

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

CRIMINAL APPLICATION NO. 2541 OF 2018

- 1 Kalyansing S/o Komalsing Patil,
Age 38 years, Occu.
R/o: Kapase Galli, Patilwada, At post
Pimprala, Dist. Jalgaon, presently
residing at Rabale, Pitambari R & D
Center, M.I.D.C. Rabale New Mumbai.
- 2 Sumanbai W/o Komalsing Patil,
Age: 58 years, Occu. Household,
R/o : as above.
R/o Kapase Galli, Patilwada,
At post Pimprala, Dist. Jalgaon.
- 3 Komalsing s/o Mohansing Patil,
Age: 60 years, Occu.
R/o: as above.
- 4 Sangramsing s/o Komalsing Patil,
Age 36 years, Occu.: Ambulance Driver,
R/o C/o Vijay Vinayak Kulkarni,
R/o: Plot No. 83, Vidyanagar,
Near Mundada High School,
Pimprala, Jalgaon.
- 5 Meena w/o Mahendrasing Patil (Mahale),
Age 34 years, Occu. R/o at post Pimpri
(Bk), Tq. Chalisgaon,
Dist. Jalgaon.
- 6 Mahendrasing S/o Navalsing Patil,
(Mahale) Age: 41 years, Occu-
R/o: as above.
- 7 Pravin s/o Walmik Rajput,
Age: 41 years, Occu. M.S.E.B. Operator,
R/o: Plot No. 54, Bhole Baba Nagar, Near
Sigargopchar Kendra,
Malegaon Road, Dhule-424 001

..APPLICANTS
(Ori. Accused)

VERSUS

- 1 The State of Maharashtra,
Through : the Police Inspector,
Police Station,

- 2 Sau. Himali Kalyansing Patil,
 Age: years, occu.
 R/o: C/o Manohar Vasudeo Chaudhari,
 14, Ambika Housing Society,
 Bhagwan Nagar, Jalgaon,
 Taluka and District Jalgaon.

RESPONDENTS

...
Smt. Nima R. Suryawanshi, Advocate for applicants
Mr. R.D. Sanap, APP for respondent No. 1-State
Mr. P.V. Barde, Advocate for Respondent No. 2
...

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

DATED : 25th 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. 70 of 2018 registered at Ramanand Nagar Police Station, Jalgaon, District Jalgaon for the offence punishable under Sections 498-A, 323, 406, 504 and 506 read with Section 34 of Indian Penal Code ("IPC") and the criminal proceeding bearing Regular Criminal Case No. 349 of 2018 pursuant to said Crime No. 70 of 2018.

3. It has been alleged on behalf of prosecution that the first informant – complainant Himali Kalyansing Patil, approached to the Police of Ramanand Nagar Police Station, Jalgaon, District Jalgaon, on 28-04-2018 and ventilated the grievance that her marriage was

solemnized on 20-05-2006 with applicant No. 1 – Kalyansing. The applicants No. 2 and 3 are in-laws, applicant No. 4 is brother-in-law, applicant No. 5 is the sister-in-law of the complainant-wife. Applicant No. 6 is the husband of applicant No. 5. Applicant No. 7 is cousin of husband of complainant-wife. After marriage, complainant - wife joined the company of husband for cohabitation at Pimprala Patiwada. It has been alleged that since the day of marriage, in-laws of the complainant used to tell her that now she is married, she should stay at matrimonial home and not to go to her parent's house and on that count she was being harassed by them. It has been alleged that at the relevant time, applicant-husband was taking education in Agriculture faculty at Dapoli College, District Ratnagiri and he was residing there alone, whereas the complainant-wife was residing at Pimprala i.e. her matrimonial place. The in-laws by taking the complainant wife in confidence, taken out all the ornaments from her person. When she was residing at her matrimonial house, the present applicants No. 4 to 6 also used to harass her by saying that she should not go to her parents house. The father-in-law of complainant asked to bring vehicle -Scooty moped as agreed in the marriage in lieu of dowry. He used to hurl abuses and give threats of life to complainant. It has been alleged that father-in-law demanded Rs. Five Lakhs for purchasing the plot and on that count also she was being harassed and abused by the applicants. Her mother-in-law also used to scold her.

4. It has been alleged that in the month of December, 2006, the applicant-husband got employment in D.Y. Patil College, Kolhapur and thereafter the complainant-wife was taken to Kolhapur for cohabitation.

