

CRIMINAL APPLICATION NO. 1681 OF 2018

.. Applicants.

1. The State of Maharashtra,
Through Police Inspector,
Ramanand Police Station,
Taluka and District Jalgaon.
2. Sarlabai W/o. Fakira Bhoi,
Age 34 years, Occu. Nil,
All R/o. C/o. Bhadu Tulsiram Bhoi,

Bhoi Wada, Aawhane,
Taluka Jalgaon and District Jalgaon. ..

Respondents

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Mr. Girish Nagori, Advocate for Applicants.
Mr. M.M. Nerlikar, APP for Respondent No.1.
Mr. P. P. Dhorde, Advocate for Respondent No.2.

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ
DATE : 22nd 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 No. 80/2018 registered at Ramanand Police Station, Dist. Jalgaon for the offence punishable under Sections 498-A, 323, 406, 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 Sarlabai approached to the Police of Ramanand Police Station, Jalgaon on 16/5/2018 and ventilated the grievance that her marriage was solemnized on 9/5/2002 with applicant No. 1 – Fakira Pandit Bhoi. The applicant No. 2 is the father-in-law of complainant, whereas, applicant No. 3 is her mother-in-law and the applicant Nos 4 and 5 are brothers-in-law. The applicant Nos. 6 and 7 are the sisters-in-law, whereas, the applicant No.8 is the

husband of applicant No.7. According to prosecution, after marriage, wife – Sarlabai joined the company of husband for cohabitation at Pimprala, Dist. Jalgaon. She received proper treatment initially at her matrimonial home. In the year 2003, she gave birth to daughter Divya during wedlock. After about one and half year of the birth of daughter Divya, she was again pregnant for second time and since then the members of matrimonial home including in-laws, brothers-in-law and sisters in law started harassing her on trifle grounds. The in-laws and husband used to demand money for purchasing the motor cycle. The complainant made endeavour to convince the in-laws and husband about poor financial condition of her parents that time she was beaten up and driven out of the matrimonial home. Thereafter, the husband, his maternal aunt and cousin brother came to complainant and after giving assurance, they took back her for cohabitation. In the meantime, she gave birth to son – Premraj. But, her ordeal did not come to an end. After some days, she was beaten up by the in-laws on the ground that there was a lizard found in the food cooked by her and again she was sent to her parents house. The complainant stayed at parents home for some days, but the financial condition of her parents was so critical, therefore, she on own volition returned to matrimonial home for cohabitation. But. there was no change in the behaviour of members of matrimonial home. They used to beat her for satisfaction of demand of Rs. 5 Lakhs for construction business and for purchase of motorcycle. On 30th August, 2013, the husband of the complainant and brothers in law forcibly taken away her girl with them. When she had been to

the matrimonial home to take daughter back, the members of the matrimonial home picked up quarrel with her. The brother in law – Maharu instigated the husband of complainant to beat her, and due to instigation, the husband of complainant dealt a blow of wooden log on her hand, which resulted into fracture injury to the complainant. The members of matrimonial home including father in law, mother in law, brother in law assaulted her. The brother in law – Vijay Bhoi and sister in law Ashabai also gave fist blows on her chest and back. In the month of September, 2013, all the members of matrimonial home assaulted her, hurled abuses and for demand of money driven her out of the matrimonial home. Eventually, she approached to the Police Station and filed report.

4. Pursuant to FIR, Police of Ramanand Police Station registered the crime and set the penal law in motion. Pending the investigation, 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 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 about maltreatment and torture meted out to the complainant – Sarlabai to attract the ingredients of Sections 498-A, 406 etc. of IPC. The learned counsel submits that there was decree passed by Civil Judge, Jalgaon for dissolution of marital relation between

spouses on 26.9.2017 and since then there was no relation in existence as an husband and wife between complainant and applicant No.1. He produced the relevant document on record. According to learned counsel, the complainant – wife is suffering from mental disease known as “paranoid schizophrenia”. The applicant produced medical treatment of various doctors to the complainant. But all efforts did not yield result. All the allegations are vague and fabricated one. The applicant Nos. 7 and 8 are residing separately. 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 husband and wife. There was no direct and indirect involvement of applicant Nos. 7 and 8 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. In support of arguments, the learned counsel relied upon the ratio laid down by the Honourable Apex Court in the case of *State of Haryana Vs. Ch. Bhajanlal and others reported in 1992 Supp(1) SCC 335* and in the case of *Zandu Pharmaceutical works Ltd. and others Vs. Mohd. Sharaful Haque and another reported in (2005) 1 SCC 122*.

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 episodes of her maltreatment and torture at the hands of applicants. There were unlawful demand of money from the applicants for construction business and purchase of motorcycle. The respondent No.2 filed affidavit-in-reply on record and submits that she filed the Regular Civil Appeal No. 922 of 2017 against the impugned judgment and decree of dissolution of marriage passed by learned Civil Judge, Jalgaon. She has also filed proceeding under Section 125 of Cr.P.C.

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 6 for exercise of inherent powers under Section 482 of Cr.P.C. The factual aspect of the matter and allegation cast in the FIR, prima facie, made out the offence against applicant Nos. 1 to 6, as alleged by complainant – wife. The decree of divorce passed by learned Civil Judge, Jalgaon is also subjudice before the appellate forum. In such circumstances, we are unable to persuade ourselves to favour the applicant Nos. 1 to 6 in this proceeding. Eventually, learned counsel for applicants seeks leave to withdraw the proceedings to the extent of applicants No. 1 to 6. Accordingly, leave was granted for withdrawal of application to the extent of applicants No. 1 to 6.

8. In so far as allegations nurtured against applicants No. 7 and 8 are

concerned, we find that the allegations cast on behalf of complainant - Sarlabai against sister-in-law and her husband are vague and general in nature. There are no specific allegations attributing overt-act of both these applicants to maltreat and harass the complainant - Sarlabai. The only allegation against applicants No. 7 to 8 are that they had assaulted and hurled abuses to complainant and subjected her to cruelty. But, these are vague and general allegations and no particulars are given in the FIR. The allegations about cruelty by these applicants are found stray and sweeping in nature. These applicants are the distant relatives and residing separately from husband of complainant and it is hard to believe that these applicants are the beneficiaries after causing interference in marital affairs of the 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 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,** 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. 7 and 8. It would be an futile efforts and would cause injustice to them if they are compelled to face agony of trial before criminal court of Magistrate. 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 applicant Nos. 7 and 8 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 6 stands disposed of as withdrawn.
3. Application in respect of applicants No. 7 and 8 is hereby allowed.
4. The penal proceeding initiated against applicants No. 7 and 8, bearing FIR No. 80/2018, for the offences punishable under Sections 498-A, 406, 323, 504 and 506 read with Section 34 of IPC registered with Ramanand Police Station, Jalgaon is hereby quashed and set aside.
5. Rule is made absolute partly in terms of prayer clause "B".
6. Criminal Application is disposed of in above terms.
7. No order as to costs.

[K.K. SONAWANE]

[T. V. NALAWADE]

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JUDGE.

JUDGE

grt/-