

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

CRIMINAL WRIT PETITION NO. 1019 OF 2018

- 1 Arjun s/o. Ramchandra Lagad,
Age : 70 years, Occu. Pensioner,
- 2 Meena w/o. Arjun Lagad,
Age : 63 years, Occu. Household,
Both R/o. Plot No. 25, Vasant Tekdi,
Savedi, Ahmednagar.
- 3 Jyoti w/o. Abasaheb Pawar,
Age : 24 years, Occu. Service as
Primary Teacher
- 4 Abasaheb s/o. Balbhim Pawar,
Age : 50 years, Occu. Service,
- 5 Swati w/o. Nitin Jadhav,
Age 38 years, Occu. Household,
All R/o. 301, Chaurang Housing Society,
Sanpada, Navi Mumbai.

PETITIONERS
.. (Original accused)

VERSUS

- 1 The State of Maharashtra,
Through Police Station Officer,
Tophkhana Police Station, Ahmednagar.
- 2 Varsha w/o. Pramod Lagad,
Age : 36 years, Occu. Household,
R/o. C/o. Babasaheb Nanasaheb Pisore,
Vedant Nagar, Savedi, Ahmednagar.

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

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Mr. Niteen V. Gaware, Advocate for Petitioners.
Mr. A. S. Shinde, APP for respondent No. 1-State.
Mr. A. D. Ostwal, Advocate for Respondent No. 2.

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

DATED : 27th SEPTEMBER, 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 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.I-330 of 2018 registered at Tophkhana Police Station, Ahmednagar, 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 RCC No. 1024 of 2018 filed pursuant to aforesaid Crime.

3. The prosecution case in short compass is that the first informant – complainant Varsha W/o. Pramod Lagad, on 28-06-2018 approached to the Police of Tophkhana Police Station, Ahmednagar, and ventilated the grievance that her marriage was solemnized on 09-12-2001 with Pramod Arjun Lagad. The petitioners No. 1 and 2 are in-laws, whereas, petitioners No. 3 and 5 are the sister-in-laws of complainant-wife and petitioner No.4 is the husband of petitioner No.3. After marriage, complainant-wife joined the company of husband for cohabitation at Ahmednagar. Initially, for about one year, the husband and other inmates of matrimonial home behaved with complainant in proper manner. Since marriage, the husband used to remain outside for twice/thrice in a week. When complainant asked the husband the reason for his absence on 2/3 days in a week, that time, he told her that for the purpose of hotel work he has to remain outside of the house. She begotten a son namely Prajwal in the year 2002. After that, her husband Pramod started remain outside the house for longer period. In the late night, he used to talk on mobile phone. At that time, complainant taken objection for the same, thereon, husband

beaten-up her. According to complainant, she disclosed about aforesaid fact to her in-laws. They told her to keep quiet if she wants to reside with her son at matrimonial home and do not try to make more inquiry. The complainant-wife divulge her ordeals to her brothers Kiran and Ravi. When her brothers tried to persuade husband and in-laws of complainant, they were abused and driven them out of the house. The husband and in-laws used to abuse and insult her on everyday on flimsy reasons. The sister-in-laws namely Jyoti Aabasaheb Pawar, Revti Shrikant Nikam, Swati Nitin Jadhav and husband of sister-in-law – Aabasaheb Balbheem Pawar used to scold with an intention to harass complainant-wife by saying that she should leave the house with her son and her husband doesn't like her and also they want to perform second marriage of brother with more beautiful girl than the complainant. The complainant-wife also came to know that her husband Pramod had an illicit relation with one woman Nilak Shelke since prior to marriage. The in-laws were aware about the illicit relationship of Pramod and despite the same, they performed his marriage with the complainant.

4. It has been alleged that since the month of December-2017, the complainant's husband was not keeping good health. The complainant inquired about illness of her husband with Dr. Rajendra Pawar, Dasare Nagar, Sawedi, Ahmednagar, thereon, she came to know that her husband Pramod was diagnosed to be HIV Positive. Therefore, she was shocked. Since year 2017, complainant and her son Prajwal resided at her maternal home at Vedantnagar. The petitioners mentally and physically harassed the complainant. Eventually, she filed report to the

Police of Tophkhana Police Station for penal action against the present petitioners.

5. Pursuant to FIR, Police of Tophkhana Police Station, District Ahmednagar, registered the crime and set the penal law in motion. Pending the investigation, the petitioners moved the present Writ Petition by invoking remedy under Article 226 of Constitution of India and Section 482 of 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 RCC No. 1024 of 2018.

6. 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 further added that the quarrelsome behaviour of wife created tense atmosphere in the house. According to learned counsel, the petitioners No. 3 and 5 are the married sister-in-laws of complainant, they are residing separately with husband at their matrimonial home. The petitioner No. 4 is the husband of petitioner No.3. They have no any concern with the marital life of husband and complainant-wife. They all are residing separately and 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 allegations made in the FIR are vague and general in nature. 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.

7. 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 on the part of petitioners.

8. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also perused the FIR and other relevant documents produced on record. This Court was not inclined to nod in favour of petitioners No. 1 and 2 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.1 and 2 and leave was granted to their extent only.

9. In regard to allegations nurtured against petitioners No. 3 to 5, we find that the allegations cast on behalf of complainant - wife against petitioners No. 3 to 5 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. 3 to 5 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 petitioners No. 3 and 5 are married sister-in-laws of complainant, they are residing with husband at their matrimonial home. The petitioner No. 4 is husband of petitioner No.3. They have no any concern with the marital life of husband and complainant-wife. They all are residing separately and 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 an 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.

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 instant case, it would be unjust and improper to allow the prosecution to proceed further against the petitioners No. 3 to 5. 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 the petitioners No. 3 to 5 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.1 and 2 stands disposed of as withdrawn.
- iii. The Criminal Writ Petition in respect of petitioners No.3 to 5 is allowed.
- iv. The penal proceeding initiated against petitioners No. 3 to 5 bearing FIR/Crime No. I-330 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Police Station, Tophkhana, District Ahmednagar, as well as criminal proceeding bearing RCC No. 1024 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 clauses "B and BB".
- vi. The Criminal Writ Petition is disposed of in above terms.
- vii. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE