

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

CRIMINAL WRIT PETITION NO. 713 OF 2019

- 1 Mr. Prateek s/o Pradeep Vyas,
Age: 30 years, Occ. Service,
R/o: 502, Sargam Co-operative
Housing Society, Gavanpada, Near
Nilamnagar, Mulund (East) Mumbai.

Also residing :

504/Saritha Horizon High-Tension
Lane, Raghvendra Colony, Kondapur,
Hyderabad 500 081

- 2 Mr. Pradeep Manmohan Vyas,
Age : 61 years, Occ. Retired.
- 3 Mrs. Santosh Pradeep Vyas,
Age: 54 years, Occ: Housewife,
- 4 Mr. Praneet Pradeep Vyas,
Age: 54 years, Occ. Service,
- 5 Mr. Sandeep Manmohan Vyas,
Age: 55 years, Occ. Service,
- 6 Mrs. Seema Bhra Sandeep Vyas,
Age: 53 years, Occ. Housewife,

Petitioner Nos. 2 to 6
R/o: 502, Sargam Co-operative
Housing Society, Gavanpada, Near
Nilamnagar, Mulund (East) Mumbai.

..PETITIONERS
(Ori. Accused)

VERSUS

- 1 The State of Maharashtra,
Through the Police Inspector Pundlik
Nagar Police Station, CIDCO, N-4,
Aurangabad, District Aurangabad.

- 2 Mrs. Deepika Prateek Vyas,
 Age: 28 years, Occ. Household,
 R/o: Plot No. 11, Sector F,
 N-4, CIDCO, Aurangabad, District RESPONDENTS
 Aurangabad.

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Mr. V.D. Hon, Senior Advocate instructed by
Mr. Ashwin V. Hon, Advocate for petitioners.
Mr. D.R. Kale, 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 : 19th 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 petitioners preferred present writ petition 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. 49 of 2019 registered at Pundliknagar Police Station, Aurangabad, District Aurangabad for the offence punishable under Sections 498-A, 406, 323, 504 and 506 read with Section 34 of Indian Penal Code ("IPC") and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

3. It has been alleged on behalf of prosecution that the first informant – complainant Mrs. Deepika Prateek Vyas approached to the Police of Pundliknagar Police Station, Aurangabad, District Aurangabad, on 31-01-2019 and ventilated the grievance that her marriage was solemnized on 23-11-2017 with petitioner No. 1 – Prateek. Petitioners

No. 2 and 3 are the in-laws whereas petitioner No. 4 is brother-in-law of complainant-wife. The petitioners No. 5 and 6 are the uncle and aunt of petitioner No. 1. It has been alleged that after marriage, complainant - wife joined the company of husband for cohabitation at Mumbai. After about five days of the marriage, the complainant along with her husband, came to Aurangabad to attend the marriage of her friend. It has been alleged that after attending the marriage, the petitioner-husband did not allow the complainant-wife to see her parents and the spouses straightway returned to Mumbai in the same night. Petitioner-husband despite having holiday on 01-12-2017, left for Hyderabad to attend his service leaving behind complainant-wife at Mumbai. It has been alleged that on 05-12-2017, the complainant with her brother came to Aurangabad for religious function of "Satyanarayan Pooja" at her parents house. Thereafter, the husband Prateek on 11-12-2017 carried all the household articles given in marriage to Hyderabad. However, the complainant was taken to Mumbai by her in-laws. According to complainant, on 16-12-2017, she accompanied with her mother-in-law went to Hyderabad. But her husband was not at home. He had gone to attend the marriage ceremony of her girl friend. During her stay at Hyderabad with husband and mother in law, they started demanding money from her parents to purchase domestic articles. There was no physical relations between the spouses during stay at Hyderabad. It has been alleged that petitioner-husband was not capable to have physical relations with the complainant-wife. It has been alleged that her husband and in-laws played mischief and cheated the complainant. She was subjected to cruelty for demand of more

dowry. The petitioners demanded amount of Rs. Ten Lakhs from the parents of complainant for his medical treatment. It has been alleged that the complainant attempted to make detail enquiry but, the petitioner-husband assaulted her with fists and kicks blows and also hurled abuses to her. He has also threatened her that if complainant-wife disclosed these facts, she will have to face fire consequences. Thereafte, she was driven out of the house. The hapless complainant informed all the facts to her father on cell phone and called him at Hyderabad. The complainant-wife came to Aurangabad along with her father. Since then she is residing with her parents and no one else from her matrimonial home came to fetch her back for cohabitation. Eventually, she filed the report to the Police for penal action against the petitioners.

4. Pursuant to FIR, Police of Pundliknagar Police Station, Aurangabad, District Aurangabad registered the crime and set the penal law in motion. Pending the investigation, petitioners moved present application by invoking remedy under Section 482 of the Cr.P.C. for relief to quash and set aside the impugned FIR and absolve from the charges pitted against them.

