

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

CRIMINAL WRIT PETITION NO. 792 OF 2019

- 1 Sandeep S/o. Damodhar Parkhe,
Age 30 years, Occu. Contractual Service,
R/o. Amrut Vivek Apartment,
Plot No. 4, Jalan Nagar,
Railway Station, Aurangabad,
Taluka and District Aurangabad.
- 2 Damodhar S/o. Raghoji Parkhe,
Age 62 years, Occu. Retired person,
R/o. Amrut Vivek Apartment,
Plot No. 4, Jalan Nagar,
Railway Station, Aurangabad,
Taluka and District Aurangabad.
- 3 Mangal W/o. Damodhar Parkhe,
Age 50 years, Occu. Housewife,
R/o. Amrut Vivek Apartment,
Plot No. 4, Jalan Nagar,
Railway Station, Aurangabad,
Taluka and District Aurangabad.
- 4 Varsha D/o. Damodhar Parkhe,
Age 28 years, Occu. Education,
R/o. Amrut Vivek Apartment,
Plot No. 4, Jalan Nagar,
Railway Station, Aurangabad,
Taluka and District Aurangabad.
- 5 Sujata D/o. Damodhar Parkhe,
Age 25 years, Occu. Education,
R/o. Amrut Vivek Apartment,
Plot No. 4, Jalan Nagar,
Railway Station, Aurangabad,
Taluka and District Aurangabad.

PETITIONERS

.. (Original accused)

VERSUS

- 1 The State of Maharashtra,
Through Satara Police Station,
Aurangabad, Taluka and District Aurangabad.
- 2 Dr. Swati W/o. Sandeep Parkhe,
Age 28 years, Occu. B.D.S. Medical Service,
R/o. C/o. Dr. Ashok A. Kakde,
W-24, Samrat Row House,
Amrut Sai Plaza, Silkmill Colony,
Near to Railway Station, Aurangabad,
Taluka and District Aurangabad.

RESPONDENTS

(R.No.2 - Original
.. Complainant)

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Mr. Rajendra H. Wagh, Advocate for petitioners.
Mr. D. R. Kale, APP for respondent No. 1-State.
Mr. A. R. Salve, Advocate for Respondent No. 2.

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

DATED : 30th SEPTEMBER, 2019.

ORAL JUDGMENT :- (Per: K.K. SONAWANE, J.)

1. Rule. Rule made returnable forthwith. Heard finally, with the consent of learned counsel appearing for the parties.

2. The petitioners - original accused 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 Crime No. 502 of 2018 registered at Satara Police Station, Aurangabad, for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code (IPC) as well as the criminal proceeding bearing Charge-sheet No. I-47 of 2019 filed pursuant to aforesaid Crime.

3. The prosecution case in short compass is that the first informant – complainant Dr. Swati w/o. Sandeep Parkhe, on 02-12-2018, approached to the Police of Satara Police Station, Aurangabad, and ventilated the grievance that her marriage was solemnized on 18-12-2016 with petitioner No. 1 – Sandeep Parkhe. The petitioners No. 2 and 3 are in-laws, whereas, petitioners No. 4 and 5 are the sisters-in-law of complainant – wife. After marriage, complainant-wife joined the company of husband for cohabitation at Jalna. After about 15 days of marriage, petitioner-husband and complainant-wife (spouses) came to reside at Aurangabad in rented house. The in-laws, brother-in-law and sisters-in-law of the complainant used to visit frequently to the spouses at Aurangabad. They used to instigate petitioner-husband to maltreat

the complainant wife. The husband also beaten-up her severally. She endured the same for better future. But, there was no change in the behaviour of husband and his relatives. The petitioner-husband advised her that her father has no son and he is affluent person so bring Rs.30 Lakhs from him to purchase a house in Aurangabad. When complainant – wife opposed for such proposal, all the petitioners tortured her physically and mentally. She disclosed about the ordeals to her father. The hapless father made arrangement and paid amount of Rs. 5 Lakhs to petitioners and also gifted the vehicle Scooty-moped worth Rs.70,000/- in the name of complainant. Despite all these things, there was no change in their behaviour and continuously tortured her physically and mentally. The petitioner-husband used to beat the complainant wife at late night on account of suspicion on her character. On 14-11-2017 at about 10.00 p.m. the petitioners by removing all ornaments from her person, driven her out of house. Therefore, complainant-wife lodged NC No. 1138 of 2018. It has been alleged that the petitioner-husband has an immoral relation with one lady komal. The complainant wife made endeavour to raise objection for such immoral relations but husband attempted to kill her by hanging to ceiling fan. However, she get extricated herself from their clutches. Thereafter, the complainant-wife is residing with her parents. When complainant-wife was proceeding towards class for preparation of competitive examination, petitioner-husband stopped her on Kranti-chouk to Paithan gate road and abused her in filthy language. He also threatened her to kill. Hence, she filed NC No. 194 of 2019 with Krantichouk Police Station, Aurangabad. According to complainant, her

parents and relatives took efforts to compromise the marital dispute. But, it did not evoke result. Eventually, she lodged report to the Police of Satara Police Station, Aurangabad, for taking penal action against the present petitioners.

