

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

**CRIMINAL WRIT PETITION NO. 1017 OF 2018
WITH
CRIMINAL APPLICATION NO. 1548 OF 2019**

- 1 Dr. Ashish s/o. Avinash Pawar,
Age 40 years, Occu. Medical Practitioner,
R/o. Pusad, Taluka Pusad, District Yeotmal.
- 2 Adv. Vinita w/o. Ashish Pawar,
Age 37 years, Occu. Legal Practitioner,
R/o. Pusad, Taluka Pusad, District Yeotmal.
- 3 Avinash s/o. Somsing Pawar,
Age 70 years, Occu. Retired,
R/o. Savitri Niwas, Kandhar,
Taluka Kandhar, District Nanded.
- 4 Sow. Kalubai w/o. Avinash Pawar,
Age 65 years, Occu. Household,
R/o. As above.
- 5 Rahul s/o. Avinash Pawar,
Age 32 years, Occu. Legal Practitioner,
R/o. As above.

PETITIONERS
.. (Original accused)

VERSUS

- 1 The State of Maharashtra,
Through Police Inspector,
Majalgaon City Police Station,
Taluka Majalgaon, District Beed.
- 2 Rupali W/o. Rahul Pawar,
Age 33 years, Occu. Service,
R/o. Samta Colony, Majalgaon,
Taluka Majalgaon, District Beed.

RESPONDENTS
(R.No.2 - Original
.. Complainant)

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Mr. V. D. Gunale, Advocate for Petitioners.
Mr. M. M. Nerlikar, APP for respondent No. 1-State.
Mr. R. A. Deshmukh, Advocate for Respondent No. 2.

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

DATED : 01st OCTOBER, 2019.

ORAL JUDGMENT :- (Per: K.K. SONAWANE, J.)

1. Rule. Rule made returnable forthwith. Heard finally, with the consent of learned counsel appearing for the parties.

2. The petitioners - original accused preferred present Writ Petition 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. 194 of 2018 registered at Police Station, Majalgaon City, Taluka Majalgaon, 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 Charge-sheet No. 56 of 2018 filed pursuant to aforesaid Crime.

3. The prosecution case in short compass is that the first informant – complainant Rupali Rahul Pawar, on 07-07-2018, approached to the Police of Majalgaon City Police Station, Taluka Majalgaon, District Beed, and ventilated the grievance that her marriage was solemnized on 18-11-2010 with petitioner No. 5 – Rahul Pawar. The petitioners No. 3 and 4 are her in-laws, whereas, petitioner No. 1 is the brother-in-law. The petitioner No.2 is the wife of petitioner No.1. After marriage, complainant-wife joined the company of petitioner No.5-husband for cohabitation at Kandhar. Initially, for about fifteen days, the husband and other inmates of matrimonial home behaved with complainant-wife in proper manner. Thereafter, they get removed the 23 tola golden articles from her person. They started scolding the complainant-wife on flimsy reasons and also saying that her parents did not pay dowry amount and not suitable to maintain relations with them. According to complainant, the petitioners insisted to get the agricultural land and plot of her father to transfer in their name. They were also demanding the salary from the complainant. They demanded amount of Rs.10 Lakhs for construction of house from the parents of complainant-wife.

They used to manhandle her. The petitioners-accused kept the complainant unfed and harassed her mentally and physically. It has been alleged that the complainant-wife disclosed all her ordeals to her parents and brother on phone. The father and brother made endeavour to give understanding to the husband and in-laws to treat the complainant in proper manner. After some days, due to maltreatment, she again came to Majalgaon. According to complainant, the inmates of matrimonial home had been to Majalgaon and assured that they will treat the complainant-wife properly. After compromise, the complainant-wife returned back for cohabitation at her marital home. But, once again, on the same reason, by harassing mentally and physically, the inmates of matrimonial home maltreated the complainant wife. Thereafter, complainant-wife started residing with her husband at Majalgaon in Mangalnath Colony, on rent. During that period, she begotten a son Ranveer. But, her ordeals did not come to an end. The husband and inmates of matrimonial home continued the maltreatment to complainant-wife. Eventually, she filed report to the Police of Majalgaon City Police Station for penal action against the present petitioners.

4. Pursuant to FIR, Police of Majalgaon City Police Station, Taluka Majalgaon, District Beed, registered the crime and set the penal law in motion. Pending the investigation, the petitioners moved present Writ Petition 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 petitioners, simultaneously, prayed to absolve from the

charges pitted against them in the proceedings bearing Charge-sheet No. 56 of 2018.

