

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

CRIMINAL WRIT PETITION NO. 1332 OF 2018

1. Vivek S/o. Ramakant Bhurkapalle,
Age:29 Years, Occu.- Pvt. Service,
2. Ramakant S/o. Baburao Bhurkapalle,
Age:50 Years, Occu.:Business,
3. Rekha W/o. Ramakant Bhurkapalle,
Age 45 years, Occ.: Household
All R/o.: Singhgadh Society, Kanheri Road,
Latur, Tq. & Dist. Latur.
4. Dr. Asmita D/o. Ramakant Bhurkapalle,
Age 25 years, Occ.:Education,
R/o.: Laxmikunj, Venkatesh Nagar,
Plot No.36, Behind Study Care Library,
Aurangabad.
5. Dnyaneshwar S/o. Angadrao More,
Age 34 years, Occ. : Business,
R/o.: Aditya Angan, Desai Nagar, Latur,
Tq. & Dist. Latur.

... **Petitioners**

Versus

1. State of Maharashtra,
2. Smita W/o. Vivek Bhurkapalle,
Age 25 years, Occ. Doctor,
R/o.:House No.1266, New Mandade Jewelers,
Near Ganjgolai, Latur,
Tq. & Dist. Latur.

... **Respondents**

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Mr. V.D. Gunale, Advocate for the Petitioners.
Mr. P.G. Borade, A.P.P. for respondent no.1-State.
Mr. V.D. Godbharle, Advocate for Respondent No.2

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**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**
DATE : 12.03.2019

JUDGMENT :- (*Per: Mangesh S. Patil, J.*)

Heard. Rule. Rule is made returnable forthwith. Learned A.P.P. waives service for the respondent no.1. Learned advocate Mr. V.D. Godbharle waives service for the respondent no.2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioner no.4 is seeking quashment of the F.I.R. and the charge-sheet filed pursuant thereto in Crime No.297 of 2018 registered with Gandhi Chowk Police Station, Latur for the offences punishable under Section 498-A, 504, 506 read with Section 34 of the Indian Penal Code.

3. After hearing the arguments of both the sides when this Court expressed its disinclination to grant any relief to the petitioner nos. 1 to 3 and 5, the learned advocate for the petitioners, on instructions, seeks leave to withdraw the writ petition to their extent.

4. The learned advocate for the petitioners vehemently submits that the dispute apparently is a matrimonial one, between the informant and the petitioner no.1. There has been enormous delay in lodging the F.I.R. Every attempt has been made to rope in all the relatives of the husband. The

petitioner no.4 is his sister who is taking post graduate education in medicine. A bare look at the F.I.R. shows that only allegations against the petitioners is about they having subjected the informant-respondent no.2 to various medical investigations without disclosing her the results. A lever biopsy was performed and without disclosing her the diagnosis they started harassing her by saying that she was suffering from a serious illness and would not survive beyond few months. As far as the petitioner no.4 is concerned the contents of the F.I.R. are vague and omnibus. No precise and specific overt act is attributed to her in subjecting the respondent no.2 to cruelty. Accepting the allegations in the F.I.R. at their face value the ingredients for the offences could not be made out as against the petitioner no.4 and the crime and the charge-sheet may be quashed and set aside to her extent.

5. The learned A.P.P. and the learned advocate for the respondent no.2 submit that merely because the petitioner no.4 is an unmarried sister-in-law of the respondent no.2 she cannot be let off. There are allegations against her in the F.I.R. It has been specifically alleged that she along with the other accused / petitioners have actually participated in subjecting the respondent no.2 to cruelty. Being a doctor herself, she has instigated the rest of the petitioners to treat her with cruelty. When she was taken to one Dr. Pravin Gambire on 03.02.2018, the respondent no.2 was made to wait out side and the petitioner no.4 consulted the doctor but did not disclose anything to her.

