

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

CRIMINAL APPLICATION NO. 1283 OF 2019

- 1 Ansar Ahmed Khan S/o Maheboob Khan,
Age : 39 years, Occ: Medical Practitioner,
R/o : CIDCO, N-12, Roza Baugh,
Aurangabad, Ta. and Dist. Aurangabad.

- 2 Maheboob Khan S/o Risalat Khan,
Age : 64 years, Occ: Pensioner,
R/o : CIDCO, N-12, Roza Baugh,
Aurangabad, Ta. And Dist. Aurangabad.

- 3 Shamim Jahan w/o Maheboob Khan,
Age : 58 years, Occ: Household,
R/o : CIDCO, N-12, Roza Baugh,
Aurangabad, Ta. and Dist. Aurangabad.

- 4 Shabana D/o Maheboob Khan,
Age : 38 years, Occ: Teacher,
R/o : Lohgaon, Tq. Paithan, Dist.
Aurangabad.

- 5 Afroz D/o Maheboob Khan,
Age: 34 years, Occ: Service (Anesthetist),
R/o: Flat No. 11, Panchshil Building, J.J.
Campus, Mumbai.

- 6 Afshan D/o Mehboob Khan,
Age : 31 years, Occ: Private Job, R/o :
CIDCO, N-12, Roza Baugh, Aurangabad,
Ta. and Dist. Aurangabad.

- 7 Nishant D/o Mehboob Khan ..APPLICANTS
Age : 25 years, Occ: Student, R/o : (Ori. Accused)
CIDCO, N-12, Roza Baugh, Aurangabad,
Ta. and Dist. Aurangabad.

VERSUS

- 1 The State of Maharashtra, Through City
Chowk Police Station, Aurangabad,
Tq. And Dist. Aurangabad.

- 2 Taslim Sultana W/o Ansar Ahmed Khan,
Age: 31 years, Occ: Household,
R/o: Sajid Terrace, Block No. 4, Near RESPONDENTS
Head Post Office, Juna Zazar,
Aurangabad, Ta. & Dist. Aurangabad.

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Mr. G.R. Syed, Advocate for Applicants.

Smt. V.N. Pati-Jadhav, APP for Respondent No. 1

Mr. Hemant Surve, Advocate for Respondent No. 2.

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

DATED : 5th 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 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. 164 of 2015 registered at City Chowk Police Station, Aurangabad, District Aurangabad for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code ("IPC") and Sections 3 and 4 of the Dowry Prohibition Act, 1869 and criminal proceeding bearing RCC No. 1260 of 2016 initiated pursuant to aforesaid FIR.

3. The prosecution case in short compass is that, the first informant Taslim Sultana on 15-06-2015 visited to the Police of City Chowk Police Station, Aurangabad and filed the report that her

marriage was solemnized on 14-03-2010 with applicant No. 1- Ansar Ahmed Khan. Applicants No. 2 and 3 are in-laws whereas applicants No. 4 to 7 are the sister-in-laws. From the wedlock, the couple blessed with female child Aleena. According to complainant, after marriage she joined the company of husband in the joint family comprising in-laws and sister-in-laws at Aurangabad. In the month of June, the spouses went to Mumbai for service. According to complainant, she joined the service in Harikishandas Hospital, Charni Road (West) and the husband - Ansar Ahmed was employed as Doctor in V.N. Desai Hospital, Santakruz (East), Mumbai. According to complainant, in order to pursue further study respondent-wife left the job and joined Nanawati Hospital, Vile Parle (East) Mumbai. It has been alleged that as complainant – wife delivered female child, her husband was not happy and on that count he physically and mentally harassed the complainant. The mother-in-law also used to tease her on flimsy reasons. Her husband mentally and physically tortured her after being instigated by the mother-in-law. Her husband also placed demand of money of Rs. 50,00,000/- to establish new hospital at Aurangabad from her parents. On refusal, the husband used to assault and abused the complainant wife.

