

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

CRIMINAL APPLICATION NO. 2451 OF 2018

- 1 Rohan Sunil Jain (Chavre)
Age: 31 years, Occ. Private Service,
R/o Ladpura Itwari,
Nr. Sedhan Mandir Nagpur,
At present - Shanti B. Vishnav,
Plot No. 30, 2nd Floor, Sanpada, Mumbai
400 405
- 2 Sunil Vasant Rao Jain (Chavre)
Age : 60 years, Occu.: Retired,
R/o: Ladpura Itwari,
Nr. Sedhan Mandir Nagpur.
- 3 Jyoti Sunil Jain (Chavre),
Age: 50 years, Occu.: Household,
R/o: As above.
- 4 Pooja Sunil Jain (Chavre)
Age: 23 years, Occu. Service,
R/o : As above.

..APPLICANTS
(Original Accused)

VERSUS

- 1 The State of Maharashtra,
Through : the Police Sub-Inspector,
Police Station, Dharangaon,
Taluka and District Jalgaon.
- 2 Tejashri Rohan Jain,
Age : 29 years, Occu. : Household,
R/o: C/o Paresh Prabhakar Jain,
Jain Galli, Taluka Dharangaon
District – Jalgaon.

RESPONDENTS

...

Mr. Saud N. Deshmukh, Advocate for applicants
Mrs. V.S. Chaudhary, APP for respondent No. 1-State
Mr.Y.B.Bolkar, Advocate for Respondent No. 2

...

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

DATED : 1st 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 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. 068 of 2018 registered at Dharangaon Police Station, District Jalgaon for the offence punishable under Sections 498-A, 420, 406, 448, 504 and 506 read with Section 34 of Indian Penal Code ("IPC") as well as the criminal proceeding bearing Regular Criminal Case No. 51 of 2018 (Charge-sheet No. 71 of 2018) filed pursuant to the aforesaid Crime No. 068 of 2018.
3. It has been alleged on behalf of prosecution that the first informant – complainant Sau Tejashree Rohan Jain, on 07-06-2018 approached to the Police of Dharangaon Police Station, District Jalgaon, and ventilated the grievance that her marriage was solemnized on 03-07-2017 with applicant No. 1 – Rohan Jain, R/o. Nagpur. The applicants No. 2 and 3 are in-laws whereas applicant No. 4 is the sister-in-law of the complainant-wife. After marriage, complainant - wife joined the company of husband for cohabitation at Nagpur in a joint family comprising in-laws and sister-in-law. It has been alleged that even after completing religious rites, the mother-in-law of complainant attempted to keep away the complainant-wife from the applicant-husband. According to complainant-wife, in the first night of marriage,

when the complainant and her husband had been in the bed-room, the applicant-husband was not so much anxious for physical relation. However, at belated stage, he had prepared himself for physical relation, but he failed to slack sexual urges of complainant-wife. It has been alleged that on enquiry, the applicant-husband disclosed her that he was taking treatment for the same by consuming "*Sheelajeet*", etc. The complainant-wife become frighten, and therefore, she stayed at her parents' home for some day. Thereafter, applicant-husband joined the service at Mumbai. The complainant-wife started residing with her husband, mother-in-law and sister-in-law in Sanpada area, Mumbai. According to complainant-wife, when she advised her husband for medical treatment, he avoided for the same. It has been alleged that the applicant used to come home at late night and he by showing blue-films to get himself excited, attempted to maintain physical relation with wife. But, the feeble attempt of husband proved futile and otiose one. The complainant-wife made endeavour to divulge these facts to the in-laws, but, they started repriminding and blamed for infertility.

4. According to prosecution, in the year 2017 on the eve of "*Bhaubeej*", when the complainant-wife accompanied with her husband had been to her parents house at Dharangaon, she disclosed about her mental and physical harassment at the hands of husband, in-laws and sister-in-law. But, the parents of the complainant-wife gave understanding to her. Thereafter, the applicant-husband placed demand of Rs. 50,000/- to her parents and the father of complainant-wife gave Rs. 50,000/- to her husband. After about three

days, spouses returned to matrimonial home at Mumbai. The father-in-law and sister-in-law were also came there from Nagpur. Thereafter, the applicant-husband and complainant-wife went to *Matheran*. After returning from *Matheran*, the in-laws and sister-in-law maltreated her on account of expenses incurred for *Matheran* Tour. The in-laws and others used to tease on her physique and scolding her that she is not suitable match for their son. According to complainant-wife, on 14-11-2017, for the above reason all inmates of matrimonial home picked up quarrel and abused her. They snatched away all the ornaments from her person and left the complainant-wife at her parents home. It has been alleged that the inmates of matrimonial home made demand of divorce. They physically and mentally harassed and abused the complainant wife. They also threatened that complainant-wife shall not disclose the factum of physical infirmities of her husband to anybody else. It has been alleged that, applicant-husband was not capable to maintain physical relations with the complainant-wife. Despite the same, her husband performed the marriage with her and in-laws played mischief and cheated the complainant. Eventually, she approached to the Police Station for penal action against the applicants.

