

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

CRIMINAL APPLICATION NO. 2245 OF 2018

- 1 Dipak S/o Punjaji Chavan,
Age : 35 years, Occ: Private Service,
R/o : R/o ND-04, Near Padmawar
Hospital, CIDCO, Nanded.

- 2 Punjaji Masaji Chavan,
Age: 62 years, Occup: Agril.,
R/o: Unchada, Tq. Hadgaon, Dist.
Nanded.

- 3 Sau. Shantabai Punjaji Chavan,
Age: 58 years, Occup.: Household,
R/o: Unchada, Tq. Hadgaon, Dist.
Nanded.

- 4 Sau Sharda Shamrao Nirmale,
Age : 40 years, Occup. Household,
R/o : Bamni, Tq. Hadgaon, Dist.
Nanded.

- 5 Sau. Nanda Anil Jadhav,
Age : 40 years, Occup.: Private
Service, R/o Near Sharda Bhavan
High School, Old Mondha, Nanded,
Tq. And Dist. Nanded.

..APPLICANTS
(Ori. Accused)

VERSUS

- 1 The State of Maharashtra, Through
the Police Station, Nanded (Rulra)
Tq. And Dist. Nanded.

- 2 Sau Jayashree W/o Dipak Chavan,
Age: 31 years, Occ: Household,
R/o: C/o Kantabai Sambhaji Shinde,
Pimpri Khurd, Tq. Kalamnuri, Dist:
Hingoli.

RESPONDENTS

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Mr. P.G. Gunale, Advocate for Applicants.
Mr. A.A. Jagatkar, APP for Respondent No. 1
Mr. S.H. Patil, Advocate for Respondent No. 2 (Appointed)

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

DATED : 9th JULY, 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 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. 0297 of 2018 registered at Nanded (Rural) Police Station, District Nanded, for the offences punishable under Sections 498-A, 323 and 504 read with Section 34 of Indian Penal Code ("IPC") and criminal proceeding bearing RCC No. 616 of 2018 initiated pursuant to aforesaid FIR.
3. The prosecution case in short compass is that, the first informant Sau. Jaishree Deepak Chavan on 06-07-2018 visited to the Police of Police Station, Nanded (Rural), District Nanded and filed the report that her marriage was solemnized on 05-05-2005 with applicant No. 1- Deepak Punjaji Chavan. Applicants No. 2 and 3 are in-laws whereas applicant No. 4 is the sister-in-law and applicant No. 5 was employed in the Mall along with applicant No.1 - Deepak. The couple was blessed with a son Rushikesh and daughter - Anuja during wedlock. According to complainant, after marriage she joined the company of husband in the joint family comprising

in-laws and sister-in-law at Nanded. She received the proper treatment for a period of four years of the marriage from the husband and in-laws. Thereafter, in the year 2015, applicant-husband started demanding Rs. 1,00,000/- from the parents to start cloth business. The husband used to mentally harassed complainant wife on trifle reason. According to complainant, when she tried to convince her husband that her parents are not in a position to pay the amount, the applicant-husband assaulted and abused her. It has been alleged that when complainant-wife informed about beating by husband to her in-laws but they were also asked to bring amount of Rs. 1,00,000/- from her parents. There were endeavour to give understanding to the husband and in-laws of complainant, but all efforts did not evoke result. The complainant-wife continued to cohabit with husband only with hope of better future marital life. However, there was no change in the behaviour of husband and in-laws. Therefore, since last seven months she started residing separately with parents. It has been alleged that applicant-husband has an immoral relations with the applicant No. 5, who was working with husband in the same shop. Eventually, she approached to the Police and filed report for penal action against the applicants.

4. Pursuant to FIR, Police of Nanded (Rural) Police Station, District Nanded registered the crime and set the penal law in motion. Investigating Officer recorded statements of witnesses acquainted with the facts of the case. He collected relevant documents of matrimonial dispute between the spouses. Pending

the investigation, the applicants moved the present application to quash and set aside the F.I.R. But, meanwhile, the Investigating Officer after completion of investigation filed the charge-sheet. The applicants, simultaneously, prayed to absolve them from the charges pitted against them in the charge-sheet vide RCC No. 616 of 2018.

