

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

CRIMINAL APPLICATION NO. 1165 OF 2019

- 1 Mustaq Mastan Kha Dhhaingal (Pathan)
Age: 32 years, Occu. Business,
R/o : Ghat Sambri, Tq. Sillod, Dist.
Aurangabad, Presnetly residing at: Near
Church Old Goa, Goa.
(Husband of respondent No. 2)
- 2 Mastan Kha Usman Kha Dhhaingal
(Pathan), Age: 56 Years, Occu. Business,
R/o : Ghatambri, Tq. Sillod, Dist.
Aurangabad. Presently residing at : Near
Church Old Goa, Goa.
(Father-in-law of respondent No. 2)
- 3 Harun Kha Mastan Kha Pathan,
Age: 31 years, Occu. Labour Work,
R/o: Ghatambri, Post Ambhai,
Tq. Sillod, Dist. Aurangabad.
(Brother-in-law of respondent No. 2)
- 4 Asma Harun Kha Pathan,
Age: 21 years, Occu. Labour.
R/o: Ghatambri, Post Ambhai,
Tq. Sillod Dist. Aurangabad.
(Wife of brother-in-law of respondent No. 2)
- 5 Sharukh Mastan Pathan,
Age : 25 years, Occu. Labour,
R/o: H. No. F-4, Omkar Residency,
Near Petrol Pump, Old Goa, North Goa.
(Brother-in-law of respondent No. 2)
- 6 Nawab Pathan,
Age: Major, Occu. Labour,
R/o: Kathora, Bu. Kathora Bazur, Jalna.
(Maternal uncle of husband of respondent No. 2)
- 7 Sahera Nawab Pathan,
Age: Major, Occu. Household,
R/o: As above. (Wife of maternal uncle of
husband of respondent No. 2)

APPLICANTS

VERSUS

- 1 The State of Maharashtra
Through Police Station Officer, Police
Station CIDCO, Aurangabad.

- 2 Anjum Kausar Mustak Pathan,
Age: 22 years, Occu: Household,
R/o: C/o Faruq Pathan, Galli No. 18,
Missar Wadi, Aurangabad, Tq. & Dist.
Aurangabad. RESPONDENTS

...
Mr. Mohit R. Deshmukh, Advocate for Applicants.
Mr. A.S. Shinde, APP for Respondent No. 1.
Mr. B.S. Kudale, Advocate for Respondent No. 2.

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

DATED : 7th JUNE, 2019.

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

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for parties at admission stage.
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. I-409 of 2018 registered at Police Station CIDCO, Aurangabad for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code ("IPC").
3. It has been alleged on behalf of prosecution that the first informant – complainant Anjum Kausar Mustak Pathan approached to the Police of CIDCO Police Station, Aurangabad, on 02-10-2018 and ventilated the grievance that her marriage was solemnized with applicant No. 1 - Mustaq Mastan Pathan on 26-03-2017. Applicant No. 2 is the father-in-law of complainant - Anjum Kausar whereas applicants No. 3 and 5 are brother-in-laws as well as applicant No. 4 is

the wife of brother-in-law. Applicants No. 6 and 7 are the relatives of her husband. It has been alleged that after marriage, wife - Anjum Kausar joined the company of husband for cohabitation at Goa. She was residing in the joint family of her husband, father-in-law, brother-in-laws etc. It has been alleged that initially for about two months she received proper treatment from the husband and other inmates of matrimonial home. But, thereafter, she was being maltreated and harassed on account of domestic reason. According to complainant, both brother-in-laws and wives of brother-in-law used to instigate her husband resulting into abuses and beating to the complainant - Anjum Kausar. Thereafter, husband and father-in-law insisted the complainant - Anjum Kausar to bring Rs.2,00,000/- to get establish the shop of foot-wear. But, due to financial crises to parents of complement could not cough-up the demand. Consequently, complainant was subjected to mental and physical torture. It has been alleged that the husband performed two marriages prior to marriage with the complainant. Thereafter, also when she had been to the parents home for delivery, that time husband Mustaq performed fourth marriage with women by name Anjum daughter of Ista Patel resident Kathora Bazar Tq. Bhokardan. The complainant ventilated the grievance that she had given birth to female child, but no one else from her matrimonial home turned up to see child or to fetch her for cohabitation. Eventually, she approached to the Police Station and filed report.

4. Pursuant to FIR, Police of CIDCO 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 - Anjum Kausar. According to learned counsel, all the applicants are residing separately and eking livelihood by doing labour work. He produced the documents of Adhar cards to show addresses and residence of the applicants. Learned counsel further added that wife - respondent No. 2 resided separately since year 2017 at her parents house. Applicants No. 3 to 7 have no any concern with marital life of applicant No. 1 and complainant- Anjum Kausar. They have no any reason to cause interference into the domestic affairs of the spouses. There were an attempt to settle the dispute amicable, but the complainant wife was adamant and found reluctant to compromise the matter. The complainant did not mention any specific incidence of maltreatment at the hands of applicants. The present complaint is nothing but an abuse of process of law.

6. Learned counsel for applicants relied upon the legal guidelines delineated by the Apex Court in the case of **Arnesh Kumar vs. State of Bihar** reported in **2014(3) Bom. C.R. (Cri)362 as well as Madhavrao Jiwaji Rao Schindia and another Vs. Sambhajirao Chandrojirao Angre and others etc.** reported in **AIR 1988 SC 709.**

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.

7. The learned APP as well as learned counsel for respondent No. 2-first informant vociferously opposed the contentions put-forth on behalf of respondents and submit that the allegations of ill treatment nurtured on behalf of complainant in the FIR discloses commission of crime Under 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 settle the business of foot wear at Goa. It has also been alleged that after delivery she gave birth to female child, but no one else from the applicants visited to the complainant to see the child.

8. 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 to 3 and 5 for exercise of inherent powers under Section 482 of Cr.P.C. Eventually, learned counsel for applicants seeks leave to withdraw the proceedings to the extent of applicants No. 1 to 3 and 5. Accordingly, leave was granted for withdrawal of application to the extent of applicants No. 1 to 3 and 5.

9. In regard to allegations nurtured against applicants No. 4, 6 and 7, we find that the allegations cast on behalf of complainant - Anjum

Kausar 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 - Anjum Kausar. There were no detail particulars given in the FIR about the participation of these applicants No. 4, 6 and 7 for their act of humiliation or insult to the complainant on account of demand of money. The allegations about cruelty by these applicants are also found stray and sweeping in nature.

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 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."*

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."

13. 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."

14. 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.

15. In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicants No. 4, 6 and 7. 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 appellants 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 to 3 and 5, namely, Mustaq Matan Kha Dhhaingal (Pathan), Mastan Kha Usman Kha Dhhaingal (Pathan), Harun Khan Mastan Kha Pathan and Shahrukh Mastan Pathan stands disposed of as withdrawn.

3. Application in respect of applicants No. 4, 6 and 7, namely, Asma Harun Kha Pathan, Nawab Pathan and Sahera Nawab Pathan, is hereby allowed.
4. The penal proceeding initiated against applicants No. 4, 6 and 7, namely, Asma Harun Kha Pathan, Nawab Pathan and Sahera Nawab Pathan, bearing FIR No. I-409 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC registered with Police Station CIDCO, Aurangabad, is ordered to be quashed and set aside.
5. Rule is made absolute partly in terms of prayer clause "B".
6. Criminal Application is disposed of in above terms.
7. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

MTK