During the period, in October, 2007 she begotten a daughter, namely Siddhi. The applicants were not satisfied after birth of daughter Siddhi. They were expecting birth of son and for the same, they maltreated the complainant frequently. The applicant-husband used to abuse and beat her on instigation by in-laws. She tried to give understanding to the husband but all efforts found unavailing. It has been alleged that present applicants No. 4 and 5 whenever visited to Kolhapur, they used to instigate applicant-husband. The complainant-wife with the hope of better future, continue to cohabit with the applicant-husband and did not inform about her persecution to parents. The husband of complainant-wife once again in the year 2010 left the job and joined the service at Daund in Sugar Factory. While residing in the quarters at the Sugar Factory, her in-laws and other applicants used to visit and instigate the applicant-husband to make demand of money from her parents. They used to abuse and beat her to satisfy demand of money. The applicant-husband used to keep her unfed and asked her to bring amount for purchasing the house. In view of continuous demand of money and maltreatment to the complainant wife to satisfy demand, the hapless father of complainant paid Rs. Five Lakhs to applicants for purchasing plot. It has been alleged that in July-2016, the inmates of matrimonial house went to reside at Ambarnath, as her husband was serving in Pitmabari Company at Thane. But, the ordeals of complainant wife did not come to an end. It has been alleged that in November, 2017, applicant-husband raised the quarrel and left her at parents home. The complainant-wife made endeavour to contact with the applicant-husband on phone time and again, but she did not

receive any response. It has been alleged that when the complainant was residing at parent's home, her husband was taking suspicion on her character. Eventually, she approached to the Women's Grievance Redressal Forum, but found unavailing. At last, she filed the report to Police Station for penal action against applicants.

5. Pursuant to FIR, Police of Ramanand Nagar Police Station, Jalgaon, 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. 349 of 2018.

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, all the applicants No. 2 to 7 are residing separately. Learned counsel further added that applicant-husband has issued notice to respondent No. 2 for restitution of conjugal right. However, instead of cohabitation she filed the FIR. Learned counsel for applicants submits that relations between husband and wife are not cordial and she is not intended for cohabitation with

the husband. The rest of the applicants 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 domestic affairs of the spouses. The complainant did not mention any specific instances of maltreatment at the hands of other applicants. 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 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, 323, 504 and 506 etc. of 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. The father-in-law was demanding vehicle moped - Scooty as agreed in the marriage as an dowry. There were allegations of physical and mental torture to the complainant for unlawful demand on the part of applicants.

8. Having given anxious consideration to the arguments advanced on behalf of both sides, this Court was not inclined to nod in favour of applicant No. 1 for exercise of inherent powers under Section 482 of

Cr.P.C. Eventually, learned counsel for applicants seeks leave to withdraw the proceedings to the extent of applicant No. 1. Accordingly, leave was granted for withdrawal of application to the extent of applicant No. 1.

9. In regard to allegations nurtured against applicants No. 2 to 7, we find that the allegations cast on behalf of complainant - wife against applicants No. 2 to 7 are totally vague and general in nature. There are no specific allegations attributing overt-act of the applicants No. 2 to 7 to maltreat and harass the complainant - wife. There were no detail particulars given in the FIR about participation of applicants No. 2 to 7 for their act of cruelty to the complainant or for demand of money etc. The allegations about cruelty by applicants No. 2 to 7 are found stray and sweeping in nature. The applicants No. 2 mother-in-law is the 58 years old as well as the applicants No. 3 father-in-law is the 60 years old senior citizen. The applicant No. 7 is the distant relative residing separately at Dhule. Therefore, it can be perceived that the applicants No. 2 to 7 have no reason to cause interference in the marital life of spouses. It is fallacious to appreciate that they are 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 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."

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 applicants No. 2 to 7. 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 applicants may not be forced unnecessarily to go on litigation before the Criminal Court. Hence, penal proceeding initiated against these applicants No. 2 to 7 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 applicant No. 1 stands disposed of as withdrawn.
- iii. Application in respect of applicants No. 2 to 7 is hereby allowed.
- iv. The penal proceeding initiated against applicants No. 2 to 7, bearing FIR No. 70 of 2018, for the offences punishable under Sections 498-A, 406, 323, 504 and 506 read with Section 34 of IPC, registered with Ramanand Nagar Police Station, Jalgaon, District Jalgaon, as well as criminal proceeding bearing Regular Criminal Case No. 349 of 2018 pursuant to said crime No. 70 of 2018, is ordered to be quashed and set aside.

- v. Rule is made absolute partly in terms of prayer clauses "B and B-1".
- vi. Criminal Application is disposed of in above terms.
- vii. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

MTK