It is further alleged that even the petitioner no.4 along with the other petitioners started taunting her by saying that she was unable to beget any issue and thereby mentally harassed her. It is further alleged that on 10.02.2018 the petitioner nos.1 and 4 took her to Hyderabad to a hospital where the doctor had prescribed her to undergo some investigations. However, without having those investigations done the petitioner no.1 took her back to Latur. This much of allegations are sufficient to reveal complicity of the petitioner no.4 in commission of the crime. Being an unmarried sister of the petitioner no.1 she was all the while staying in the same house with the rest of the petitioners, when the respondent no.2 was subjected to ill-treatment. When the Investigating Office has found sufficient material against the petitioner no.4 there is no reason to quash the crime and the charge-sheet.

6. We have carefully considered the F.I.R. and the papers of the investigation. As is mentioned herein-above, the petitioner nos. 1 to 3 and 5 have sought to withdraw the petition and therefore we are only concerned with the role attributable to the petitioner no.4, who happens to be an unmarried sister of the petitioner no.1-husband and who is herself a doctor. Before advertng to the facts one need only to remind that even the Supreme Court has been alive to the common phenomenon which the society is coming across as noticed in the case of **Preeti Gupta and Anr. V/s. State of Jharkhand and Anr.; (2010) 7 Supreme Court Cases 667**. That there is a

tendency to rope in all the relatives of the husband in such cases. The Court has to be on guard while considering the case in respect of the relatives of the husband when a wife lodges a complaint regarding cruelty and demand for dowry.

7. Keeping in mind such trite observations of the Supreme Court, if one examines the matter in hand, it is pertinent to note that the respondent no.2 herself seems to be a doctor, quite resourceful and has lodged a detailed F.I.R. which is typed and runs into more than eight pages. She has given all the details since inception i.e. since the date of marriage on 03.01.2016 including some precise details regarding the money purportedly paid by her matrimonial relations to the wife of the petitioner no.5, just before the marriage. She has narrated with precise dates as to how from time to time she was made to approach various doctors for the purposes of investigation, as to how she was diagnosed with some liver disease and as to how she was never disclosed the exact diagnosis. She was tortured mentally by saying that she was about to die in the near future and was being insisted for giving divorce to the petitioner no.1 so as to enable him to solemnize another marriage. She has also stated as to how there was a domestic violence and she had to approach the Civil Court under Section 12 of the Domestic Violence Act, 2005.

8. We do not intend to comment upon veracity or otherwise of all these allegations which now would be tested only at the full fledged trial. We are referring to these allegations just to demonstrate as to how the respondent no.2 being a literate person has been prompt in disclosing very many episodes in a lengthy F.I.R., still she has not been able to come out with any precise and specific overt acts on the part of the petitioner no.4. A careful reading of the F.I.R. demonstrates that along with the rest of the petitioners she has been referred to as having treated the respondent no.2 with cruelty. A vague and bald allegation has been made that she was instigating the rest of the petitioners to subject her to cruelty. The petitioner no.4 along with the petitioner no.1 had taken her to Dr. Dadge but she was made to wait out side and the petitioner no.1, his father and the petitioner no.4 made some secret consultation with Dr. Dadge and Dr. Gambhire. There is one more allegation about the petitioner no.1 and the petitioner no.4 having abruptly taken her to Hyderabad on 10.02.2018. Beyond such allegations which are in fact not even allegations stricto sensu, the entire F.I.R. is devoid of any precise and specific allegation against the petitioner no.4 which would constitute cruelty within the meaning of Section 498-A of the Indian Penal Code. In view of such state of affairs, in our considered view as far as the petitioner no.4 is concerned, the situation is squarely covered by category nos. 1,3 and 7 from the case of **State of Haryana and Ors. V/s. Bhajan Lal and Ors.; AIR 1992**

SUPREME COURT 604 and therefore to the extent of the petitioner no.4 the writ petition deserves to be allowed.

9. Leave is granted to the petitioner nos. 1 to 3 and 5 and the writ petition is disposed of as withdrawn to their extent.

10. The writ petition to the extent to the petitioner no.4 is allowed in terms of prayer clause 'B1'.

11. The Rule is made absolute in above terms.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]