

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

CRIMINAL APPLICATION NO. 1550 OF 2018

- 1 Gautam S/o Wamanrao Kakade,
Age: 28 years, Occu.: Service,
R/o: Flat No. 9, Maruti Society,
K.J. Mehata High School Road,
Sadguru Nagar Nashik
- 2 Indubai W/o Wamanrao Kakade,
Age: 60 years, Occ: Household &
Pensioner, R/o Ambedkar Road,
Kanhayanagar, Jalna, Tq. & Dist.
Jalna.
- 3 Ramesh S/o Wamanrao Kakade,
Age: 39 years Occ. Service,
R/o: Lane No. 5, Room No. 231,
Police Quarter, Near Bus Stand,
Nashik, Dist. Nashik.
- 4 Chhaya W/o Ramesh Kakade,
Age : 33 years, Occ.Household,
R/o: Lane No. 5, Room No. 231,
Police Quarter, Near Bus stand,
Nashik, Dist. Nashik.

..APPLICANTS
(Ori. Accused)

VERSUS

- 1 The State of Maharashtra, Through
Police Station, Cidco, Aurangabad.
- 2 Priyanaka W/o Gautam Kakade,
Age: 27 years, Occ.: Private Service,
R/o : C/o Ashok Natthu Sutar,
N-9, 27/11, Pratap Nagar,
Cidco Aurangagad

RESPONDENTS

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Mr. Menezes Joslyn A, Advocate for Applicants.
Mr. R.D.Sanap, APP for Respondent No. 1
Mr. M.P. Gandle, Advocate for Respondent No. 2

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

DATED : 15th 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 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. 57 of 2018 registered at CIDCO Police Station, Aurangabad District Aurangabad, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code ("IPC") and under Sections 3 and 4 of the Dowry Prohibition Act and consequential proceeding arising thereof bearing Charge-sheet No. 107 of 2018.

3. The prosecution case in short compass is that, the first informant Priyanka W/o Gautam Kakade on 27-02-2018 approached to the Police of CIDCO Police Station, Aurangabad, District Aurangabad and filed the report that her marriage was solemnized on 11-05-2015 with applicant No. 1. According to complainant, the in-laws and husband made demand of Rs.2,00,000/- as an dowry in the marriage. However, her father anyhow collected the amount of Rs.1,00,000/- and paid to the

applicants. It is alleged that due to non fulfillment of balance amount, applicant did not took the complainant for cohabitation and kept her at parents house for a month. But, on assurance by the father of complainant to pay remaining amount, the applicant No. 1 allowed the complainant for cohabitation with him at Panji Goa, as at the relevant time he was posted there as Constable. According to complainant, thereafter, for a period of six months the applicant treated the complainant in proper manner. Thereafter, the applicant-husband get himself transferred from Goa to Deolai (Nashik) and started residing with other applicants in Police quarters at Nashik. The applicants No. 2 and 4 mother-in-law and sister-in-law physically and mentally harassed the complainant for demand of balance dowry amount. According to complainant, she disclosed about ill-treatment by the applicants to her parents. There were endeavour to convince the applicants not to ill-treat and behave properly with the complainant. Thereafter, the inmates of matrimonial home treated the complainant in proper manner for some days. But, her ordeals did not come to an end. The husband and other applicants started harassing the complainant. The circumstances constrained her to lodge complaint with Women's Redressal Centre at Aurangabad. According to complainant, there was amicable settlement at the instance of both sides and complainant once again joined the company of applicant No. 1.

Thereafter, also the applicants subjected her to physical and mental torture for the reason that she had filed complaint at Womens' Redressal Centre. They started demanding balance amount of dowry from her parents. It has been alleged that on 04-02-2018, the applicants picked-up quarrel with complainant on account of payment of remaining dowry amount. They beaten up the complainant-wife with fists and kicks blows and on following day the applicants snatched away gold ornaments from the person of complainant-wife and driven her out of the house. Eventually, she once again approached to the Police and filed report for penal action against the applicants.