5. Learned counsel for petitioners vehemently submits that there were no physical and mental cruelty to the complainant on the part of petitioners. But, she has filed present false penal proceeding with an *malafide* intention to harass the petitioners. There were no specific allegations about maltreatment and torture meted out to the complainant-wife. Learned counsel submit that the complainant-wife is very dominant and aggressive lady and permanently residing with her parents even after marriage. The petitioner No.5 was required to come at Majalgaon from Kandhar, however, she never came at Kandhar for cohabitation even after her marriage. The complainant is serving as Assistant Teacher since year 2007 and drawing handsome salary. Her financial position was sound and her parents were having huge property. The present petitioners are the office bearers of management where complainant-wife was serving as Assistant Teacher. As respondent No. 2 – complainant wife could not succeed in the appeal before School Tribunal as well as before the High Court. The complainant nurtured the grudge against the present petitioners and the present FIR is the outcome of that litigation. The petitioner No. 1 is the Government servant, working as Senior Doctor. The petitioner No. 2 is legal practitioner by profession and doing practice in the Court at Pusad. Both petitioners No.1 and 2 are residing separately at Pusad. The petitioners No. 3 and 4 are the old aged parents of petitioners No.1 and 5. The petitioner No. 3 is the retired Government servant, residing at Kandhar with petitioner No. 4. According to learned counsel, the

petitioners No. 1 to 4 have no any concern with the marital life of petitioner No. 5 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 instance of maltreatment at the hands of petitioners. 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 petitioners. Learned counsel submits that the present complaint is nothing but an abuse of process of law. It would unjust and improper to compel the petitioners to face the agony of trial. In case, the present penal proceeding is not quashed, it would cause serious prejudice and injustice to the petitioners.

6. The learned APP as well as learned counsel for respondent No. 2-first informant opposed the contentions put-forth on behalf of petitioners. They submit that the allegations of ill-treatment nurtured on behalf of complainant in the FIR disclose 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 petitioners. There were allegations of physical and mental torture to the complainant for unlawful demand of amount on the part of petitioners.

7. Having given anxious consideration to the arguments advanced on behalf of both sides, this Court was not inclined to nod in favour of petitioners No. 3 to 5 for exercise of inherent powers under Section 482 of Cr.P.C. Eventually, learned counsel for the petitioners seeks leave to withdraw the proceedings against petitioners No.3 to 5 and leave was

granted to their extent only.

8. In regard to allegations nurtured against petitioners No. 1 and 2, we find that the allegations cast on behalf of complainant - wife against petitioners No. 1 and 2 are totally vague and general in nature. There are no specific allegations attributing overt-act of these petitioners to maltreat and harass the complainant-wife. There were no detail particulars given in the FIR about participation of petitioners No. 1 and 2 for their act of cruelty to the complainant or for demand of money, etc. The allegations about cruelty at the hands of petitioners are found stray and sweeping in nature. The petitioner No.1 is the Government servant, working as Senior Doctor. The petitioner No.2 is legal practitioner by profession and doing practice in the Court at Pusad. They are residing separately from the spouses. They have no any reason to cause interference into the domestic affairs of the spouses. Therefore, it can not be perceived that these petitioners have reason to cause interference in the marital life of spouses. It is fallacious to appreciate that they are beneficiaries from the marital discord between the spouses.

9. 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."

10. 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.*

11. 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."*

12. 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."

13. The Honourable Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and other 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.

14. In the light of aforesaid expositions of law, in the instant case, it would be unjust and improper to allow the prosecution to proceed further against petitioners No. 1 and 2. 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 petitioners may not be forced unnecessarily to go on litigation before the Criminal Court. Hence, penal proceeding initiated against petitioners No. 1 and 2 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Writ Petition is partly allowed.
- ii. The Criminal Writ Petition in respect of petitioners No. 3 to 5 stands disposed of as withdrawn.
- iii. The Criminal Writ Petition in respect of petitioners No. 1 and 2 is allowed.
- iv. The penal proceeding initiated against petitioners No. 1 and 2 bearing FIR/Crime No. 194 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Majalgaon City Police Station, Taluka Majalgaon, District Beed, as well as criminal proceeding bearing Charge-sheet No. 56 of 2018 pursuant to aforesaid crime, is ordered to be quashed and set aside to their extent only.
- v. Rule is made absolute in terms of prayer clause "C and C-1".
- vi. The Criminal Writ Petition is disposed of in above terms. No order as to costs.
- vii. The Criminal Application No. 1548 of 2019 stands disposed of in the light of Order dated 18-09-2019 passed by this Court.

Sd./-
[K. K. SONAWANE]
JUDGE

Sd./-
[T.V. NALAWADE]
JUDGE