..APPLICANTS
(Ori. Accused) |

VERSUS

- | | | |
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| 1 | The State of Maharashtra,
Through : The Police Inspector,
Gandhi Chowk Police Station, Latur,
Taluka and District Latur. | |
| 2 | Mrs. Farhin w/o Wasim Bargir,
Age: 32 years, Occup. Housewife,
R/o: Labour Colony, DRT No. 38,
behind Remand Home, Near
Vivekanand School,
Taluka and District Latur. | RESPONDENTS |

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Mr. A.B. Jagtap, Advocate holding for
Mr. V.D. Sapkal, Advocate for Applicants.
Mrs. D.S. Jape, APP for Respondent No. 1
Mr. R.P. Adgaonkar, Advocate for Respondent No. 2

...
WITH

CRIMINAL APPLICATION NO. 1128 OF 2019

1. Wasim S/o Munaf Bargir,
Age-35 years, Occu. Engineer,
R/o: 7138 Windsor Lakes,
Buld-13, Indainpolis, Indiana 46237

2. Munaf S/o Taj Bargir,
Age : 62, Retired Government Servant,
Address- House No. 1664,
Tiwari Lane, Khanbhag,
Panchmukhi Maruti Road,
Sangli 416 416.

3. Mrs. Kumrun Munaf Bargir,
Age : 60 years, Address- House
No. 1664, Tiwari La, Khanbhag, Panchmukhi
Maruti Road, Sangli 416 416.
4. Mrs. Asma Javed Shaikh,
Age : 35 years, Designation- Assistant
Manager at Varroc Group,
Address- Flat No. 403, C-Wing,
Hallmark Avenue Ravet, Pune- 412 101
5. Mr. Javed Shaikh,
Age- 40 years, Designation – Marketing
Manager at Imkmax Address-Flat No. 403,
C-wing, Hallmark Avenue, Ravet,
Pune 412 101.

..APPLICANTS
(Ori. Accused)

VERSUS

1. The State of Maharashtra,
Through : P.S.O. Gandhi Chowk Police Station,
Dist. Latur.
2. Mrs. Farheen w/o Wasim Bargir,
(Farheen N. Kazi) Age: 32 years,
R/o: DRT No. 38, Labour Colony,
Behind Remand Home, Near Vivekanand School,
Gandhi Chowki, Latur Maharashtra.

...RESPONDENTS

...
Mrs. Shweta Ankulwar Advocate holding for
Mr. Sagar S. Ghumare, Advocate for Applicants.
Mrs. D.S. Jape, APP for Respondent No. 1
Mr. R.P. Adgaonkar, Advocate for Respondent No. 2
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**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 23rd JULY, 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 point of controversy in both the proceedings are centered on the issue of quashing and setting aside the criminal proceeding bearing

Crime No. 0019 of 2019 on the similar and identical facts and circumstances, therefore, both these allied proceedings are dealt with together for its decision on merit by this Common Judgment.

3. The applicants preferred present applications 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. 0019 of 2019 registered at Gandhi Chowk Police Station, Latur, District Latur, for the offences punishable under Sections 498-A, 406, 323, 504 and 506 read with Section 34 of Indian Penal Code ("IPC").

4. The prosecution case in short compass is that, applicants No. 1 to 4 in Criminal Application No. 1128 of 2019 are husband, in-laws, sister-in-law of complainant and applicant No.5 is the husband of sister-in-law i.e. applicant No.4. The applicants (in Criminal Application No. 1804 of 2019) are the distant relatives of husband of first informant. It has been alleged that first informant Mrs. Farhin W/o Wasim Bargir, on 10-01-2019 approached to the Police of Gandhi Chowk Police Station, Latur, District Latur and filed the report that her marriage was solemnized on 25-12-2011 with Mr. Wasim Bargir at Latur. It has been alleged that after the marriage, the father-in-law and sister-in-law used to scold the complainant that there was no proper arrangement in the marriage. The inmates of matrimonial home used to maltreat and harass the complainant on account of domestic work. They humiliate and insult her by saying that she could not do the work in proper manner. The complainant attempted to disclose about her persecution to husband, but, he assaulted her by

