

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLIATION NO. 1555 OF 2018

1. Jairam S/o. Chandrabhan Shinde,
Age 34 years, Occu. Agril.,
R/o. Kanchanwadi,
Raluka and District Aurangabad.
2. Sagarbai W/o. Chandrabhan Shinde,
Age 54 years, Occu. Household,
R/o. Kanchanwadi,
Raluka and District Aurangabad.
3. Sandeep S/o. Chandrabhan Shinde,
Age 25 years, Occu. Business,
R/o. Kanchanwadi,
Raluka and District Aurangabad.
4. Dipika @ Alka d/o. Chandrabhan Shinde,
Age 22 years, Occu. Household,
R/o. Kanchanwadi,
Taluka and District Aurangabad.
5. Sulabai w/o. Deorao Gaikwad,
Age 53 years, Occu. Household,
R/o. Kanchanwadi,
Taluka and District Aurangabad.
6. Deorao w/o. Yadaorao Gaikwad,
Age 58 years, Occu. Service,
R/o. Kanchanwadi,
Taluka and District Aurangabad.
7. Kavita w/o. Dnyaneshwar Mali,
Age 33 years, Occu. Household,
R/o. Dahigaon (S), Post Tapadgaon,
Taluka Shevgaon, District Ahmednagar.
8. Dnyaneshwar S/o. Pralhad Mali,
Age 38 years, Occu. Service,
as a Assistant Teacher,
R/o. Dahigaon (S), Post. Tapadgaon,
Taluka Shevgaon, District Ahmednagar.

9. Bali W/o. Ashok Mali,
Age 33 years, Occu. Household,
R/o. Murmi, Taluka Shevgaon,
District Ahmednagar.
10. Ashok S/o. Bhanudas Mali,
Age 38 years, Occu. Tailor,
R/o. Murmi, Taluka Shevgaon,
District Ahmednagar. .. Applicants

Versus

1. The State of Maharashtra
Through Police Station, Satara,
Taluka and District – Aurangabad.
2. Neeta D/o. Ramrao Gaikwad,
(In proceeding Neeta Jairam Shinde),
Age 23 years, Occu. Household,
R/o. Kanchanwadi,
Taluka and District Aurangabad. .. Respondents

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Mr. Pandurang M. Gaikwad, Advocate for Applicants.
Mr. M. M. Nerlikar, Advocate for Respondent No.1.
Mr. S. G. Shete, Advocate for Respondent No.2.

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ
DATE : 15TH 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 penal proceedings vide RCC No. 1213/2016 pending before Learned

Magistrate, Aurangabad for the offence punishable under Sections 498-A, 494, 323, 504, 506 r/w. 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act.

3. It has been alleged on behalf of prosecution that the first informant – complainant Neeta approached to the Police of Satara Police Station, Aurangabad on 6/10/2015 and ventilated the grievance that her marriage was solemnized on 8/3/2015 with applicant No. 1 – Jairam @ Bablu Shinde. The dowry amount of Rs. 5 Lakhs was agreed to be paid to the applicant No.1 Jairam. Accordingly, the parents of complainant paid Rs. 2 Lakhs to the applicant in presence of one Janardhan Kamble, Ganesh Solankar etc and balance amount of Rs. 3 Lakhs of dowry was agreed to be paid at the time of marriage. It has been alleged that after marriage, the complainant joined the company of husband in joint family comprising in-laws, brother-in-law and sister in law. The applicant No. 2 is the mother-in-law, whereas, the applicant No.3 is the brother-in-law and applicant No.4 is the unmarried sister-in-law of the complainant. The applicant Nos. 5 and 6 are maternal aunt and uncle of the complainant. The rest of the applicant Nos. 7 to 10 are the married sister-in-law and their husband, respectively. According to complainant, initially for about 2/3 days of the marriage, she received proper treatment at her matrimonial home. But, thereafter she was being scolded by the applicants by saying sarcastically that they were not honoured properly in the marriage ceremony etc. The applicants used to maltreat and abuse the complainant for demand of balance amount of Rs. 3 Lakhs dowry. The applicant Nos. 4 and 5

were residing adjoining to the matrimonial home of complainant. They used to instigate the husband and other inmates of matrimonial home of complainant, which resulted into beating and abusing the complainant by her husband. The applicant Nos. 9 and 10 also whenever visited to the matrimonial home of complainant at Kanchanwadi, Aurangabad, they used to insult and humiliate the complainant by saying that she has forcibly performed marriage with the applicant No.1. It has been alleged that after about 15 days of the marriage, the applicant subjected the complainant to maltreatment and harassment for demand of balance dowry amount and forcibly driven her out of the house and since then she is residing at her parents home. The complainant further alleged that on 15.5.2015, her father had been to village Georai to attend the relative's marriage, that time, he came to know that the applicant No.1 Jairam performed second marriage with one Vidya Govind Gavhane R/o. Pichadgaon Tq. Newasa. Thereafter, the complainant rushed to the house of husband - Jairam for enquiry, but she was being abused and assaulted by the applicants. Thereafter, she filed the application before Women Cell to redress her grievances, but all efforts did not yield result. Eventually, she filed the present complaint for penal action against the applicants.

