

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

CRIMINAL APPLICATION NO. 2683 OF 2018

1 Dr. Lalit S/o Ramesh Patil,
Age: 32 years, Occu. Doctor,

2 Ramesh Chandrakant Patil,
Age: 58 years, Occ: Nil,

3 Vijubai Ramesh Patil,
Age: 54 years, Occ. Nil,

All 1 to 3 R/o Mayadevi Nagar,
Opp. Civil Surgeon Bunglow,
Mahabal Parisar, Jalgaon.

4 Dr. Bhushan Ramesh Patil,
Age : 31 years, Occ. Doctor,
R/o : Flat No. 311, Hill View,
Balaji Nagar, Dhankwadi,
Pune-43.

5 Kirti Ramesh Patil,
Age: 38 years, Occ. Teacher,
R/o: Sai Krupa Apartment, Sahakar
Nagar, Bhusawal, Dist Jalgaon.

..APPLICANTS
(Ori. Accused)

VERSUS

1 The State of Maharashtra
Through

2 Saw. Minakshi W/o Lalit Patil,
Age: 28 Yrs, Occ. Nurse,
R/o: 54/1 Flat No. 14,
Near Akash Homes, Pokale Poultries,
Near Dhareshwar Mandir, Dhayari,
Tql & Dist. Pune.

RESPONDENTS

...

Mr. Girish A. Nagori, Advocate for Applicants.
Smt. D.S. Jape, APP for Respondent No. 1.
Mr. H.A. Patankar, Advocate for Respondent No. 2.

...

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

DATED : 1st 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. 88 of 2017 registered at Police Station, Zilla Peth, Jalgaon, District Jalgaon for the offence punishable under Sections 498-A, 323, and 504 read with Section 34 of Indian Penal Code ("IPC") and criminal proceeding bearing RCC No. 717 of 2017 initiated pursuant to aforesaid FIR.

3. The prosecution case in nutshell is that the complainant Minakshi Patil approached to the Police of Zilla Peth Police Station, Jalgaon, District Jalgaon, on 28-07-2017 and ventilated the grievance that her marriage was solemnized on 15-02-2011 with applicant No. 1 – Lalit Patil. The applicant Nos. 2 and 3 are her in-laws whereas applicants No. 4 and 5 are brother-in-law and sister-in-law of the complainant respectively. It has been alleged that after marriage, complainant - wife joined the company of husband for cohabitation at Mayadevi Nagar,

Jalgaon. She was residing in the joint family of her husband, in-laws, brother-in-law sister-in-laws etc. According to complainant, initially for about one month she resided at Jalgaon with her in-laws. Thereafter, she started residing with husband-Lalit and brother-in-law at Dhayari Pune. At the time of marriage, present applicants had demanded the LED TV. But, later on, she was being maltreated and harassed by the applicants for demand of LED TV.

4. It has been alleged that after two/three months of the marriage, the applicants demanded Rs.50,000/- from father of complainant-wife. As the father could not satisfy the demand, the applicants maltreated and harassed her. It has been further alleged that when she was pregnant for about four months, husband-Lalit, taken her for Sonography at Madhukar General Hospital, Pune, and thereafter, she came to Jalgaon for residing with her in-laws. At that time, the mother in-law gave unlabeled bottle of medicine to her and told her that said medicine is helpful for growth of child. Thereafter, she was sent to her parents home. However, the complainant did not consume the medicine. It has been alleged that on 16-01-2014, the complainant gave birth to female child "Hrudya". After birth of daughter Hrudya, the complainant was deserted on the ground that as she did not follow their directions to consume the medicine contained in the bottle, for not giving birth to a female

child. Thereafter, the complainant filed application before the Women's Vigilance Committee, Jalgaon. After enquiry, she had received letter from Committee to file complaint against her in-laws. However, as the in-laws got information about this, they approached to complainant-wife through middle man, and assured her that henceforth she will be treated in proper manner, and consequently she did not file the complaint.

