

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

CRIMINAL APPLICATION NO. 1979 OF 2019

- 1 Mr. Ramesh S/o Devidas Kurhade,
Age: 57 years, Occ. Service,
R/o: Bhagirath Nagar, Behind BSNL
Office, Taroda (Kh) Tq. & Dist. Nanded.
- 2 Kantabai W/o Ramesh Kurhade,
Age : 51 years, Occu. : Household,
R/o : Bhagirath Nagar, Behind BSNL
Office, Taroda (Kh) Tq. & Dist. Nanded.
- 3 Aarti d/o Namdeo Kurhade,
Age : 21 years, Occu: Education,
R/o : Yeshwant Nagar, Nanded.
Tq. & Dist. Nanded.
- 4 Shobhabai w/o Shivaji Ingale,
Age: 53 years, Occu: Household,
R/o: Ganeshpur, Tq. Kinwat,
Dist. Nanded.
- 5 Shivaji S/o Sonaji Ingale,
Age: 56 years, Occ: Agril.,
R/o : Ganeshpur, Tq. Kinwat,
Dist. Nanded.
- 6 Navnath S/o Shivaji Ingale,
Age: 26 years, Occu. Agril.,
R/o : Ganeshpur, Tq. Kinwat,
Dist. Nanded.
- 7 Waman S/o Shivaji Ingale,
Age : 34 years, Occu: Agril.,
R/o : Ganeshpur, Tq. Kinwat,
Dist. Nanded.

..APPLICANTS
(Ori. Accused)

VERSUS

- 1 The State of Maharashtra,
Through the Police Station, Barad,
Dist. Nanded.

- 2 Aarti d/o Fulaji Garad @
 Aarti w/o Lokdeshwar Edake,
 Age: 22 years, Occu: Household,
 R/o: C/o Fulaji s/o Shriram Garad, RESPONDENTS
 Shriram Nagar, Kinwat, Tq. Kinwat,
 Dist. Nanded.

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Mr. Sudarshan J. Salunke, Advocate for applicants

Mr. K.S. Patil, APP for Respondent No. 1

Mr. V.C. Patil, Ashtekar, Advocate for Respondent No. 2

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

DATED : 23rd 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-original accused No. 6 to 12 preferred the 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 Crime No. 118 of 2018 registered at Barad Police Station, District Nanded for the offence punishable under Sections 376, 498-A, 504 and 506 read with Section 34 of Indian Penal Code ("IPC").

3. The prosecution case in short compass is that, the first informant – complainant Aarti d/o Fulaji Garad @ Aarti W/o Lakdeshwar Edake approached to the Police of Barad Police Station, District Nanded, on 30-10-2018 and ventilated the grievance that her marriage was

solemnized on 04-03-2018 with accused – Lokdeshwar. The applicants are the distant relatives of husband of complainant- Aarti. The applicant No. 1 is the maternal uncle of husband of first informant, whereas, applicant No. 2 is the wife of applicant No. 1. Applicant No. 3 is the niece of applicants No. 1 and 2. Applicant No. 4 is the paternal Aunt, whereas, applicant No. 5 is husband of applicant No. 4. Applicants No. 6 and 7 are the sons of applicants No. 4 and 5.

4. It has been alleged that after marriage, the complainant joined the company of husband at her matrimonial home. The spouses were residing jointly with mother-in-law, brother-in-law Sunil and sister-in-law Meena. According to complainant, after marriage for some days she received proper treatment, but thereafter, she was subjected to cruelty for unlawful demand of Rs. 5 Lakhs to open a new show-room. They used to keep her unfed. The complainant cast allegation that her brother-in-law Sunil ravished her without her consent. When the complainant made endeavour to disclose these factual aspect to the other inmates of matrimonial home, they reprimanded her. They supported to the act of brother-in-law Sunil for sexual harassment of the complainant. According to informant-complainant, she called the applicants No. 1 and 2 on cell-phone and took efforts to share her ordeals with them as they were the Mediator for settlement of marriage of complainant with accused Lokdeshwar. But, instead of giving understanding to the inmates of matrimonial home, they rebuked the first-informant and asked her to satisfy the demand of in-laws. They picked-up quarrel with her parents and abused the first-informant in presence of her father. It has been alleged that thereafter, the first-

informant had been to Ganeshpur and disclosed about her persecution at the hands of inmates of her matrimonial home to applicants No.4 to 7. But, the applicants No. 4 to 7 also did not favour her and asked the first-informant to fulfill the demand of in-laws. The applicants No. 4 to 7 also abused the complainant and her father in filthy language and driven out of the house. According to complainant – Aarti, the applicant No. 3 has an immoral relation with her husband. Whenever her husband-accused Lokdeshwar returned to home in inebriated condition, he used to have conversation with applicant No. 3 on cell-phone. Eventually, fed up with all these mental and physical torture, the complainant filed report to the Police for penal action against the inmates of matrimonial home as well as present applicants, who are relatives of her husband. The applicant No.3 has an immoral relation with her husband being fiance.