kicks and fists. The husband also gave threats that she should not disclose these facts to anybody else; Otherwise, she would be allowed to go to her parents' house. Initially, the complainant-wife did not disclose the fact of maltreatment to her parents. Lateron, she disclosed about ill-treatment to her parents. Thereupon, they convinced the complainant-wife for better future marital life. The father also told the complainant-wife that the marriage of her two sisters are remained to be performed. Therefore, the complainant-wife maintained silent. According to complainant, after fifteen days of marriage, the spouses started residing in Pamne Nigdi Pradhikaran Luk Building, Near Anand Hospital, in the flat on rent, that time her in-laws and one divorced sister-in-law were accompanied with them. After applicant-husband had been to office, the other inmates of matrimonial house used to torture and insult the complainant-wife on account of trifle reasons of not cooking, washing cloths properly, etc. They sarcastically used to say that they did not like her. The husband was also not paying attention to the grievance of complainant. In contrast, he used to beat and abused her. The applicants gave threats of desertion to the complainant wife. The husband used to come home in an inebriated state. He was also arranging wet parties with friends at home and asked the complainant-wife to prepare meal. The mediator of marriage Mr. Haji Jatkar and his wife came to matrimonial home of complainant. She ventilated the grievance to them, but, they also reprimanded and abused her in presence of inmates of matrimonial home. According to the complainant-wife, applicants also insisted her to bring Rs.25 Lakhs from her parents to purchase house property and for satisfaction of

demand she was subjected to maltreatment and harassment.

5. It has been alleged that, in the month of May, 2012, the husband left the complainant-wife to her parents house at Latur. Thereafter, applicant-husband got employment in America, and hence, after giving understanding by the parents of complainant-wife, the applicant-husband took her with him at America. When the spouses were in America, the complainant begotten one daughter, namely, Myarah. The applicant-husband also harassed her physically and mentally for the reason that she delivered a female child. The applicant-husband also beaten the complainant severely and in December, 2015 he abandoned her at parents home and made demand of Rs. Twenty Five Lakhs. The applicant-husband also abused the father of complainant-wife in filthy language, humiliate and manhandled him. It has been alleged that when applicant-husband left the complainant wife at the house of parents, he threatened her to bring money otherwise she would not be allowed for cohabitation. Thereafter, applicant-husband went to America. In September, 2016, applicant - Shaikh Javed had been to Latur and demanded the amount. He gave threat of dire consequences to the complainant-wife and her father. Since, then complainant-wife is residing with her parents. Eventually, she approached to the Police and filed the present report for penal action against the applicants.

6. Pursuant to FIR, Police of Gandhi Chowk Police Station, Latur District Latur registered the crime and set the penal law in motion. Pending the investigation, the applicants moved the present application

to quash and set aside the F.I.R. and prayed to absolve from the charges pitted against them in aforesaid crime.

7. Learned counsel for applicants (in Criminal Application No. 1804 of 2019) 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 on the part of these applicants. There was no any specific allegations against applicants for cruelty as contemplated under Sections 498-A of IPC. The applicants Haji Saipan Jatkar and Vahida W/o Haji Jatkar have no any concerned with the marital life of applicant-husband and complainant-wife. They are only the mediators and residing separately. They are not the relatives of husband of complainant-wife. They have no any reason to cause interference into the marital affairs of the spouses. All the allegations are general and vague in nature. The present complaint is nothing but an abuse of process of law. It would unjust and improper to compel these applicants to face the agony of trial. Hence, learned counsel urged to quash and set aside the penal proceeding initiated against the applicants.

8. The learned counsel for the applicants in Criminal Application No. 1128 of 2019 vehemently submits that the allegations made against the applicants are all false, baseless and concocted one. They have not committed any crime, but they are falsely implicated in this case. According to learned counsel, the complainant was not interested for cohabitation with applicant-husband. There were no unlawful demand of money. There was no any specific allegations against applicants for

cruelty as contemplated under Sections 498-A of IPC. They have no concern at all with the allegations made in the FIR. The applicant-Mrs. Asma Javed Shaikh and applicant No.5 – Javed Shaikh both were in employment residing at Pune, whereas, the applicants No. 2 and 3 – in-laws were residing separately at Sangli. The applicants No. 2 to 5 have no concern with the marital life of applicant No. 1 and complainant. They have no reason to cause interference into the domestic affairs of the spouses. All the allegations are general and vague in nature. According to learned counsel, the span of marital life of spouses was near about 7-8 years, but up-till 2019, there was no complaint against the applicants. But, due to difference of opinion, in a fit of rage, the present FIR came to be filed. The complainant-wife also suffering from mental ailment. He submits that the present complaint is nothing but an abuse of process of law. It would be unjust and improper to compel the applicants to face the agony of trial. Hence, learned counsel urged to quash and set aside the penal proceeding initiated against the applicants.

