

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

CRIMINAL APPLICATION NO. 2662 OF 2018

1. Nitin s/o Manikrao Gadage,
Age : 28 years, Occupation : Private Service,
Residing at Mundhva, Pune.
2. Varsha w/o Manikrao Gadage,
Age : 50 years, Occupation : Household,
Residing at Waigaon Sashti, Taluka Partur,
District Jalna.
3. Manikrao s/o Trimbakrao Gadage,
Age : 55 years, Occupation : Agriculture,
residing as above.
4. Kamini d/o Manikrao Gadage,
Age : 22 years, Occupation : Education,
Residing as above.
5. Mohini d/o Manikrao Gadage,
Age : 24 years, Occupation : Household,
Residing at Vishrantwadi, Pune.
6. Someshwar s/o Manikrao Gadage,
Age : 20 years, Occupation : Studying,
Residing at Mundhva, Pune.
7. Rohini w/o Prashant Sapkal,
Age : 26 years, Occupation : Housewife,
Residing at Risod, Taluka Risod,
District Washim.

**...APPLICANTS
(ACCUSED)**

VERSUS

1. The State of Maharashtra,
Through the Senior Police Inspector,
Mondha Police Station, Parbhani.
2. Rajashree w/o Nitin Gadage,
Age : 27 years, Occupation : Self employed,
Residing presently at c/o Mr. Trimbuk Ingle,
Plot No. 193, Ramkrushna Nagar,
Wasmat Road, Parbhani.

... RESPONDENTS

No. 1- prosecution

No. 2-original complainant

Mr. Hemant Surve, Advocate for the applicants
Mrs. D. S. Jape, APP for the respondent/State
Mr. S. K. Chavan, Advocate for respondent No. 2.

CORAM : T. V. NALAWADE &
S.M. GAVHANE, JJ.

DATED : 21-11-2019

ORAL JUDGMENT (PER :- S.M. GAVHANE, J.)

. Rule. Rule made returnable forthwith, heard finally with the consent of the parties.

2. By this application under Section 482 of the Code of Criminal Procedure applicants-accused No. 1 to 7 against whom crime No. 215/2018 has been registered with Mondha Police Station, Parbhani on 02/08/2018 for the offences punishable under Sections 498-A, 506

read with Section 34 of the Indian Penal Code, at the instance of respondent No. 2-informant, have prayed to quash and set aside the said FIR in terms of prayer clause (B).

3. Mr. Surve, learned counsel for the applicants after this Court has expressed that the Court is not willing to grant relief to applicant No. 1, on instructions stated that applicant No. 1 is withdrawing the application and the same may be disposed of as withdrawn to the extent of said applicant.

4. Mr. Surve, learned counsel submitted that there is no dispute that respondent No. 2-informant was married to applicant No.1 on 25/01/2015 and after marriage she started cohabiting with applicant No. 1. He further submits that there is no dispute that applicants No. 2 and 3 are in-laws of respondent No. 2, applicants No. 5 and 7 are her sisters-in-law and they are staying at their marital places at Pune and Risod. Applicant No. 4 is younger sister-in-law and applicant No. 6 is brother-in-law of respondent No. 2. Both applicants No. 4 and 6 are studying. It is submitted that applicant No. 1 and respondent No. 2 were residing at Pune. Applicant No. 1 is employed at Pune. Applicant

No. 6 was also studying at Pune. Respondent No. 2 disliked her husband and therefore there was conflict in between the couple.

5. Mr. Surve further submitted that respondent No. 2 lodged FIR on 02/08/2018. Prior to that as applicant No. 2 proceeded to her parental place once for all alongwith her father and brother in spite of opposition of the applicant, after waiting for considerable time applicant No. 1 issued a notice through his advocate to her on 07/05/2018 asking her to join the company. She responded to said notice by making extreme allegations of having illicit relations with some stranger. Then she filed application under the provisions of the Protection of Women from Domestic Violence Act, 2005 in the Court of Magistrate at Parbhani on 04/06/2018. On the same date she also filed application seeking maintenance under Section 125 of the Code of Criminal Procedure. According to learned counsel as per the allegations in the FIR demand of Rs. 10,00,000/- was made for starting a poultry unit right from December, 2017 to 02/08/2018, but no grievance is made in this respect earlier and there is thus delay in lodging the FIR, which shows that deliberately and intentionally the crime has been registered against the applicants. Applicant No. 1 is seeking Restitution of Conjugal Rights,

but respondent No. 2 ignoring the same filed the present FIR. Allegations made in the FIR against the applicants are vague and those allegations are not sufficient to state that the applicants have caused cruelty to respondent No.2 so as to attract offence under Section 498-A. Further it is submitted that applicants No. 2 to 7 are residents of different places other than the resident of applicant No. 1-husband and therefore their involvement in the present crime remains deliberate and intentional. Moreover, no over act is attributed to them in the entire FIR. Thus, according to learned counsel the FIR is nothing but an abuse of process of law. Therefore, the FIR deserves to be quashed and set aside by allowing the application.

6. To support his submissions learned counsel for the applicants has relied upon the decisions of the Apex Court in the cases of *Preeti Gupta & Another Vs. State of Jharkhand & Another, 2010 (7) SCC 667*, *Neelu Chopra Vs. Bharti, 2009 (10) SCC 184* and *Arnesh Kumar Vs. State of Bihar & Anr, 2014 (8) SCC 273*.

