

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.840 OF 2015

1. Shree s/o Shankar Deodas
Age : 41 years, Occ – Nil
R/o Opposite Block No.A/984,
Camp No.5, Kailas Colony,
Ulhas Nagar, 421 005
District – Thane
2. Shankar s/o Jagannath Deodas
Age : 80 years, Occ – Pensioner
R/o Opposite Block No.A/984,
Camp No.5, Kailas Colony,
Ulhas Nagar, 421 005
District – Thane
3. Urmila w/o Shankar Deodas
Age : 61 years, Occ – Household
R/o Opposite Block No.A/984,
Camp No.5, Kailas Colony,
Ulhas Nagar, 421 005
District – Thane
4. Navin s/o Shankar Deodas,
Age : 39 years, Occ – Service
R/o Opposite Block No.A/984,
Camp No.5, Kailas Colony,
Ulhas Nagar, 421 005
District – Thane

PETITIONERS

VERSUS

1. The State of Maharashtra
Through Police Inspector
Ramanand Nagar Police Station,
Jalgaon, District – Jalgaon
2. Smita w/o Shree Deodas
Age : 37 years, Occ – Household,
R/o. c/o Makrand Madhukar Aher,
Opposite State Bank of India,

Shri Nagar Colony,
Mahabal Road, Jalgaon
District – Jalgaon

RESPONDENTS

Mr. S.N. Suryawanshi, Advocate holding for
Mr. N.B. Suryawanshi, Advocate for the petitioners
Mr. S.B. Yawalkar, Additional Public Prosecutor
(A.P.P.) for respondent No.1/State
Mr. G.A. Nagori, Advocate for respondent No.2

**CORAM : S.S. SHINDE AND
R.G. AVACHAT, JJ.**

JUDGMENT RESERVED ON : 15th JANUARY, 2019
JUDGMENT PRONOUNCED ON : 5th FEBRUARY, 2019

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. Rule. Rule made returnable forthwith. With the consent of learned counsel, appearing for the parties and learned Additional Public Prosecutor (A.P.P.) for the State, heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioners seek quashment of the proceeding of Regular Criminal Case (RCC) No.6 of 2016, pending on the file of the Court of Judicial Magistrate, First Class, Jalgaon and/or transfer of the said proceeding from the said court to appropriate/competent court at Ulhasnagar.

3. The proceeding i.e. RCC No.6 of 2016 came to be initiated pursuant to the First Information Report ("FIR", for short), lodged by Sau. Smita Deodas – Respondent No.2 herein, vide C.R.No.35 of 2015 registered with Police Station, Ramanand Nagar, Jalgaon, for the offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code ("IPC", for short). Petitioner No.1 is the husband of the first informant. Petitioner Nos. 2 and 3 are her parents-in-law, while petitioner No.4 is her brother-in-law. It has been alleged in the FIR that the petitioners harassed and illtreated Smita – the first informant in connection with unlawful demand of dowry. The parents of Smita paid the petitioners Rs.Two Lakhs twice. Since Smita did not conceive, the petitioners harassed and illtreated her and ultimately, turned her out of the matrimonial house.

4. The learned counsel for the petitioners would submit that even if the allegations in the FIR and the statements of witnesses are taken into consideration as it is, none of the offences, alleged to have been committed by the petitioners, are made out. According to learned counsel, allowing the continuation of the

proceeding of RCC No.6 of 2016 would be an abuse of process of law. Learned counsel would, in the alternative, submit that the parties last resided at Ulhasnagar. The parental house of the first informant is at Nasik. No incident of whatsoever nature took place at Jalgaon. With a view to harass the petitioners, the FIR has been lodged at the Police Station Jalgaon. Learned counsel, therefore, urged for quashment of the proceeding of RCC No. 6 of 2016 and/or transfer of the same to the competent court at Ulhasnagar.

5. Learned A.P.P. and the learned counsel, representing the first informant (respondent No.2) would, on the other hand, submit that the allegations in the FIR undoubtedly make out the offences punishable under Sections 498-A, 323, 504, 506 of the IPC against the petitioners. The averments in the FIR get reinforced by the statements of the persons acquainted with the facts and circumstances of the case. According to learned counsel, the first informant had preferred an application to the Women's Vigilance Cell at Jalgaon. The husband and the father-in-law of the first informant would attend the proceedings before Women's Vigilance Cell. During their those visits to Jalgaon, they had

asked the first informant to bring Rs.Ten Lakhs from her parents as a condition to get her back to her matrimonial house. Learned counsel meant to say that the offence was also committed within the limits of the court at Jalgaon. Learned counsel and learned A.P.P. ultimately urged for dismissal of the writ petition.

LEGAL PROPOSITION

6. In the case of ***Bhaskar Lal Sharma and another Vs. Monica and others (2004)3 SCC 383***, the Hon'ble Supreme Court has observed as under :-

"The facts, as alleged, will have to be proved which can only be done in the course of a regular trial. The appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complaint/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence."

