

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 543 OF 2019

1. Reena w/o. Sumedh Pawar,
Age 32 years, Occu. Service,
R/o. Flat No. 9, Pal Residency,
Near Kamgar Chauk, N-2,
CIDCO, Aurangabad,
Tq. & Dist. Aurangabad.
2. Suman w/o. Ramdas More,
Age 57 years, Occu. Household,
R/o. As per above.

....Petitioners.

Versus

1. The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai - 32.
2. Police Inspector,
Police Station,
Cantonment 5, Aurangabad,
Tq. & Dist. Aurangabad.
3. Aamrpali w/o. Vinod Pawar,
Age 26 years, Occu. Household,
R/o. Bhimnagar, Bhawasingpura,
Aurangabad, Tq. & Dist. Aurangabad.

....Respondents.

Mr. S.D. More, Advocate for petitioners.

Mr. K.S. Patil, APP for respondent Nos. 1 & 2.

Mr. N.T. Tribhuwan, Advocate for respondent No. 3.

**CORAM : T.V. NALAWADE AND
K.K. SONAWANE, JJ.
DATED : 13/06/2019.**

JUDGMENT : [PER T.V. NALAWADE, J.]

- 1) Rule. Rule made returnable forthwith. By consent, heard

both the sides for final disposal.

2) Present proceeding is filed for relief of quashing of proceeding of SCC No. 8226/2017 which is pending in the Court of Judicial Magistrate, First Class, Aurangabad. The case is filed for offences punishable under sections 451, 323, 504 etc. of Indian Penal Code (hereinafter referred to as 'IPC' for short). The case is filed in C.R. No. 74/2017 which was registered in Cantonment (Chavani) Police Station, Aurangabad.

3) The first informant Amrapali Pawar is the wife of brother in law of petitioner No. 1. Petitioner No. 2 is the mother of petitioner No. 1. It appears that there is some dispute between petitioner No. 1 and her husband and due to that, petitioner No. 1 was not living with her husband. The family of the husband of petitioner No. 1 and his brothers have ancestral house property and there, Amrapali was living at that time.

4) Allegations are made that on 21.3.2017 at about 3.00 p.m. when Amrapali was alone, present in the portion where she was living, the petitioners entered her house, picked up quarrel and virtually drove her out of the house. Threat of life was given. F.I.R. was given on the same day and the crime came to be registered.

5) The submissions made and the record show that on 21.3.2017 itself present petitioner No. 1 Reena had given report to Chavani police and crime at C.R. No. 73/2017 was registered for the offences punishable under sections 498-A, 323, 504, 506 and 34 of IPC against Amrapali and others. She had made complaint against her husband that her husband was giving her cruel treatment and his relatives like Amrapali were giving her illtreatment. The crime was registered due to such allegations for the offence punishable under section 498-A etc.of IPC and that was registered prior to the present crime. The submissions made show that partition had not taken place. In C.R. No. 73/2017 present petitioner No. 1 had contended that she was living in the same house and she was cohabiting with husband, though there was some dispute with the husband and his relatives.

6) The learned APP submitted that there is record like injury certificate issued in favour of Amrapali. That record shows that she was referred to doctor on 28.3.2017 and minor injury was found on her person like blunt trauma. This record shows that some incident did take place on 21.3.2017, but the crime for offence under section 498-A of IPC was registered first in time on the basis of report given by petitioner No. 1. It is not disputed that she has filed proceedings

against the husband due to his conduct. The first informant is the wife of brother of husband of petitioner No. 1. Due to all these circumstances, it cannot be said that petitioners had committed house trespass. Other sections could have constituted non cognizable offences and not offence of criminal house trespass. It is clear that to give counter blast to the complaint given by petitioner No. 1, present case is filed against the petitioners. It will be abuse of process of law if the petitioners are directed to face the trial for aforesaid offences. In the result, the petition is allowed. Relief is granted in terms of prayer clause 'B' to the extent of petitioners. Rule is made absolute in those terms.

[K.K. SONAWANE, J.]

[T.V. NALAWADE, J.]

ssc/