4. Pursuant to FIR, Police of CIDCO Police Station, Aurangabad, District Aurangabad registered the crime and set the penal law in motion. Investigating Officer recorded statements of witnesses acquainted with the facts of the case. He collected relevant documents of matrimonial dispute between the spouses. The Investigating Officer after completion of investigation filed the charge-sheet under Section 173 of Cr.P.C. The applicants prayed to absolve from the charges pitted against them and quashed and set aside the FIR No. 57 of 2018 and consequential proceeding arising thereof bearing Charge-sheet No. 107 of 2018.

5. Learned counsel for applicants vehemently submits that applicants are innocent of the charges pitted against them. They

have not committed any crime, but they are falsely implicated in this case. According to learned counsel, the complainant was not interested in cohabiting with applicant-husband. Her behaviour and conduct was not proper with husband and in-laws and she was arrogant. There were no unlawful demand of money. According to learned counsel, there was no any specific allegations against applicants for cruelty as contemplated under Section 498-A of the IPC. The learned counsel submits that applicant No. 2 is mother-in-law. Applicant No. 4 is wife of applicant No.3 – brother-in-law of complainant-wife. Applicants No. 2 and 4 have no any concerned with the marital life of applicant No. 1 and complainant. They have no any reason to cause interference into the domestic affairs of the spouses. All the allegations are general and vague in nature. It is nothing but an abuse of process of law. It would unjust and improper to compel the applicants to face the agony of trial. Hence, learned counsel explained the attending circumstances on record in detail and urged to quash and set aside the penal proceeding initiated against the applicants.

6. The learned APP as well as learned counsel for respondent No. 2-first informant 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, 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 was unlawful demand of money from applicants towards dowry. There were allegations of physical assault to the complainant on the part of applicants.

7. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into the relevant documents produced on record as well as factual aspects of the matter. The learned counsel for applicants already seeks permission to withdraw the proceeding in respect of applicants No. 1 and 3 and order to that effect was passed on 17-01-2019 by this Court. We find that there is no scope for exercise of inherent powers under Section 482 of the Cr.P.C. in favour of applicant No. 2 as it appears from the FIR that *prima facie* case is made out against her. The specific allegations are cast against mother-in-law about cruelty as envisaged under Section 498-A of I.P.C. We do not find force in the submission of learned counsel for the applicants to absolve the applicant-mother in-law from charges pitted against her. Therefore, we were not inclined to grant any relief in favour of the applicant No. 2. Eventually, learned counsel for applicants seeks leave to withdraw the proceedings to the extent of applicant No. 2. Accordingly, leave came to be granted for withdrawal of application to the extent of applicant No. 2.

8. In regard to allegations made against applicant No. 4, we find that during crucial period of co-habitation of complainant with husband, the applicant No. 4 was not available in the company of complainant. The entire allegations about cruelty are against husband, mother-in-law and brother-in-law. There was reference that applicant No. 4 harassed the complainant mentally and physically, but all the aspersion against her are vague, and general in nature. There was no specific instance or details of participation of applicant No. 4 in the alleged act of cruelty available on record for adverse inference about her involvement into the crime. There are no specific allegations attributing overt-act of applicant No. 4 to maltreat and harass the complainant. The allegations are stray and omnibus in nature. Therefore, it would unjust and improper to compel the applicant No. 4 to face agony of trial before criminal court following marital discord between 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 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.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 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 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 applicant No. 4. It would be an futile efforts and would cause injustice to them, if she is 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 applicants may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against applicant No. 4 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 applicants No. 1 and 3 has already been dismissed as withdrawn. stands dismissed as withdrawn.
- iii. Application in respect of applicant No. 2 stands dismissed as withdrawn.
- iv. Application in respect of applicant No. 4 is hereby allowed.
- v. The penal proceeding initiated against applicant No. 4 bearing FIR No. 57 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC and under Section 3 and 4 of the Dowry Prohibition Act, registered with CIDCO Police Station, Aurangabad, District Aurangabad, and consequential proceeding arising thereof bearing Charge-sheet No. 107 of 2018, is ordered to be quashed and set aside.
- vi. Rule is made absolute partly in terms of prayer clause (C) to the extent of applicant No. 4.
- 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