

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLIATION NO. 1331 OF 2019

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| <ol style="list-style-type: none"> 1. Nirmala @ Nimi W/o. Ganesh Rawe,
Age 44 years, Occu. Household, 2. Ganesh S/o. Kacharu Rawe,
Age 57 years, Occu. Service (A.S.I.
City Traffic Branch Ahmednagar)
R/o. Bhingar Camp, Sadar Bazar,
House No. 84, Bhingar,
Ahmednagar. | .. | Applicants
(Original Accused) |
| Versus | | |

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| <ol style="list-style-type: none"> 1. The State of Maharashtra
Through its Investigation Officer
Bhingar Camp Police Station, Ahmednagar,
Taluka and District – Ahmednagar. 2. Devika W/o. Nilesh Bagale,
Age 30 years, Occu. Beauty Parlor,
R/o. Dwarkadhish Colony, Alamgir
Road, Bhingar, Ahmednagar. | .. | Respondents |
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Mr. Narayan B. Narwade, Advocate for Applicants.
Mr. A. S. Shinde, Advocate for Respondent No.1.
Ms. J. P. Kingre, Advocate for Respondent No.2.

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**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ**
DATE : 17th 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 Crime No.09/2019 registered at Bhingar Camp Police Station, Ahmednagar, 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 – Devika approached to the Police of Bhingar Camp Police Station, Ahmednagar, on 03/01/2018 and ventilated the grievance that her marriage was solemnized on 31/05/2013 with one Nilesh Bagale. He was in service in MIDC area, Ahmednagar. After marriage, she joined the company of her husband in joint family of in-laws, brother-in-law, sister-in-law. The applicant No.1 is the cousin sister-in-law of complainant, whereas, the applicant No.2 is the husband of applicant No.1. It has been alleged that after marriage the complainant was treated properly for about 2/3 months. But, thereafter, since 13/7/2013, the husband and in-laws started maltreating and harassing her on trifle reasons. The mother-in-law used to scold and abused her filthly. The father-in-law, brother in law – Yogesh and sister in law – Punam used to abuse and assault her. The present applicant No.1 Nimi and her husband applicant No.2 Ganesh whenever visited to the house of complainant used to instigate the husband of complainant and on such instigation, there were beating to her on the part of husband. The members of matrimonial

home of the complainant used to mentally and physically maltreat her on the ground that she has given birth to a female child after about a year of marriage. They also insisted her to get transfer the house property of her father in their favour. Eventually, the complainant approached to the Bhingar camp Police Station and lodged the FIR.

4. Pursuant to FIR, Police of Bhingar camp Police Station, Latur. registered the crime and set the penal law in motion. Pending the investigation, applicants moved present application by invoking remedy under Section 482 of Cr.P.C. for the 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 against present applicants about maltreatment and torture meted out to the complainant – Devika. The allegations in the FIR are vague and baseless. There was no direct and indirect involvement of applicants in this crime. The learned counsel further submits that the present applicant No.1 is the cousin sister-in-law of complainant and applicant No.2 is her husband. They are residing separately from the husband of complainant. They have no reason to cause interference in marital life of complainant nor they are beneficiaries from marital discord.

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 was unlawful demand of money as well as the husband and other inmates of matrimonial home insisted to get transfer the house property of parents of complainant in their favour. The present applicant also used to instigate husband and other members of matrimonial home of complainant.

7. We have given anxious consideration to the arguments advanced on behalf of both sides. We find that the allegations cast on behalf of complainant – Devika against the present applicants are totally vague and general in nature. There are no specific allegations attributing overt-act of these applicants to maltreat and harass the complainant – Devika. There were no detail particulars given in the FIR about the participation of these applicants for their act of humiliation or insult to the complainant. The only allegation is that at the instigation of the applicants the husband of complainant used to maltreat her. It has been mentioned in the FIR that,

‘‘तसेच माझी चुलत ननंद निमी गणेश रवे व नंदाबाई
गणेश रवे हे देखील आमच्या घरी येऊन माझ्याबद्दल चुकीचे
सांगून माझ्या पतीला माझ्याबद्दल भडकावत असे.’’

The allegations about cruelty by these applicants are found stray and sweeping in nature. There were no allegations that these applicants themselves torture the complainant directly. But, they used to instigate her husband. It would fallacious to appreciate these allegations amounts to cruelty as contemplated u/sec.498-A of IPC. Moreover, the applicant No.1 is the cousin sister-in-law of complainant and applicant No.2 is her husband. They are the distant relatives and residing separately from husband of complainant. They have no any reason to cause interference in marital life of complainant nor they are beneficiaries from marital discord.

8. 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."*

9. 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.*

10. 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.”*

11. It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Schindia AIR 1988 SC 709** 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.”

12. 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.

13. In the light of aforesaid exposition of law, in the matter in hand, it would be unjust and improper to allow the prosecution to proceed against these applicants. It would be an futile efforts and would cause injustice to them, in case, they are compelled to face agony of trial before criminal court. 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 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

- 1] The criminal application stands allowed.
- 2] Relief is granted in terms of prayer clause (B). The FIR bearing Crime No. 9/2019 registered under Sections 498-A, 323, 504, 506 r/w. 34 of IPC at Bhingar Camp Police Station, Ahmednagar is hereby set aside and quashed to the extent of these applicants only.
- 3] Rule made absolute in above terms.
- 4] Fees of the appointed counsel are quantified at Rs. 3,000/- to be paid through the High Court Legal Services Sub-Committee Aurangabad.

[K.K. SONAWANE]
JUDGE.

grt/-

[T. V. NALAWADE]
JUDGE