

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 1304 OF 2019

1. Lokesh s/o Shriram Mali,
Age: 28 years, Occ : Temporary Service,
2. Shriram s/o Kautik Mali,
Age: 56 years, Occ : Agri.,
3. Sangitabai w/o Shriram Mali,
Age: 42 years, Occ : Household,
4. Bhushan s/o Shriram Mali,
Age: 29 years, Occ : Agri.,
5. Sundarbai s/o Bhushan Mali,
Age: 27 years, Occ : Household,
6. Shantaram s/o Kautik Mali,
Age: 71 years, Occ : Nil,
7. Raju s/o Shantaram Mali,
Age: 50 years, Occ : Agri,

All above R/o. Mali Wada
At – Post Paldhi
Tq. - Dharangaon Dist. Jalgaon.
8. Poonam w/o Ganesh Mali,
Age : 30 years, Occ : Household,
9. Ganesh s/o Arjun Mali,
Age : 38 years, Occ : Nil,

Both applicants No. 8 & 9 are
R/o. Mali Wada Shivaji Nagar, Nandurbar
Tq. & Dist. Nandurbar.
10. Gitabai w/o Bhaskar Patil,
Age : 73 years, Occ : Nil,
11. Sanjay s/o Bhaskar Mali,
Age: 50 years, Occ : Agri,
12. Arun s/o Bhaskar Mali
Age : 44 years, Occ : Agri.
Applicants No. 10 to 12 are
R/o. Patonda,
Tq. - Chalisgaon & Dist. - Jalgaon.
13. Gokul s/o Uddhav Mali,
Age: 57 years, Occ : Nil,

14. Sindhubai w/o Gokul Mali,
Age: 49 years, Occ : Household,
Applicants No. 13 & 14 are
R/o Talai,
Tq. Erandol & Dist. - Jalgaon
15. Vilas s/o Jagannath Mali
Age : 49 years, Occ : Service
16. Shobha w/o Vilas Mali
Age : 41 years, Occ : Household.
Applicants No. 15 & 16 are
R/o Room No. A-6 Jail Road
Punyadev Park, Adharwadi
Tal – Kalyan Dist. Thane

... APPLICANTS

Vs.

1. The State of Maharashtra
Through Police Station in charge,
Bhadgaon, Tq. Bhadgaon Dist. Jalgaon.
2. Bhagyashri w/o Lokesh Mali,
Age : 27 years, Occ. Nil,
At present,
R/o. Pimparkhel, Tq. Bhadgaon,
Dist. Jalgaon.

.... RESPONDENTS.

Advocate for the Applicants : Shri J. V. Patil
APP for the Respondent No. 1 : Shri A. S. Shinde
Advocate for the Respondent No. 2 : Shri Y. R. Barhale

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ
DATE : 02 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. 4/2019 registered at Police Station, Bhadgaon, Dist. Jalgaon for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code (“IPC”) as well as penal proceedings vide RCC No. 55/2019 pending before Learned Magistrate, Bhadgaon, Dist. Jalgaon.

3. It has been alleged on behalf of prosecution that the first informant – complainant Bhagyashri approached to the Police of Bhadgaon Police Station, on 18/01/2019 and ventilated the grievance that her marriage was solemnized on 14/3/2018 with applicant No. 1 – Lokesh Mali. The applicant No. 2 is the father-in-law of complainant, whereas, applicant No. 4 is her brother-in-law and the applicant No.5 is the wife of applicant No.4. The applicant No. 3 is the mother-in-law of complainant. The applicants No. 6 to 16 are the relatives of her husband. According to prosecution, after marriage, wife – Bhagyashri joined the company of husband for cohabitation at Bhadgaon. 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 four 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 insufficient dowry of Rs. 2.51 Lakhs given in marriage. It has been alleged that the applicants asked the complainant to bring money for medical expenses of her pimples on the face. It has been further alleged that they used to ask her to bring Rs. 2,00,000/- from

her father for the construction of the second floor. The cousin brother of the father in law and his wife, who were residing adjacent to the house of complainant, used to instigate the in-laws by saying that they had made undue haste for marriage of the complainant with their son. They would have get more dowry if they would have waited some day for the marriage of Lokesh. According to complainant, the in-laws as well as brothers-in-law and their wives used to instigate the father in law by saying that complainant's father had given very meager dowry. The father of complainant also gave Rs. 50,000/- to her by selling some gold, but even thereafter the complainant was subjected to mental and physical torture. The parents of complainant could not cough-up the frequent demand of money due to financial crises. It has been alleged that at the time of Diwali also, there was harassment to the complainant for demand of money and hence, the brother came to take her to parent's home. At that time the applicant threaten that if amount of Rs. 2,00,000/- is not sent with the complainant, she will not be allowed for cohabitation at matrimonial home. It has been alleged that on 15.12.2018, the in-laws of the complainant came to her parental home at Pimparkhed but at that time also they picked up quarrel with complainant and her parents. The father of complainant tried to give understanding to them but it was found unavailing. Eventually, she approached to the Police Station and filed report.

4. Pursuant to FIR, Police of Bhadgaon 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. Meanwhile, I.O. complied with the procedural formalities and filed charge-sheet vide RCC No. 55/2019 and same is pending before learned Magistrate at Bhadgaon, Dist. Jalgaon. The applicant also seek relief to quash and set aside the proceeding of RCC No. 55/2019 pending before the Magistrate.

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 - Bhagyashri. According to learned counsel, all the applicants are residing separately. The complainant was not inclined to reside with the in-laws and she was insisting her husband to accompany with him at Erandol, where the husband was working. According to learned counsel, the applicant No.1 is the husband, and applicant Nos. 2 and 3 are in-laws of the complainant. The rest of the applicants all are residing separately from the husband of complainant. They are the distant relatives and have no concern with the marital life of spouses. These applicants have no reason to cause interference in the domestic problems of husband and wife. There was no direct and indirect involvement of applicant Nos. 6 to 16 into the crime. These persons are roped in this false case without any reasonable cause. The 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.

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 to 5 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 to 5. Accordingly, leave was granted for withdrawal of application to the extent of applicants No. 1 to 5.

8. In regard to allegations nurtured against applicants No. 6 to 16, we find that the allegations cast on behalf of complainant - Bhagyashri 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. 6 to 16 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. These applicants are the distant relatives and 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 the complainant without any purported motivation.

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 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.”

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 relook of the entire provision of Section 498-A of Cr.PC. 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. 6 to 16. 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. 6 to 16 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 5 stands disposed of as withdrawn.
3. Application in respect of applicants No. 6 to 16 is hereby allowed.
4. The penal proceeding initiated against applicants No. 6 to 16, bearing FIR No. 4/2019, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC registered with Police Station, Bhadgaon as well as criminal proceeding bearing RCC No. 55/2019 pending before the learned Magistrate, Bhadgaon, Dist. Jalgaon 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

grt/-