4. Pursuant to FIR, Police of Satara Police Station, Aurangabad, registered the crime and set the penal law in motion. Pending investigation, the petitioners moved present Writ Petition by invoking remedy under Article 226 of the Constitution of India and provision under Section 482 of Cr.P.C. for relief to quash and set aside the impugned FIR and chargesheet bearing No. I-47 of 2019 and also prayed to absolve from the charges pitted against them.

5. Learned counsel for petitioners vehemently submits that there were no physical and mental cruelty to complainant on the part of petitioners. But, she has filed present false penal proceedings with an *malafide* intention to harass the petitioners. There were no specific allegations about maltreatment and torture meted out to the complainant-wife. Learned counsel submits that respondent No.2-complainant is of complaining and quarrelsome in nature. She has filed the proceeding under the provision of Protection of Women from Domestic Violence Act, 2005, before the appropriate forum. She has also filed false complaints/NC before the various authorities to harass the petitioners. Learned counsel further submits that the NC complaint filed by the complainant-wife against petitioners reveals that she is not interested to cohabit with husband. According to learned counsel, the petitioners No. 2 and 3 are old aged parents of husband of the complainant. They are suffering from old aged ailment. The petitioners

No. 4 and 5 are real sisters of petitioner-husband and they are taking education. The petitioners No. 2 to 5 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. The complainant did not mention any specific instance of maltreatment at the hands of petitioners. The learned counsel submits that the allegations made in the FIR are vague and general in nature. There was no demand of any kind on the part of petitioners. Learned counsel submits that 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, 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. They 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. The complainant is a Doctor (Medical practitioner). There were allegations of physical and mental torture to the complainant for unlawful demand of amount on the part of petitioners. Therefore, respondent No.2-complainant has filed the NC cases prior to filing of present FIR/charge-sheet. The complainant-wife has filed affidavit-in-reply also produced relevant documents on record for perusal.

7. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into documents produced on record. In view of nature of subject-matter and allegations nurtured on behalf of complainant-wife, this Court was reluctant to nod in favour of petitioners No. 1 to 3 for exercise of inherent powers under Section 482 of Cr.P.C. Eventually, learned counsel for the petitioners seeks leave to withdraw the proceedings filed by petitioners No. 1 to 3. Accordingly, leave was granted to their extent only.

8. In regard to allegations nurtured against petitioners No. 4 and 5, we find that the allegations cast on behalf of complainant - wife against petitioners No. 4 and 5 are totally vague and general in nature. There are no specific allegations attributing overt-act of these petitioners to maltreat and harass the complainant-wife. There were no detail particulars given in the FIR about participation of petitioners No. 4 and 5 for their act of cruelty to the complainant or for demand of money, etc. The allegations about cruelty at the hands of petitioners are found stray and sweeping in nature. The petitioners No. 4 and 5 are the sisters-in-law of complainant - wife and they are taking education. They have no any reason to cause interference into the domestic affairs of the spouses. Therefore, it can not be perceived that these petitioners have reason to cause interference in the marital life of spouses. It is fallacious to appreciate that they are beneficiaries from the marital discord between the spouses.

9. 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."*

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 Scindia 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."

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 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.

14. In the light of aforesaid expositions of law, in the instant case, it would be unjust and improper to allow the prosecution to proceed further against petitioners No. 4 and 5. 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 their 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 petitioners No. 4 and 5 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Writ Petition is partly allowed.
- ii. The Criminal Writ Petition in respect of petitioners No. 1 to 3 stands dismissed as withdrawn.
- iii. The Criminal Writ Petition in respect of petitioners No. 4 and 5 is allowed.
- iv. The penal proceeding initiated against petitioners No. 4 and 5 bearing FIR/Crime No. 502 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Satara Police Station, Aurangabad, as well as consequential proceedings bearing Charge-sheet No. I-47 of 2019 pursuant to aforesaid crime, is ordered to be quashed and set aside to their extent only.

- v. Rule is made absolute in terms of prayer clause "C".
- vi. The Criminal Writ Petition is disposed of in above terms.
- vii. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE

MTK