

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

CRIMINAL APPLICATION NO. 1841 OF 2018

1 Amar S/o Narsing Neharkar,
Age: 22 years, Occ. Education,
R/o : Osh State Medical University,
Home No. 14, Flat No. 74,
Russia Osh Royan.

2 Savita W/o Laxman Tidke,
Age Major years, Occ. Household,
R/o : Dindrud, Tal Wadwani,
District Beed.

3 Laxman S/o Chandrasen Tidke,
Age : Major Years, Occ. Business,
R/o Dindrud, Tal. Wadwani,
District Beed.

..APPLICANTS
(Ori. Accused
Nos. 4 to 6)

VERSUS

1 The State of Maharashtra,
Through : In-charge Police Station
Officer, Police Station, Dharur,
Tal. Dharur, Dist. Beed.

2 Sau. Ashwini W/o Pravin Neharkar,
Age: 21 years, occ. Household,
R/o: Govindwadi, Tal. Majalgaon,
District Beed, are present R/o Rui
Dharur, Tal. Dharur, District Beed.

RESPONDENTS

...
Mr. M.S. Karad, Advocate holding for
Mr. S.S. Thombre, Advocate for applicants
Mr. M.M. Nerlikar, APP for respondent No. 1-State
Mr. N.R. Thorat, Advocate for Respondent No. 2
...

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

DATED : 6th AUGUST, 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 Nos. 4 to 6 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. 93 of 2018 registered at Dharur Police Station, Taluka Dharur, District Beed for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code ("IPC") as well as the criminal proceeding bearing Regular Criminal Case No. 11 of 2018 filed pursuant to aforesaid Crime.

3. It has been alleged on behalf of prosecution that the first informant - complainant Sau Ashiwini Neharkar, approached to the Police of Dharur Police Station, Taluka Dharur, District Beed, on 16-05-2018 and ventilated the grievance that her marriage was solemnized on 18-06-2017 with accused - Pravin Narsing Neherkar. The applicant No. 1 is brother-in-law and applicant No. 2 is the sister-in-law of the complainant-wife. Applicant No. 3 is the husband of applicant No. 2. After marriage, complainant - wife joined the company of husband for cohabitation at Govindwadi, Taluka Majalgaon. She was treated in proper manner for about eight days. Thereafter, the husband and other inmates of matrimonial home used to scold the complainant that marriage ceremony was not properly performed, as well as her parents did not give proper honour to them and not given household articles in the marriage. The inmates of matrimonial home

started maltreating and harassing the complainant. There were abusing and beating to complainant. She disclosed about ill-treatment to her parents, brother and maternal uncle. But, they convinced the complainant - wife for better future marital life and send her for cohabitation. Thereafter, her father and maternal uncle also made endeavour to give understanding to the in-laws for proper treatment to the complainant, but all efforts found unavailing. The husband-Pravin was in employment with Municipal Corporation, Pune, and therefore, he had taken the complainant-wife with him to Pune for cohabitation. While residing at Pune, her in-laws and applicants used to instigate the husband to make demand of articles like Washing Machine, LED TV etc from her parents. They used to abuse and beat her to satisfy demand of aforesaid articles. According to complainant, when she tried to convince that her parents are not in a position to give such articles, but, she was being maltreated by the husband and other members of her matrimonial home. They used to keep her unfed and harassed her mentally and physically. They were saying that unless her parents satisfy their demand, they will not allow her to reside in their house. They also gave threat of life. Then she disclosed all the facts to her brother on phone. At last, she was driven out of the house for satisfaction of demand of articles. Since then she is residing with her parents. It has been alleged that on 03-09-2017, husband, in-laws and applicants had been to her parents home and they asked her unless their demand of articles is not satisfied, they will not allow her for cohabitation. They also gave threats of desertion to the complainant wife. They were insisting for divorce. Eventually, she filed report to

the Police of Dharur Police Station for penal action against husband, in-laws and present applicants, etc.

4. Pursuant to FIR, Police of Dharur Police Station, Taluka Dharur, District Beed 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. But, meanwhile, Investigating Officer after completion of investigation filed the charge-sheet. The applicants, simultaneously, prayed to absolve from the charges pitted against them by quashing and setting aside the proceedings bearing RCC No. 11 of 2018, pending before the learned Judicial Magistrate, First Class, Dharur, District Beed.

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 false 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. According to learned counsel, all the applicants are residing separately. Learned counsel further added that complainant-wife is arrogant and adamant. She is not interested for cohabitation with husband. She has filed the proceedings under the provisions of Protection of Women from Domestic Violence Act, 2005 before the learned Judicial Magistrate First Class, Dharur. The applicants have no any concern with the marital life of applicant No. 1 and complainant-wife. They have no any reason to cause interference into the domestic

affairs of the spouses. The complainant did not mention any specific instances of maltreatment at the hands of applicants. The learned counsel submits that the allegations made in the FIR are vague and general in nature. There was no demand of any kind on the part of applicants. Applicant No. 1 brother-in-law is prosecuting his MBBS Course in Russia. Applicant No. 2 is married sister of husband of complainant and after the marriage she is residing with her husband i.e. applicant No. 3. The present complaint 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.

6. 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 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. There was unlawful demand of household articles from the applicants. There were allegations of physical and mental torture to the complainant for unlawful demand on the part of applicants.

7. 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 totally 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 present applicants for their act of cruelty to the complainant or for demand of household articles etc. The allegations about cruelty by applicants are found stray and sweeping in nature. Applicant No. 1 brother-in-law is prosecuting his MBBS Course in Russia. Applicant No. 2 is married sister of her husband and after the marriage she is residing with her husband i.e. applicant No. 3. They are residing separately from the spouses. Therefore, it can be perceived that the applicants have no reason to cause interference in the marital life of spouses. It is fallacious to appreciate that they are the beneficiaries from the marital discord between the spouses.

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

9. 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.

10. In the light of aforesaid exposition of law, in the instant case, it would be unjust and improper to allow the prosecution to proceed further against 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 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 litigation before the Criminal Court. Hence, penal proceeding initiated against these 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 applicants bearing FIR No. 93 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Dharur Police Station, Taluka Dharur, District Beed, as well as criminal proceeding bearing Regular Criminal Case No. 11 of 2018 pursuant to aforesaid crime, is ordered to be quashed and set aside to the extent of present applicants.
- iii. Rule is made absolute in terms of prayer clauses "A and C-1".
- iv. The Criminal Application is disposed of in above terms.
- v. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

Sd/-

[T.V. NALAWADE]
JUDGE

MTK