

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

CRIMINAL APPLICATION NO. 1209 OF 2018

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| 1 | Swapnil S/o Sundarlal Jadhav,
Age: 29 years, Occu. Nil,
R/o : Behind Dr. Babasaheb Ambedkar
Statue, Dikshabhumi Nagar, Harsul,
Aurangabad. | |
| 2 | Sundarlal S/o Kashinath Jadhav,
Age: 65 years, Occu. Retired Military
Men, R/o: Behind Dr. Babasaheb
Ambedkar Statue Dikshabhumi Nagar,
Harsul, Aurangabad. | <i>(The application
stands abated
being dead.)</i> |
| 3 | Suman @ Shalini W/o Sundarlal Jadhav,
Age: 50 years, Occu. Household,
R/o: Behind Dr. Babasaheb Ambedkar
Statue, Dikshabhumi Nagar, Harsul,
Aurangabad. | |
| 4 | Maya w/o Vinod Salve,
Age : 35 years, Occu. Household,
R/o Near Jadhav Kirana Stores,
H.No. 5-3-392, Brijwadi, Chikalthana,
Aurangabad. | |
| 5 | Savita W/o Santosh Kharat,
Age : 32 years, Occu. Household,
R/o : Galli No. 17, Sanjay Nagar,
Mukundwadi, Aurangabad. | .. APPLICANTS
(Original Accused) |

VERSUS

- | | | |
|---|--|---------------------------------|
| 1 | The State of Maharashtra
Through Harsul Police Station,
Aurangabad. | |
| 2 | Surekha W/o Swapnil Jadhav,
Age: 21 years, Occu. Household,
R/o Diksha-Bhumi Nagar, Ambedkar
Nagar, Near Statue, Harsul, Aurangabad
Presently residing at Nyamurti Nagar,
High Court Parisar, Aurangabad. | RESPONDENTS
(Non-applicants) |

Mr. Anand V. Indrale Patil, Advocate for Applicants.
Mr. M.M. Nerlikar, APP for Respondent No. 1.
Mr. A.S. Usmanpurkar, Advocate for Respondent No. 2.

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

DATED : 1st AUGUST, 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. 0025 of 2018 registered at Harsul Police Station, Aurangabad for the offence punishable under Sections 498-A, 307, 323, 504 and 506 read with Section 34 of Indian Penal Code ("IPC"). During the course of hearing, it has been informed to Court by learned counsel for applicant that the applicant No.2 – Shri Sundarlal s/o. Kashinath Jadhav is no more and died pending the present application. Therefore, present application stands abated to the extent of applicant No. 2.

3. It has been alleged on behalf of prosecution that the first informant – complainant Surekha W/o Swapnil Jadhav, on 18-02-2018 approached to the Police of Harsul Police Station, Aurangabad, and ventilated the grievance that her marriage was solemnized with applicant No. 1 – Swapnil Jadhav on 20-04-2017. The applicant Nos. 2 and 3 are in-laws whereas applicants No. 4 and 5 are sisters-in-law of

the complainant. According to the complainant-wife, after marriage, she joined the company of husband for cohabitation at matrimonial home in the joint family of her husband, in-laws, and sisters-in-law, etc. Initially, for about a month, she received proper treatment from husband and other inmates of matrimonial home. But, thereafter, her husband and in-laws subjected her to maltreatment on account of domestic reasons as well as for not giving sufficient dowry and utensils, etc. They started demanding Rs. Two Lakhs from the father of complainant-wife for establishing "*Setu Suvidha Centre*". The complainant-wife made endeavour to convince the applicants that her father has already incurred huge expenses for her marriage and he is not in a position to pay such huge amount. But, the husband and in-laws harassed and maltreated her mentally and physically to satisfy demand. They used to abuse and assault her. According to complainant, whenever, applicants No. 4 and 5 had been to matrimonial home, they also used to scold the complainant-wife by saying that she did not cook properly. They used to instigate the husband and in-laws, which resulted into maltreatment to her. Whenever, the complainant-wife had been to parents' home, she used to divulge her ordeals to the parents. However, her parents, by convincing her, used to send her back for cohabitation. It has been alleged that on 17-09-2017, at about 7.00 p.m. when complainant-wife was cooking, the husband and in-laws picked up quarrel on account of not bringing the amount from her parents and lifted her to terrace forcibly with intention to kill by pushing her down from the terrace. The frightened complainant-wife became unconscious. In