In the case of *Preeti Gupta* (Supra) there was no specific allegations in the entire complaint against both the appellants i.e.

married sister-in-law and unmarried brother-in-law of the complainant. It was the contentions of the appellants that they had never interfered with the internal affairs of the complainant and her husband because the appellants had been living in different cities for a number of years. They have never visited the place where the alleged incident had taken place. None of the prosecution witnesses had stated anything against the appellants. The complaint against the appellants was quashed in the interest of justice and judgment of the High Court was set aside by allowing the appeal.

In the case of *Neelu Chopra* (Supra) appellants are father-in-law and mother-in-law of the complainant. In the FIR for offences under Sections 406, 498-A read with Section 114 of the IPC, complaint was filed after 9 years of marriage. Complaint does not show as to which accused has committed what offence and what is the exact role played by appellant in commission of offence. Appellants are old aged persons. Articles including jewellery were in possession of husband of complainant. There was no mention of date on which the said ornaments, if any, were entrusted to appellants or when they demanded back and were refused to be given back by appellants or any one of

them. Order taking cognizance against appellants was quashed and complaint was quashed by allowing the appeal.

In the case of *Arnesh Kumar* (Supra) it has been held that Section 498-A of the IPC has been used as weapon to get arrested the relatives of husband including bedridden grand fathers/mothers, sisters living abroad for decades and only 15% cases resulted in convicted. Strict compliance of Section 41 and 41A of the Code of Criminal Procedure was directed by Apex Court failing which stern action was suggested.

7. Mr. Chavan, learned counsel for respondent No. 2 and Mrs. Jape, learned APP appearing for State have submitted that on the basis of allegations in the FIR offences alleged against the applicants are attracted. They have also taken us through the affidavit-in-reply of respondent No.2, the affidavit-in-rejoinder of applicant No. 1 and sur-rejoinder on behalf of respondent No. 2. According to them there is no ground to quash and set aside the FIR as submitted by the learned counsel for the applicants.

8. We have carefully considered the submissions made by the learned counsel appearing for the applicants, respondent No. 2 and the learned APP. We have perused the application, the affidavits referred to above and documents produced on record by the applicants and respondent No. 2.

9. On perusal of the FIR lodged by respondent No. 2 on 02/08/2018 in Mondha Police Station, District Parbhani it appears that people from her in-laws house have caused her mental and physical cruelty on demanding Rs. 10,00,000/- for poultry business. FIR shows that after marriage when she started residing at Pune with her husband people from in-laws house made her father to bring TV, refrigerator, washing machine, bed and Rs. 2,00,000/- and so also they demanded money from the people from her parental house. Her parents had transferred an amount of Rs. 1,00,000/- on 08/08/2016. So also, through her relatives on several times through cheque and some times in cash amounts were given to her husband. FIR shows that the informant and people from her parental house tried to convince people from her in-laws house but they had ignored. Therefore, in December, 2016 she came to Waigaon Sashti at her in-laws house and at that time

applicants No. 2 and 3 her mother-in-law and father-in-law instead of sending her to Pune sent her to Parbhani saying her to bring Rs. 10,00,000/- for poultry business and further said her not to come for cohabitation unless she brings money and therefore she has to stay at Parbhani. It is also alleged in the FIR that the in-laws, sisters-in-law and brother-in-law were causing physical and mental cruelty to respondent No. 2 on the ground that she does not know cooking and they were blaming and taunting her and thus she was driven out of the house. So also, it alleged that through her relatives and on phone she was threatened to kill by the people from her in-laws house.

10. From the above referred allegations there is specific allegations against applicants No. 2 and 3 regarding demand of money from respondent No.2. Therefore, merely because these two applicants are residing at Sashti, Taluka Partur as mentioned in the cause title, prima facie it cannot be said that offences alleged against them are not attracted as submitted by the learned counsel for the applicants. Therefore, it cannot be said that the FIR against these applicants would amount to abuse of process of law. Therefore, application of these applicants is liable to be dismissed.

11. The above referred allegations in the FIR against applicants No. 4 to 7 are vague and they are not specific. Applicants No. 4 and 6 are taking education. Applicants No. 5 and 7 are sisters-in-law of the informant. Applicant No. 7 is married sister-in-law of respondent No. 2-informant who is residing at Risod, District Washim. So also, applicant No. 5 is residing in Pune but not with the applicant No. 1 husband of respondent No. 2. Considering above all circumstances and as the allegations against applicants No. 4 to 7 in the FIR are vague, we are of the view that no offence would be made out against these applicants and the present FIR against them is amounting to abuse of process of law. So also, no purpose would be achieved by directing these applicants to face the trial on the basis of impugned FIR. Therefore, the impugned FIR is liable to be quashed against applicants No. 4 to 7 by allowing the application of said applicants. Therefore following order is passed.

ORDER

1. Application of applicant No. 1 is disposed of as withdrawn.
2. Application of applicants No. 2 and 3 is dismissed.

3. Application of applicants No. 4 to 7 is allowed.
4. Relief is granted to applicants No. 4 to 7 in terms of prayer clause (B) of the application.
5. Rule is made absolutely in those terms.

[S.M. GAVHANE, J.]

[T. V. NALAWADE, J.]