5. Learned counsel for petitioners vehemently submits that there were no physical and mental cruelty to the complainant on the part of petitioners. But, she has filed present penal proceeding with an malafide intention to harass the petitioners. There were no specific allegations about maltreatment and torture meted out to the complainant - wife. The learned counsel submits that all the valuable

articles of complainant were returned to her as per directions of this Court while hearing of anticipatory bail application. Moreover, the complainant wife was agreed not to oppose the present petition for quashing the FIR. Learned counsel further added that respondent No.2-complainant was not willing to continue marital relation with petitioner-husband. She has filed the divorce petition against the petitioner-husband before Family Court at Aurangabad. According to learned counsel, the petitioners No. 2 to 6 have no any concern with the marital life of petitioner No. 1 and complainant-wife. They have no any reason to cause interference into the domestic affairs of the spouses. They are residing separately from husband of complainant and they are not the beneficiaries from marital discord of spouses. The complainant did not mention any specific instances of maltreatment at the hands of petitioners. According to learned counsel, the allegations made in the FIR are vague and general in nature. There was no demand of any kind from the complainant. The present complaint is nothing but an abuse of process of law. It would unjust and improper to compel the petitioners to face the agony of trial. In case, the present penal proceeding is not quashed, it would cause serious prejudice and injustice to the petitioners.

6. The learned APP as well as learned counsel for respondent No. 2-first informant opposed the contentions put-forth on behalf of petitioners 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 IPC. The complainant categorically described the episode of her maltreatment and torture at

the hands of petitioners. There was unlawful demand of money from the petitioners. The respondent No. 2 filed affidavit-in-reply on record and opposed the contentions put forth on behalf of petitioners.

7. Having given anxious consideration to the arguments advanced on behalf of both sides, this Court was not inclined to nod in favour of petitioner No. 1 for exercise of inherent powers under Section 482 of Cr.P.C. Eventually, learned counsel for petitioners seeks leave to withdraw the proceedings to the extent of petitioner No. 1. Accordingly, leave was granted for withdrawal of application to the extent of petitioner No. 1.

8. In regard to allegations nurtured against petitioners No. 2 to 6, we find that the allegations cast on behalf of complainant - wife against petitioners No. 2 to 6 are vague and general in nature. There are no specific allegations attributing overt-act of the petitioners No. 2 to 6 to maltreat and harass the complainant - wife. There were no detail particulars given in the FIR about participation of petitioners No. 2 to 6 for their act of cruelty to the complainant or for demand of money. The allegations about cruelty by petitioners No. 2 to 6 are found stray and sweeping in nature as envisaged under Section 498-A of IPC.

9. It is to be noted that the marriage of spouses was performed on 23-11-2017 and within couple of years of the marriage, there was marital discord between spouses. The period of cohabitation of the complainant wife was hardly one and half years. The petitioners No.2 and 3 are old aged parents of husband. The petitioner No.4 is the brother-in-law of complainant and residing separately at Mumbai. The

petitioners No. 5 and 6 are the uncle and aunt of husband of complainant. They are distant relatives and residing separately. They have no reason to cause interference in the marital life of spouses. They are not the beneficiaries of marital discord between spouses. Therefore, it is hard to believe *prima facie* that these petitioners No. 2 to 6 have any role in the matrimonial dispute between spouses. It is also worth to mention that basic cause of dispute between spouses may be owing to inability of husband for physical relation with the wife.

10. Moreover, the learned counsel for applicant drawn attention towards submissions made on behalf of complainant that after return of all articles of "Shridhan" she would not oppose for quashing the present criminal proceeding filed against petitioners. This Court in Criminal Anticipatory Bail Application No. 427 of 2019 (Coram: V.M. Deshpande, J.), in order dated 12-04-2019 observed these facts, that she had received all articles of "Shridhan" and now she would not oppose for quashing the impugned FIR, in the proceeding filed on behalf of applicants.

11. At this juncture, the question that arises, whether the FIR registered against petitioners 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."*

12. 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.*

13. 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."*

14. 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."

15. 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 petitioners are taken at their face value and accepted the same in its entirety would not constitute any offence or make out case against petitioners, in such circumstances, there would not be any propriety to allow the prosecution to proceed further into the matter.

16. In the light of aforesaid expositions of law, in the matter in hand, it would be unjust and improper to allow the prosecution to proceed against petitioners No. 2 to 6. It would be an futile efforts

and would cause injustice to them if 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 ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the petitioners may not be forced unnecessarily to go on litigation before the Criminal Court. Hence, penal proceeding initiated against these petitioners No. 2 to 6 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 petitioner No. 1 stands disposed of as withdrawn.
- iii. Application in respect of petitioners No. 2 to 6 is hereby allowed.
- iv. The penal proceeding initiated against petitioners No. 2 to 6, bearing FIR No. 49 of 2019, for the offences punishable under Sections 498-A, 406, 323, 504 and 506 read with Section 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961, registered with Pundliknagar Police Station, Aurangabad, District Aurangabad, is ordered to be quashed and set aside.
- v. Rule is made absolute in terms of prayer clause "B".
- vi. Criminal Application is disposed of in above terms.
- vii. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

Sd/-

[T.V. NALAWADE]
JUDGE