5. Pursuant to FIR, Police of Dharangaon Police Station, District Jalgaon 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 in the proceedings bearing RCC No. 51 of 2018 (Charge-sheet No. 71 of 2018) pending before the learned Magistrate at Dharangaon, District Jalgaon.

6. 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, the applicants No. 2 to 4 are residing separately. He further added that respondent No. 2 filed proceeding under the provisions of Protection of Women from Domestic Violence Act, 2005 against the applicants seeking various reliefs and just to settle the personal scores with applicants, the complainant has lodged the present FIR to harass and to take vengeance from the applicants' family. The present FIR is off-shoot of a matrimonial disputes. Learned counsel for applicants submits that the applicants No. 2 to 4 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 marital affairs of the spouses. The complainant did not mention any specific instances of maltreatment at the hands of applicants No.2 to 4. The allegations made in the FIR are vague and general in nature. There was no demand of any kind on the part of applicants. 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.

7. 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, 406, 420, 448, 504 and 506 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 the applicants for purchasing plot etc. There were allegations of physical and mental torture to the complainant owing to inability of applicant-husband to maintain physical relation with her.

8. Having given anxious consideration to the arguments advanced on behalf of both sides, this Court was not inclined to nod in favour of applicants No. 1 to 3 for exercise of inherent powers under Section 482 of Cr.P.C. There are allegations sufficient to make out the case prima facie against applicants No.1 to 3. It cannot be considered that the present penal proceeding against them would be an abuse of process of law. In view of nature of allegations against applicants No.1 to 3, we are unable to persuade ourselves to favour them. Therefore, this Court was reluctant to quash and set aside the impugned penal proceeding against them. Eventually, learned counsel for applicants seeks leave to withdraw the proceedings to the extent of applicants No. 1 to 3. Accordingly, leave was granted for withdrawal of application to the extent of applicants No. 1 to 3.

9. In regard to allegations nurtured against the sole applicant No. 4, we find that the allegations cast on behalf of complainant - wife against applicant No. 4 are totally vague and general in nature. There are no specific allegations attributing overt-act of the applicant No. 4 to maltreat and harass the complainant - wife. There were no detail particulars given in the FIR about participation of applicant No. 4 for her act of cruelty to the complainant or for demand of money etc. The allegations about cruelty by applicant No. 4 are found stray and sweeping in nature. The applicant No. 4 is 23 years old unmarried sister-in-law. Therefore, it would difficult to conceive that the applicant No. 4 has any reason to cause interference in the marital life of spouses. It is fallacious to appreciate that she is one of the beneficiaries from the marital discord between the spouses.

10. 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."

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 Schindia 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 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.

15. 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 applicant No. 4. It would be an futile efforts and would cause injustice to her, if she is compelled to face agony of trial before criminal Court. It would also dissipate the precious time of Court of law

as the possibility of her ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicant No. 4 may not be forced unnecessarily to go on litigation before the Criminal Court. Hence, penal proceeding initiated against applicant No. 4 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is partly allowed.
- ii. The Criminal Application in respect of applicants No. 1, 2 and 3 stands disposed of as withdrawn.
- iii. The Criminal Application in respect of applicant No. 4 is hereby allowed.
- iv. The penal proceeding initiated against applicant No. 4, bearing FIR No. 068 of 2018, for the offences punishable under Sections 498-A, 420, 406, 448, 504 and 506 read with Section 34 of IPC, registered with Dharangaon Police Station, District Jalgaon, as well as criminal proceeding bearing Regular Criminal Case No. 51 of 2018 (Charge-Sheet No. 71 of 2018) pursuant to aforesaid crime is ordered to be quashed and set aside.
- v. Rule is made absolute partly in terms of prayer clauses "C and G".
- vi. The Criminal Application is disposed of in above terms.
- vii. No order as to costs.

Sd/-

**[K. K. SONAWANE]
JUDGE**

Sd/-

**[T.V. NALAWADE]
JUDGE**