5. Pursuant to FIR, Police of Barad Police Station, District Nanded 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 impugned FIR and absolve from the charges pitted against them.

6. Learned counsel for applicants vehemently submits that there were no physical and mental cruelty to the complainant on the part of these applicants. But, she has filed present penal proceeding with an *malafide* intention to harass the applicants. There were no specific allegations about maltreatment and torture meted out to the complainant - wife. Learned counsel further added that the respondent

No.2-complainant was not willing to continue marital relation with husband. He has filed petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. According to learned counsel, these applicants have no any concern with the marital life of complainant-wife and her husband. They have no any reason to cause interference into the domestic affairs of the spouses. They are residing separately from husband of complainant and they are not the beneficiaries from marital discord of spouses. The complainant did not mention any specific instances of maltreatment at the hands of these applicants. According to learned counsel, the allegations made in the FIR are vague and general in nature. There was no demand of any kind from applicant No. 3. The applicant No. 3 - Aarti is the student of B.Sc. III year. She had no any relation with accused-husband nor at any point of time she harassed or tortured the first informant. The present applicants are the distant relatives. The learned counsel submits that the present complaint against these applicants is nothing but an abuse of process of law. 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.

7. 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 376, 498-A, 323, 504 and 506 etc. of IPC. The complainant categorically described the episode of her maltreatment and torture at

the hands of applicants. These applicants instigated and compelled the parents of complainant to satisfy unlawful demand of money from the husband and inmates of matrimonial home.

8. Having given anxious consideration to the arguments advanced on behalf of both sides, we find that the allegations cast on behalf of complainant - wife against applicants are vague and general in nature. There are no specific allegations attributing overt-act of the applicants to maltreat and harass the complainant - wife. There were no detail particulars given in the FIR about participation of applicants for their act of cruelty to the complainant or for demand of money etc. In the FIR, it has been alleged that the applicants No.1 and 2 were the Mediators for the marriage of spouses and applicants No. 4 to 7 are relatives of husband of complainant. Therefore, the complainant had been to these applicants seeking their help to resolve the marital dispute. But, these applicants refused to intervene in the marital discord of spouses. These all circumstances if appreciated in favour of complainant, it would hard to believe that these circumstances are sufficient to draw adverse inference against applicants for act of cruelty as envisaged under Section 498-A of IPC. The allegations about cruelty by applicants are found stray and sweeping and omnibus in nature.

9. It is to be noted that the marriage of spouses was performed on 04-03-2018 and within couple of months of the marriage, there was marital discord between spouses. The period of cohabitation of the complainant wife was hardly about 6-7 months with the husband Lokdeshwar. The applicant No. 1 is the maternal uncle of husband of

first informant, whereas, applicant No. 2 is the wife of applicant No. 1. Applicant No. 3 is the niece of applicants No. 1 and 2. Applicant No. 4 is the paternal Aunt, whereas, applicant No.5 is husband of applicant No. 4. Applicants No. 6 and 7 are the sons of applicants No. 4 and 5. The applicant - Aarti had no relation with accused-husband of the complainant. There were no allegation that she harassed the first informant. The applicants No. 1, 2, 4 to 7 all are distant relatives and residing separately. They have no reason to cause interference in the martial life of spouses. They are not the beneficiaries of marital discord between spouses. Therefore, it is hard to believe *prima facie* that these applicants have any role in the matrimonial dispute between spouses.

10. 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."

11. 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.*

12. 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."*

13. It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Scindia and another Versus Sambhajirao Chandojirao 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."

14. 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.

15. In the light of aforesaid expositions of law, in the matter in hand, it would be unjust and improper to allow the prosecution to proceed against present applicants. 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 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 litigation before the Criminal Court. Hence, penal proceeding initiated against applicants deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is allowed.
- ii. The penal proceeding initiated against the present applicants bearing FIR No. 118 of 2018, for the offences punishable under Sections 376, 498-A, 504 and 506 read with Section 34 of IPC, registered with Barad Police Station, District Nanded, is ordered to be quashed and set aside.
- iii. Rule is made absolute in terms of prayer clause "C".
- iv. Criminal Application is disposed of in above terms.
- v. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

Sd/-

[T.V. NALAWADE]
JUDGE