7. Before adverting to the averments in the FIR and the statements of the persons acquainted with the facts and circumstances of the case, it is necessary to have a glance at the provisions of Section 498-A of the IPC. Section 498-A reads as under:

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purpose of this section, "cruelty" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

8. It would be crystal clear from the meaning of the word "cruelty" given herein above that it should be a willful conduct on the part of the husband or his relatives, which is likely to drive the woman to commit

suicide or to cause grave injury or danger to life, limb or health of such woman. Or harassment of the woman, has to be with a view to coerce her or any person related to her to meet any unlawful demand for any property.

9. The allegations in the FIR are –

The marriage of the first informant with petitioner No.1 took place on 16th June, 2006 at Nasik. The petitioners and their relatives were duly honoured in the marriage. The first informant started residing, along with petitioners, at her matrimonial house, at Ulhasnagar. The petitioners treated her well for initial some days. Thereafter, they started harassing her on petty issues. Petitioner No.1, the husband, is in service with a Private Company. It is alleged in the FIR that the husband (petitioner No.1) would physically and mentally harass the first informant on the ground that her parents did not pay him adequate dowry. Since the first informant did not conceive, the petitioners illtreated her. They would taunt her to be infertile. They asked her to give divorce to petitioner No.1. Since the first informant had desire to continue her marital tie, she preferred an application to the Women's Vigilance Cell at Jalgaon. Her husband (petitioner No.1)

and father-in-law (petitioner No.2) would attend the said proceeding. Instead of taking her back to the matrimonial home/house, both of them repeatedly asked her to fetch Rs.Ten Lakhs from her parents as a condition to get her back. It has further been alleged in the FIR that with a view to see the first informant happy at her matrimonial home, her parents had paid the petitioners Rs.Two Lakhs twice, but in vain. The brother-in-law (petitioner No.4) had repeatedly asked the first informant to sign the divorce papers. The first informant again preferred an application to the Women's Vigilance Cell at Jalgaon. The petitioners do not turn up before the said Cell. The first informant was, therefore, left with no option but to file the FIR.

10. The statements of the persons, acquainted with the facts and circumstances of the case, are more or less similar to that of the allegations in the FIR. Close scrutiny of these papers would undoubtedly indicate that none of the ingredients of the term "cruelty", appearing in Section 498-A of the IPC, get attracted against the mother-in-law and the brother-in-law (petitioner Nos. 3 and 4 respectively) of the first informant. The allegation that the parents of the first

informant paid Rs.Two Lakhs to her husband, father-in-law and brother-in-law (petitioner Nos.1, 2 and 4, respectively) is general in nature. The FIR and the proceedings of RCC No.6 of 2016, initiated pursuant thereto are, therefore, liable to be quashed so far as petitioner Nos.3 and 4 are concerned. So far as petitioner Nos.1 and 2 are concerned, the allegations in the FIR and the statements of witnesses do prima facie make out a case to proceed against them for the offences punishable under Sections 498-A, 504, 506 r/w 34 of the IPC.

11. As regards transfer of proceeding from the Court, at Jalgaon to the Court, at Ulhasnagar, it is to be stated that the averments in the FIR are to the effect that the petitioner Nos.1 and 2 would attend the proceedings before the Women's Vigilance Cell at Jalgaon and after such proceedings, they had asked the first informant to fetch Rs.Ten Lakhs from her parents as a condition to take her back to matrimonial home/house. We have to go by the averments in the FIR as they are. The allegations in the FIR suggest that the alleged offence, in its continuation, did take place at Jalgaon as well. The court of Judicial Magistrate, First Class, Jalgaon

has, therefore, jurisdiction to enquire into and try the alleged offence. The prayer for transfer of the criminal case i.e. RCC No. 6 of 2016, therefore, cannot be acceded to.

12. We are conscious of the fact that the petitioners are residing at Ulhasnagar. The parental home/house of the first informant is at Nasik. After her stay at Nasik, she started residing at her brother's home/house, at Jalgaon. It would be a great inconvenience for the petitioner Nos. 1 and 2 to travel from Ulhasnagar to Jalgaon for attending the Court proceedings. We are, therefore, of the view that the court concerned would consider the application, if any that may be preferred by petitioner Nos. 1 and 2, seeking exemption from personally appearing before the court, before framing of the charge and/or during hearing of the case.

13. For the reasons given herein above, the writ petition partly succeeds.

14. In the result, we pass the following order:-

(a) The Writ Petition is partly allowed.

- (b) The proceeding i.e. Regular Criminal Case (RCC) No.6 of 2016, pending on the file of Judicial Magistrate, First Class, Jalgaon, instituted pursuant to the First Information Report i.e. C.R.No.35 of 2015 registered with Police Station, Ramanand Nagar, Jalgaon, for the offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code, as against petitioner Nos. 3 and 4, is hereby quashed.
- (c) So far as petitioner Nos. 1 and 2 are concerned, the Writ Petition stands dismissed.
- (d) The Rule is made partly absolute in the above terms.

[R.G. AVACHAT]
JUDGE

[S.S. SHINDE]
JUDGE