Government Hospital, Aurangabad, she regain consciousness. In the hospital, also her husband and in-laws gave threats to the complainant for not disclosing true facts to anybody else including police. Thereafter, her parents arrived in the hospital and they shifted the complainant initially in Patwardhan Hospital and thereafter in Hi-tech Adhar Hospital for treatment. According to complainant, during her hospitalization, Police had been to the hospital on 18-09-2017 for recording her statement, but, due to pressure of husband and in-laws, she did not disclose true facts to the Police. Subsequently, injured-complainant-wife was shifted to Bajaj Hospital for further medical treatment by her parents. According to complainant, when she was admitted in the Bajaj Hospital, no one else from her matrimonial home visited to the hospital to see her. Since, then she is residing with her parents. Eventually, she approached to the Police and filed report for penal action against the husband, in-laws and sisters-in-law.

4. Pursuant to FIR, Police of Harsul 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 FIR bearing Crime No. 0025 of 2018.

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 *malafide* intention to harass the applicants. There were no specific allegations about maltreatment and torture meted out to the complainant – wife.

According to learned counsel, the FIR in question has been registered with a view to pressurize and harass the applicants on account of petition filed by applicant-husband for judicial separation on the ground of cruelty by the wife-complainant. The FIR is filed at belated stage without any reasonable cause. It has been submitted that the applicants No. 4 and 5 are the married sisters of husband of complainant and they are residing separately at their matrimonial home with their husband. According to learned counsel, the wife - respondent No. 2 resided separately since year 2017 at her parents house. Applicants No. 4 to 5 have no any concern with the marital life of applicant No. 1 and complainant-wife. They have no any reason to cause interference into the domestic affairs of the spouses. There is inordinate delay in filing the complaint. The complainant did not mention any specific instances of maltreatment at the hands of applicants No. 4 and 5. According to learned counsel, the allegations made in the FIR are vague and general 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. 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 under Sections 498-A, 307, 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 were unlawful demand of money from the applicants to establish the "*Setu Suvidha Centre*". There was also attempt to commit murder of complainant-wife by the husband and in-laws. The allegations are serious and disgusting one. Lastly, the learned APP explained the circumstances in detail and prays for rejection of application.

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 and 3 for exercise of inherent powers under Section 482 of Cr.P.C. The allegations nurtured on behalf of complainant-wife in the FIR are sufficient to attract the ingredients of offence as alleged against applicants. Obviously, the allegations cast against husband and in-laws are serious and anti-social in nature. We are unable to persuade ourselves to nod in favour of applicants No. 1 and 3. The applicant No.2 Sundarlal is no more and reported to be dead. Therefore, proceeding filed on his behalf stands abated. Eventually, learned counsel for applicants seeks leave to withdraw the proceedings to the extent of applicants No. 1 and 3. Accordingly, leave was granted for withdrawal of application to the extent of applicants No. 1 and 3.

8. In regard to allegations nurtured against applicants No. 4 and 5, we find that the allegations cast on behalf of complainant - wife against sisters-in-law are vague and general in nature. There are no specific allegations attributing overt-act of these applicants to maltreat and harass the complainant - wife. There were no detail particulars given in the FIR about participation of these applicants No. 4 and 5 for their act of cruelty to the complainant or for demand of money. The

allegations about cruelty by these applicants are found omnibus and sweeping in nature. Moreover, the applicants No. 4 and 5 are the married sisters-in-law of complainant. They are residing separately with the husband at their matrimonial home. They have no reason to cause any interference in the marital affairs of the spouses.

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.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."*

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.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.

11. 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.*"

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 No. 4 and 5. It would be an futile efforts and would cause injustice to them, if they compelled to face agony of trial before Criminal Court of Magistrate. It would also dissipate the precious time of Court of law as the possibility of their ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicants No. 4 and 5 may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against these applicants deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is partly allowed.
- ii. The Criminal Application in respect of applicant No. 2 stands abated as he is dead.

- iii. Application in respect of applicants No. 1 and 3 stands disposed of as withdrawn.
- iv. Application in respect of applicants No. 4 and 5 is hereby allowed.
- v. The penal proceeding initiated against applicants No. 4 and 5, bearing FIR No. 0025 of 2018, for the offences punishable under Sections 498-A, 307, 323, 504 and 506 read with Section 34 of IPC, registered with Harsul Police Station, Aurangabad, is ordered to be quashed and set aside.
- vi. Rule is made absolute partly in terms of prayer clause "B".
- vii. Criminal Application is disposed of in above terms.
- viii. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

Sd/-

[T.V. NALAWADE]
JUDGE

MTK