

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

CRIMINAL WRIT PETITION 764 OF 2017

- 1] Shaila W/o Ashok Singan,
Age: 56 years, Occu. Household,
R/o Room No.11, Lila Mane Chawl,
Near Somwar Bazar, Ajit Park, Malad West,
MUMBAI 400064.
- 2] Dattatray S/o Atmaram Gaikwad,
Age: 52 years, Occu. Agriculture,
R/o. 143, Shahunagar, Godoli,
Jagtap Wadi, Dist. Satara 415002.
- 3] Laxmi W/o Dattatray Gaikwad,
Age: 47 years, Occu. Household
R/o 143, Shahunagar, Godoli,
Jagtap Wadi, Dist. Satara 415002
- 4] Prakash S/o Dattatray Gaikwad
Age 27 years, occu.: Service
R/o 143, Shahunagar, Godoli,
Jagtap Wadi, Dist. Satara 415002
- 5] Balasaheb (Balkrishna) S/o Atmaram Gaikwad
Age 47 years, Occu : Service
R/o Room No.5, Nirawali Chawl,
Orlem Tank Road, Near Inamdar Estate,
Malad West, Mumbai 400 064.
- 6] Vandana W/o Balasaheb (Balkrishna) Gaikwad
Age 36 years, Occu : Household,
R/o Room No.5, Nirawali Chawl,
Orlem Tank Road, Near Inamdar Estate,
Malad West, Mumbai 400 064.
- 7] Rajendra Mahadev (Ashok) Shinde,
Age 37 years, Occu : Labour,
R/o Varachi Ali, At Post : Jakatwadi,
Tq. Satara, Dist. Satara.

8] Manisha W/o Rajendra Shinde
Age 32 years, Occu : Household,
R/o Varachi Ali, At Post : Jakatwadi,
Tq.Satara, Dist.Satara. ... **PETITIONERS**

Versus

1] The State of Maharashtra,
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai.

2] Anita W/o Ankush Singan
Age 28 years, Occu : Nil,
R/o At present Arangaon,
Tq. Jamkhed, Dist.Ahmednagar ... **RESPONDENTS**

Mr.Nikhil S. Tekale, Advocate for petitioners.
Mr.P.K.Lakhotia,APP for Respondent no.1.
Mr.M.S.Bhosale, Advocate for respondent no.2.

CORAM : MANGESH S. PATIL, J.

DATE : 16/09/2019

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned APP waives service for respondent no.1 and learned Advocate Mr.Bhosale waives service for respondent no.2. With the consent of the parties, Petition is heard finally at the stage of admission.

2] The petitioners who are the relatives of the husband of the respondent no.2 are praying for quashment and setting aside the Criminal Case filed by the respondent no.2 *inter alia* for the offences

punishable under Sections 498-A, 323, 504,506 read with Section 34 of the I.P.C.

3] The learned advocate for the petitioners submits that the contents of the complaint filed by respondent no.2 even if they are taken at their face value do not make out any of the ingredients for which the process has been issued. The allegations are vague and omnibus. All the relatives of the husband are being roped in with an ulterior motive to harass them. The case of the petitioners is squarely covered by the decision of the Supreme Court in the case of **State of Haryana V/s Bhajanlal; AIR 1992 SC 604**. He would further submit that even there is apparent illegality in as much as the process has been directed to be issued against the petitioners who admittedly do not reside within the jurisdiction of the Magistrate. He ought to have conducted an inquiry under Section 202 of the Cr.P.C. before directing the process to be issued. Therefore even on this count, the complaint deserves to be quashed and set aside.

4] The learned Advocate for the respondent no.2 submits that there was enough material before the Magistrate requiring him to take cognizance and issue process. The order has been passed after application of mind. The petitioners have not filed any revision against order directing process to be issued and have straightway approached this Court praying for quashment. He would submit that the complaint specifically alleges that all the accused i.e. present petitioners had taken part in subjecting her to cruelty. The stage of the trial being preliminary one, respondent no.2 could have substantiated her allegation during the trial. No inference can be drawn at such preliminary stage exonerating all the petitioners. He

would further point out as to how attempt was made to show that the petitioner no.1 who is the mother-in-law of the respondent no.2 has been residing separately from the couple. But the material is *ex facie* concocted and cannot be believed.

5] Perusal of the complaint of the respondent no.2 would reveal that she has stated that her marriage was solemnized on 11/3/2012 and she started cohabiting with the accused persons, she became pregnant and delivered a boy. It is alleged that for initial few days she was maintained properly. Thereafter accused nos.1 and 2 i.e. husband and the mother-in-law started ill treating her on account of their demand for Rs.5 lakhs. She was subjected to mental and physical cruelty. It is then alleged that even the accused nos.3 to 7 i.e. present petitioners no.2 to 8 intermittently harassed her alongwith accused no.1 and 2. Thereafter she has narrated about few episodes wherein she addressed all the accused collectively without referring to any specific individual. She then alleged that accused no.1 i.e. her husband then drove her out of house. She then stated about having issued notice to the husband through her advocate. It is in the concluding paragraph that she has collectively stated that all the accused having come to the place of her maternal uncle on 24/5/2015. They demanded money and gold and then assaulted her and her mother as well.

6] A bare perusal of this statement and her statement under verification recorded by the Magistrate under Section 200 of the Cr.P.C. on the same lines clearly shows that the allegations even if they are taken at their face value do not make out all the necessary ingredients for the offences for which the process has been issued. It

is only in respect of husband and the petitioner no.1 who is her mother-in-law that there are some specific and precise allegations.

7] As has been laid down in case of Bhajanlal (supra) there is usual practice to implicate all the relations of the husband in such matrimonial cases. The petitioner no.2 is the maternal uncle of the husband, petitioner no.3 is the wife of the petitioner no.2, petitioner no.4 is the cousin of the husband, petitioner no.5 is his uncle, petitioner no.6 is wife of that uncle and petitioners no.7 and 8 are distant relatives of the husband. Even according to the respondent no.2 as is mentioned in the complaint filed by her, petitioners 2 to 8 are residents of Satara, whereas her husband and the mother-in-law are residents of Mumbai. Even without referring to the mandate of Section 202 proviso of Cr.P.C., it appears, that these petitioners 2 to 8 were not cohabiting with the respondent no.2 and her husband. Taking into account of these aspects, the case of the petitioners 2 to 8 is squarely covered by the principles laid down in Bhajanlal's case. Since there is some substance in the allegations against petitioner no.1, I am not inclined to allow the Petition to her extent. However, it would be a sheer misuse of the process of law if even rest of the petitioners are allowed to be prosecuted on the basis of such vague and omnibus allegations.

8] The Writ Petition is partly allowed.

9] Regular Criminal Case no.165/2015 pending in the Court of Judicial Magistrate, First Class, Jamkhed, Dist.Ahmednagar is quashed and set aside to the extent of the petitioners no.2 to 8.

10] Writ Petition is dismissed to the extent of petitioner no.1. Rule is accordingly made absolute.

(MANGESH S. PATIL,J.)

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