9. 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, 406, 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 applicants for purchasing house property. There were allegations of physical assault as well as abuses in filthy language on

the part of applicants to the complainant. The respondent No.2 filed the affidavit-in-reply on record and submitted that applicant-husband has created his matrimonial bio-data on web-site at USA, wherein he has declared his status as divorced and he is having no issue. There is possibility that applicant-husband may perform second marriage. The applicant-husband also filed petition for divorce in the Court of USA and succeed in getting ex-parte decree of dissolution of marriage by playing fraud.

10. Having given anxious consideration to the arguments advanced on behalf of both sides, we find that there is no scope for exercise of inherent powers under Section 482 of the Cr.P.C. in favour of applicants (in Criminal Application No. 1128 of 2019) as it appears from the FIR that *prima facie* case is made out against them. There are specific allegations cast against husband, in-laws and brother-in-law about cruelty as envisaged under Section 498-A of I.P.C. There was unlawful demand as well as physical and mental torture to the complainant following marital discord. It is also worth to mention that the applicant-husband attempted to get *ex-parte* divorce from the Court at USA. He has also pretended himself as divorced person and seek marriage proposal from brides by creating his matrimonial bio-data and displaced it on web-site. All these circumstances *prima facie* made out the offence as alleged against applicants. We do not find force in the submission of learned counsel for the applicants (in Criminal Application No. 1128 of 2019). Therefore, we are not inclined to grant any relief in favour of these applicants. It cannot be said that the present criminal proceeding against applicants (in Criminal

Application No. 1128 of 2019) is abuse of process of law. However, the allegations nurtured on behalf of complainant-wife and applicant-husband against each other are to be tested on the anvil of merit in detail trial before concerned Court of Magistrate.

11. In regard to allegations made against applicants (in Criminal Application No. 1804 of 2019), we find that during crucial period of co-habitation of complainant with husband, these applicants were not available at matrimonial home of complainant and they are the only mediators for settlement of marriage between spouses. Moreover, they are not the relatives of husband of complainant-wife as contemplated under Section 498-A of IPC. The entire allegations about cruelty are against husband and in-laws. There was reference that these applicants instigated the husband and in-laws for mental and physical harassment to the complainant-wife, but all the aspersion against them are vague, and general in nature. There were no specific instances or details of participation of applicants in the alleged act of cruelty available on record for adverse inference about their involvement into the crime. There are no specific allegations attributing overt-act of applicants to maltreat and harass the complainant. The allegations against applicants are also stray and omnibus in nature. Therefore, it would be unjust and improper to compel the applicants to face agony of trial before criminal court following marital discord between spouses.

12. 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."

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 (in Criminal Application No. 1804 of 2019). It would be an futile efforts and would cause injustice to them, if they are compelled to face agony of trial before the Court of law. 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 these applicants may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against these applicants (in Criminal Application No. 1804 of 2019) deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application No. 1128 of 2019 is dismissed.
- ii. The Criminal Application No. 1804 of 2019 is hereby allowed.
- iii. The penal proceeding initiated against applicants (in Criminal Application No. 1804 of 2019) bearing FIR No. 19 of 2019, registered with Gandhi Chowk Police Station, Latur, District Latur, for the offences punishable under Sections 498-A, 406, 323, 504 and 506 read with Section 34 of IPC, is ordered to be quashed and set aside.
- iv. Rule is made absolute in terms of prayer clauses "B" of Criminal Application No. 1804 of 2019.
- v. Criminal Application is disposed of in above terms.
- vi. No order as to costs.

Sd/-
[K. K. SONAWANE]
JUDGE

MTK

Sd/-
[T.V. NALAWADE]
JUDGE