4. Pursuant to FIR, Police of Satara Police Station registered the crime and set the penal law in motion. I.O. recorded statement of witnesses acquainted with the facts of the case. I.O. collected relevant documents and after compliance of procedural formalities I.O. filed charge-sheet vide RCC No. 1213/2016 and same is pending before learned Chief Judicial Magistrate at

Aurangabad. Pending the proceeding before learned Magistrate, applicants moved present application by invoking remedy under Section 482 of the Cr.P.C. for relief to quash and set aside the penal proceeding vide RCC No. 1213 of 2016 initiated against them.

5. Learned counsel for applicants vehemently submits that there was 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 about maltreatment and torture meted out to the complainant - Neeta. According to learned counsel, the respondent No.2 – first informant is not legally wedded wife of applicant No.1. The respondent No.2 is the daughter of maternal uncle of applicant No.1. There was a dispute between the family of the applicant No.1 and the maternal uncles. The parents of respondent No.2, with ulterior motive of taking revenge, illegally projected that marriage of respondent No.2 with applicant No.1 has taken place on 8.3.2015. There was no such marriage of applicant No.1 performed with complainant. The applicants are falsely implicated in this case. They have no concern with the alleged crime. After knowledge about the impugned FIR, the applicant No.1 approached to the learned Civil Court and filed the RCS No. 831 of 2015 on 21.9.2015, thereby seeking declaration that the respondent No.2 is not legally wedded wife of the applicant No.1. The learned counsel submits that summons of the said civil suit was duly served to the respondent No.2 and she has caused appearance through her advocate. But, thereafter she remained absent continuously in the civil proceeding and

circumstances constrained the Civil Court to proceed further in absence of respondent No.2. The applicant No.1 adduced his evidence. The learned Civil Judge (J.D.), Aurangabad after appreciating the evidence on record, was pleased to partly decreed the said suit and gave declaration that respondent No.2 is not the legally wedded wife of the applicant No.1. The said judgment and order is not challenged by the respondent No.2 uptill this date. The learned counsel, therefore, submits that there was no marital relationship as an husband and wife in between the respondent No.2 and applicant No.1. There is no substance in the allegations of second marriage or bigamy. The present complaint is filed with malafide intention to harass the applicant No.1 and his relatives. The learned counsel further submits that the rest of the applicants Nos. 4 to 10 are residing separately from the husband of complainant. They are the distant relatives and have no concern with the marital life of spouses. These applicants have no reason to cause interference in the domestic problems of applicant No.1 and respondent No.2. There was no direct and indirect involvement of applicant Nos. 4 to 10 into the crime. These persons are roped in this false case without any reasonable cause. According to learned counsel, the allegations made in the FIR are vague and general in nature. 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 punishable under Sections 494, 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 from the applicants. The complainant also cast allegation about second marriage of husband during her life time.

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 to 3 for exercise of inherent powers under Section 482 of Cr.PC. The allegation cast against the applicant Nos. 1 to 3 in the FIR, prima facie, made out the offence as alleged against them. The circumstances on record did not permit us to favour the applicant Nos. 1 to 3. Eventually, learned counsel for applicants seeks leave to withdraw the proceedings to the extent of applicants No. 1 to 3. Accordingly, leave was granted for withdrawal of application to the extent of applicants No. 1 to 3.

8. In regard to allegations nurtured against applicants No. 4 to 10, we find that the allegations cast on behalf of complainant - Neeta against these distant relatives are vague and general in nature. There are no specific allegations attributing overt-act of all these applicants to maltreat and harass the complainant - Neeta. There were no detail particulars given in the FIR about the participation of these applicants No. 4 to 10 for their act of humiliation or

insult to the complainant on account of demand of money. The only allegation is that they were present at the time of second marriage of applicant No.1 with one lady Vidya Gavhane. But, these allegations are also omnibus and general in nature. The details about participation of these applicants at the time of second marriage are not given in FIR by the complainant Neeta. The allegations are not sufficient to make out a case of bigamy against these applicants. These applicants are the distant relatives and it is hard to believe that these applicants are the beneficiaries after causing interference in marital discord of spouses. They have no reason to torture the complainant without any purported motivation.

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.PC. 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.PC. 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,** relied upon by the applicants, 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 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 to 10. It would be an futile efforts and would cause injustice to them if they are compelled to face the agony of trial before court of law. 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 these applicant Nos. 4 to 10 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

1. The Criminal Application is allowed partly.
2. Application in respect of applicants No. 1 to 3 stands disposed of as withdrawn.
3. Application in respect of applicants No. 4 to 10 is hereby allowed.
4. The criminal proceeding initiated against applicants No. 4 to 10 criminal proceeding bearing RCC No. 1213/2016 pending before the learned Magistrate, Satara, Aurangabad is ordered to be quashed and set aside.
5. Rule is made absolute partly in terms of prayer clause "C".
6. Criminal Application is disposed of in above terms.
7. No order as to costs.

[K.K. SONAWANE]
JUDGE.

[T. V. NALAWADE]
JUDGE

grt/-