5. Learned counsel for applicants vehemently submits that applicants are innocent of the charges pitted against them. They have not committed any crime, but they are falsely implicated in this case. According to learned counsel, the complainant was not interested in cohabiting with applicant-husband. She was reluctant to perform her domestic obligation. Her behaviour was so adamant and arrogant one. There were no unlawful demand of money. According to learned counsel, the complainant wife on suspicion made sweeping allegation against applicant-husband that he has an illicit relations with applicant No. 5 and she was instigating him against her. There was no any specific allegations against applicants for cruelty as contemplated under Section 498-A of the IPC. The learned counsel submits that applicants No. 4 is married sisters, applicant No. 5 is the lady working in the shop having no relation with husband of complainant. Learned counsel submits that all the applicants are residing separately. Applicants No. 4 and 5 have no any concern with the marital life of applicant No. 1 and complainant. They have no any reason to cause interference into the domestic affairs of the spouses. All the allegations are general and vague in

nature. The present complaint is nothing but an abuse of process of law. It would be unjust and improper to compel the applicants to face the agony of trial. Hence, learned counsel urged to quash and set aside the penal proceeding initiated against 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 and 504 etc. of the IPC. The complainant categorically described the episode of her maltreatment and torture at the hands of applicants. There was unlawful demand of money from applicants for establishment of Cloth shop and also physical assault to the complainant on the part of applicants.

7. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into the relevant documents produced on record as well as factual aspects of the matter. We find that there is no scope for exercise of inherent powers under Section 482 of the Cr.P.C. in favour of applicants No. 1 to 3 as it appears from the FIR that *prima facie* case is made out against them. There are specific allegations cast against husband and in-laws about cruelty as envisaged under Section 498-A of I.P.C. There was unlawful demand as well as physical and mental torture to the complainant following marital discord. We do not find force in the submission of learned counsel

for the applicants. Therefore, we are not inclined to grant any relief in favour of the applicants. It cannot be said that the present criminal proceeding against applicants No. 1 to 3 is abuse of process of law.

8. In regard to allegations made against applicants No. 4 and 5, we find that during crucial period of co-habitation of complainant with husband, the applicant No. 4 was not available at matrimonial home of complainant. She was residing with husband at her matrimonial home. The entire allegations about cruelty are against husband and in-laws. There was reference that applicants No. 4 and 5 harassed the complainant mentally and physically, but all the aspersion against them are vague, and general in nature. There was no specific instance or details of participation of applicants No. 4 and 5 in the alleged act of cruelty available on record for adverse inference about their involvement into the crime. There are no specific allegations attributing overt-act of applicants No. 4 and 5 to maltreat and harass the complainant. The applicant No.5 is not the relative of husband of complainant as contemplated under Section 498-A of I.P.C. She cannot be considered as an accused for offence under Section 498-A of I.P.C. There are allegations that she had an immoral relation with husband of complainant and thereby causing harassment to her. But, these allegations are stray and omnibus in nature. Therefore, it would unjust and improper to compel the applicant No. 5 to face agony of trial before criminal court following marital discord between spouses.

9. At this juncture, the question that arises, whether the FIR registered against applicants 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 Punja 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 Schindia 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."

13. 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.

14. In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicants No. 4 and 5. It would be an futile efforts and would cause injustice to them. It would also dissipate the precious time of Court of law as the possibility of 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 litigations before the Criminal Court. Hence, penal proceeding initiated against these applicants No. 4 and 5 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is partly allowed.
- ii. Application in respect of applicants No. 1 to 3 stands dismissed.

- iii. Application in respect of applicants No. 4 and 5 is hereby allowed.
- iv. The penal proceeding initiated against applicants No. 4 and 5 bearing FIR No. 0297 of 2018, for the offences punishable under Sections 498-A, 323 and 504 read with Section 34 of IPC, registered with Nanded (Rural) Police Station, District Nanded, and criminal proceeding bearing RCC No. 616 of 2018 initiated pursuant to aforesaid FIR, is ordered to be quashed and set aside.
- v. Rule is made absolute partly in terms of prayer clauses "A-1 and B".
- vi. Criminal Application is disposed of partly in above terms.
- vii. No order as to costs.
- Viii. The fees of appointed Counsel is quantified at Rs.3000/- to be paid through the High Court Legal Services Authority, Sub-Committee, Aurangabad.

Sd/-

[K. K. SONAWANE]
JUDGE

Sd/-

[T.V. NALAWADE]
JUDGE

MTK