

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

CRIMINAL APPLICATION NO. 1962 OF 2018

1. Aadil S/o Latif Shaikh,
Age:25 Years, Occu.- Labour
R/o.: Chandtara Masjid, Gajanan Nagar,
Beed, Tq. & Dist. Beed.
2. Latif S/o Abbas Shaikh,
Age:46 Years, Occ.- Service,
R/o: As above.
3. Mumtaj W/o Latif Shaikh,
Age:42 Years, Occ.- Household,
R/o: As above.
4. Manna Abbas Shaikh,
Age:72 Years, Occ.-Nil,
R/o: As above.
5. Nilofar W/o Firoj Sayyad,
Age:23 Years, Occ.-Nil,
R/o: Survey No.44, Kelewadi,
Paud road, Kothrud, Pune,
Tq. & Dist. Pune.

... **Applicants**

Versus

1. State of Maharashtra,
Through Police Station Officer,
Patoda Police Station,
Tq. Patoda, Dist. Beed.
2. Heena W/o Aaadil Shaikh,
Age 20 years, Occ. Household,
At present R/o.: Kranti Nagar, Patoda,
Tq. Patoda, Dist. Beed.

... **Respondents**

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Mr. Yogesh K. Bobade, Advocate for the Applicants.

Mr. Mr. M.M. Nerlikar, A.P.P. for respondent no.1-State.

Ms. N.L. Jadhav, Advocate for Respondent No.2.

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**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**

DATE : 27.03.2019

JUDGMENT :- (*Per: Mangesh S. Patil, J.*)

Heard. Rule. Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The applicants are claiming quashment of Crime No. 235 of 2017 registered with Patoda Police Station, District Beed for the offences punishable under Section 498-A, 504, 506 read with Section 34 of the Indian Penal Code.

3. The respondent no.2 who is the wife of the applicant no.1 lodged the F.I.R. on which basis the crime is registered, alleging that she was married to the applicant no.1 on 08.05.2016. She was maintained properly for initial 2-3 months. Thereafter the husband and the in laws i.e. all the applicants started demanding money from her and on that count she was subjected to physical and mental torture. Somehow she continued to cohabit for a year. Her parents many times tried to convince the applicants but she was kept starving or was some time driven out of the house and was made to stand under the sun bare footed. She was also taunted and teased on racial lines.

Her husband then started insisting to solemnize second marriage unless he was paid money for a printing machine. She was ultimately driven out of the matrimonial house. When her maternal uncle tried to mediate and persuaded the applicants to allow her to cohabit they flatly refused. On 13.08.2017 when she was residing with her parents the applicants came to her, threatened her and declared that they would allow her to resume cohabitation only if they were paid money. She therefore lodged a complaint with the Women's Grievance Cell and ultimately lodged the F.I.R. Hence this writ petition for quashing the crime as well as the charge-sheet filed pursuant thereto.

4. After hearing both the sides when we disclosed our disinclination to grant any relief to the applicant nos. 1 to 3, their learned advocate, on instructions, seeks leave to withdraw the application to their extent.

5. According to the learned advocate applicant no.4 is the grand mother of the husband, whereas the applicant no.5 is his sister i.e. sister in law of the respondent no.2 who is married and staying at Pune. The other applicants are residing at Beed. There was no opportunity for the applicant no.5 to subject the respondent no.2 to any cruelty since she has been staying at her matrimonial home which is at far away distance from Beed. The applicant no.4 is an aged lady of 72. When the husband and his parents have

been cohabiting in the same house, it is unlikely that she could have indulged in any overt act. Besides, except bald and omnibus statements, there are no specific and precise allegations against either the applicant nos.4 or 5 in either demanding the money from the respondent no.2 or subjecting her to any cruelty. It would be misuse of the process of the law if based on such vague allegations they are made to stand to the trial.

6. The learned A.P.P. and the learned advocate for the respondent no.2 submit that no minute scrutiny of material is permissible at this juncture. There are allegations against all the applicants including applicant nos.4 and 5 about having subjected the respondent no.2 to cruelty. There are statements of father, maternal uncle and grand father as well as brother and mother of the respondent no.2. They all *prima facie* corroborate the allegations in the F.I.R. The prosecution and the respondent no.2 deserves an opportunity to substantiate the allegations which can happen only during the trial and the application may be rejected.

7. We have carefully perused the papers and the statements of the witnesses referred to herein above recorded under Section 161 of the Code of Criminal Procedure. As is mentioned earlier, since the applicant nos. 1 to 3 have sought to withdraw the application, the matter is to be considered only qua the applicant nos. 4 and 5. Applicant no.4 is the grand mother of the

husband whereas the applicant no.5 is his sister. In considering the matters of this kind, one need to bear in mind the observations of the Supreme Court in the case of **Amit Kapoor Vs. Ramesh Chandra and another; (2012) 8 SCC 460** wherein various guidelines have been laid down as to how the approach of the Court dealing with such matters should be. Simultaneously, one need to refer to the decisions and the observations of the Supreme Court in the case of **Geeta Mehrotra & Anr. V/s. State of U.P. & Anr.; AIR 2013 SC 181, Preeti Gupta and Anr. V/s. State of Jharkhand and Anr.; (2010) 7 Supreme Court Cases 667, and Arnesh Kumar V/s. State of Bihar and Anr; AIR 2014 SC 256** etc. wherein it has been noticed that in such kind of matrimonial disputes when a complaint is filed under Section 498-A of the Indian Penal Code by a wife, there is an usual tendency to rope in all the relations of her husband. It is therefore imperative for any Court to bear in mind such common tendency.

8. Bearing in mind the guidelines laid down in the case of **Amit Kapoor** (supra) if one examines the matter in hand we have no manner of doubt that the allegations in the F.I.R. as well as the statements of the witnesses referred to herein above are equally vague and omnibus as far as the role attributed to the applicant nos. 4 and 5 is concerned. In exactly similar manner it has been alleged that all the applicants including the applicant nos. 4 and 5 had treated her with cruelty by uniformly referring

them to as 'all in laws'. No specific role is attributed or incident is referred to in which the applicant nos. 4 and 5 had taken part in subjecting the respondent no.2 to cruelty, physical or mental. On the contrary in the statement of her father he has simply stated that the respondent no.2 used to make grievances to him that while her husband was ill-treating her, his parents and his grand mother i.e. applicant no.4 were not taking her side and were instigating him. Same is the case in respect of his statements as far as the applicant no.5 is concerned. To repeat, even the maternal uncle of the respondent no.2, her grand father, brother and mother have come out with startlingly similar allegations.

9. Precisely for this reason we have mentioned at the beginning that we have no manner of doubt that the allegations as against the applicant nos. 4 and 5 are vague and omnibus and it would be a sheer misuse of the process of law and an exercise in futility if they are made to stand the trial. The case is squarely covered by Category 1 and 3 from the case of **State of Haryana and Ors. V/s. Bhajan Lal and Ors.; AIR 1992 SUPREME COURT 604.** The application is therefore allowed to the extent of the applicant nos. 4 and 5.

10. The rule is made absolute in terms of prayer clause 'B' to their extent.

11. The application of applicant nos. 1 to 3 is disposed of as withdrawn.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]