It has been alleged that after completion of study of DSH Course, when complainant had been to Aurangabad, the in-laws and sister-in-laws used to scold her on domestic reasons and harassed her mentally and physically. The inmates of matrimonial home kept

the complaint -wife unfed and also abused her. In the year, 2013, the complainant again joined service in Ghati Hospital, Aurangabad. On account of salary amount and domestic work, the inmates of matrimonial home always harassed the complainant and lastly, driven her out of the house. According to complainant, she had been to Mumbai and started residing with her husband. The complainant appeared for interview for the post of Medical Officer. Accordingly, she selected and appointed as Medical Officer, at Ahmednagar. The inmates of matrimonial home insisted for leaving the job at Ahmednagar. Lastly, on 11-04-2014, inmates of matrimonial home assaulted the complainant, abused and driven her out of the house along with daughter Aleena. Thereafter, complainant lodged report with Goregaon (West) Police Station, Mumbai. However, complainant joined service at Ahmednagar and started residing with her parents. There were endeavour to give understanding to the husband and in-laws of complainant, but all efforts did not evoke result for reconciliation of marital discord between spouses. At last, she approached to the Police and filed report for penal action against the applicants.

4. Pursuant to FIR, Police of City Chowk Police Station, Aurangabad, District Aurangabad registered the crime and set the penal law in motion. Investigating Officer recorded statements of witnesses acquainted with the facts of the case. He collected relevant documents of matrimonial dispute between the spouses. After completion of procedural formalities, Investigating Officer filed

charge-sheet bearing RCC No. 1260 of 2016, which is pending before the learned Magistrate at Aurangabad.

5. Learned counsel for applicants vehemently 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. According to learned counsel, the complainant was not interested in cohabiting with applicant-husband. She was reluctant to perform her domestic obligation like cooking etc. There was no any specific allegations against applicants for cruelty as contemplated under Section 498-A of the IPC. The learned counsel submits that applicants No. 4 and 5 are married sisters, applicant No. 7 is prosecuting the studies in Telangana State and she joined the service there and presently promoted at Bangalore. Learned counsel submits that all the applicants are residing separately. Applicants No. 4 to 7 have no any concern with the marital life of applicant No.1 and complainant. They have no any reason to cause interference into the domestic affairs of the spouses. All the allegations are general and sweeping in nature. The present complaint is nothing but an abuse of process of law. It would 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.

6. 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, 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 the applicants for establishment of Hospital.

7. we have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into the relevant documents produced on record as well as factual aspects of the matter. We find that there is no scope for exercise of inherent powers under Section 482 of the Cr.P.C. in favour of applicants No. 1 to 3. Therefore, we expressed that this Court is not inclined to nod in favour of applicants No. 1 to 3 for grant of relief in their favour. Eventually, learned counsel for applicants No. 1 to 3 seeks leave to withdraw the proceeding to their extent. Accordingly, leave was granted and application to the extent of applicants No. 1 to 3 came to be disposed off as withdrawn.

8. In regard to the allegations made against applicants No. 4 to 7, we find that during crucial period of co-habitation of complainant with husband, the applicants No. 4 to 7 were not available at matrimonial home of complainant. The entire allegations about cruelty are made against husband and in-laws. There was reference that applicants No. 4 to 7 harassed the complainant mentally and physically, but all aspersion against the applicants No. 4 to 7 are

vague, and general in nature. There was no specific instance or details of participation of applicants No. 4 to 7 in the alleged act of cruelty for adverse inference about their involvement into the crime. There are no specific allegations attributing overtact of applicants No. 4 to 7 to maltreat and harass the complainant.

9. It would be reiterated that, there are no specific allegations attributing overtact of applicants No. 4 to 7 about maltreatment and harassment to the complainant-wife. There were no particulars given in the FIR for their participation into the crime. The circumstances demonstrate that, it would difficult for the prosecution to establish the charges against applicants No. 4 to 7 for the allegations nurtured on behalf of complainant. It would cause injustice to him, in case, they are compelled to face agony of the trial. The present FIR against the applicant Nos. 4 to 7 is an abuse of process of law.

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 Punja 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 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."

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 to 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 applicants No. 4 to 7 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is partly allowed.
- ii. Application in respect of applicants No. 1 to 3 stands disposed of as withdrawn.
- iii. Application in respect of applicants No. 4 to 7 is hereby allowed.
- iv. The penal proceeding initiated against applicants No. 4 to 7, bearing FIR No. 164 of 2015, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC and under Sections 3 and 4 of the

Dowry Prohibition Act, 1860, registered with City Chowk Police Station, Aurangabad, District Aurangabad, and criminal proceeding bearing RCC No. 1260 of 2016 initiated pursuant to aforesaid FIR, is ordered to be quashed and set aside.

- v. Rule is made absolute partly in terms of prayer clause "B".
- vi. Criminal Application is disposed of in above terms.
- vii. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

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