5. It has been alleged that she had filed the case under the provisions of Domestic Violence Act and as per order of the learned Judicial Magistrate, First Class, dated 15-11-2016, she again started co-habitation with husband at Pune. At that time, her husband – Lalit, brother-in-law -Bhushan and in-laws used to threaten her regarding withdrawal of case filed against them. Thereafter, when she was brought to matrimonial home at Jalgaon, on 20-01-2017, the husband, in-laws, brother-in-law and sister-in-law were threatening her that, if she fails to withdraw the Court cases, she will not be allowed for cohabitation at Pune. It has been alleged that husband also refused to admit the daughter in School. Therefore, the complainant-wife herself got the daughter admitted in the School. Thereafter, on 28-03-2017, when she had been to Dhayari, the husband locked the door from inside and did not allow her. Then, she had been to her parental home. When she was at Jalgaon at her parental home, the mother-in-law called her at the matrimonial home at

Mayadevi Nagar, Jalgaon on 30-03-2017. But, her husband, inmates of matrimonial home abused and beaten up her and eventually the complainant-wife filed complaint with Police on Phone. After that, when she returned to parents home, at about 8.00 p.m. the inmates of matrimonial home assaulted her and made attempt to take forcibly the daughter Hrudyu with them. The applicants also attacked with fist and kick blows to the complainant-wife. At last, she filed complaint with Police.

6. Pursuant to FIR, Police of Zilla Peth Police Station, Jalgaon District Jalgaon registered the crime and set the penal law in motion. Investigating Officer recorded statements of witnesses acquainted with facts of the case. He collected relevant documents of matrimonial dispute between the spouses. After completion of procedural formalities, Investigating Officer filed charge-sheet bearing RCC No. 717 of 2017 which is pending before the learned Magistrate at Jalgaon.

7. Learned counsel for applicants vehemently submits that the applicants are innocent of the charges pitted against them. They have not committed any crime, but they are falsely implicated in this case. There was no unlawful demand of money. There is inordinate delay in filing the FIR. There were no physical and mental cruelty to the complainant on the part of applicants. But, she has filed present 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, applicants No. 2 to 5 are residing separately. The applicants No. 2 to 5 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 applicants No. 2 to 5. According to learned counsel, the allegations made in the FIR are vague and general in nature. There was no demand of any kind on the part of applicant. 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.

8. 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 IPC. The complainant categorically described the episode of maltreatment and torture at the hands of applicants. There was unlawful demand of money from the applicants to purchase the vehicle and also for transfer of applicant No.1 husband.

9. 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. 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.

10. In regard to allegations nurtured against applicants No. 4 and 5, we find that the allegations cast on behalf of complainant - wife against sister-in-law and brother-in-law are vague and general in nature. There are no specific allegations attributing overt-act of applicants No. 4 and 5 to maltreat and harass the complainant - wife. There were no detail particulars given in the FIR about active participation of these applicants No. 4 and 5 for their act of cruelty to the complainant or for demand of money. The allegations about cruelty by these applicants are found stray and sweeping in nature. Moreover, it appears that they are residing separately from husband of complainant.

11. 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."*

12. 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.*

13. 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."*

14. 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."

15. 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.

16. 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 of applicants No. 4 and 5 is totally bleak. The ends of justice would be served by ensuring that the applicants No. 4 and 5 may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against these applicants 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 disposed of as withdrawn.
- 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. 88 of 2017, for the offences punishable under Sections 498-A, 323 and 504 read with Section 34 of IPC, registered with Zilla Peth Police Station, Jalgaon, District Jalgaon, and criminal proceeding bearing RCC No. 717 of 2017 initiated pursuant to aforesaid FIR, is ordered to be quashed and set aside.
- v. Rule is made absolute partly in terms of prayer clause "B".
- vi. Criminal Application is disposed of in above terms.
- vii. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

Sd/-

[T.V. NALAWADE]
JUDGE