

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

CRIMINAL APPLICATION NO.2915 OF 2018

1. Santosh S/o Laxman Ade,
Age 31 years, Occu. Service,
2. Laxman S/o Tikaram Ade,
Age 58 years, Occu. Labour,
3. Janabai W/o Laxman Ade,
Age 53 years, Occu. Household,
4. Namdeo S/o Laxman Ade,
Age 30 years, Occu. Service,
5. Avinash S/o Namdeo Rathod,
Age 27 years, Occu. Service,
6. Pravin Namdeo Rathod,
Age 31 years, Occu. Service,
7. Namdeo S/o Thavra Rathod,
Age 60 years, Occu. Labour,
8. Ashabai W/o Namdeo Rathod,
Age 52 years, Occu. Household,

All R/o Janapuri (Tanda),
Tq. Loha, District Nanded.

... **Applicants**

Versus

1. The State of Maharashtra,
Through Police Station Sonkhed,
Tq. & District Nanded.
2. Ashwini Santosh Ade,
Age 28 years, Occu. Household,

R/o Shrinagar Colony,
Borigaon Road, Vasmata,
Tq. Vasmata, Dist. Hingoli. ... **Respondents**

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Mr. M.V.Thorat, Advocate for Applicants.
Mr. S.J.Salgare, APP for Respondent-State.
Mr. S.J.Salunke & Mr. A.D.Gade, Advocates for
Respondent No.2.

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**CORAM : T.V.NALAWADE AND
MANGESH S. PATIL, JJ.**

DATE : 14.03.2019

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

Heard. Rule. Rule is made returnable forthwith.
With the consent of both the sides the matter is heard
finally at the stage of admission.

2. The applicants are claiming quashment of the FIR
in Crime No.141 of 2018 registered with Sonkhed Police
Station, District Nanded for the offences punishable
under Sections 498-A, 324, 294, 143, 147 and 149 of
Indian Penal Code.

3. The FIR has been lodged by Respondent No.2 with
the allegations that she was married to applicant No.1

on 15.05.2015. Applicant Nos.2 and 3 are his parents. Applicant No.4 is his brother and applicant Nos.5 to 8 are the distant relatives of applicant Nos.1 to 4. After the marriage, she started cohabiting with applicant Nos.1 to 4. She was maintained properly for first few months but since thereafter she was subjected to ill-treatment. They used to tease her by saying that she was unable to cook and her parents had not taught her to cook. She was also taunted by saying that if applicant No.1 would have been married to some other girl they would have got sumptuous dowry. They insisted her to bring money and was subjected to physical and mental ill-treatment. It was also alleged that when she informed her parents about such ill-treatment meted out to her, with the intervention of some villagers she could resume cohabitation after an amount of Rs.3,00,000/- was paid to the applicant Nos.1 to 4. Even thereafter she was subjected to cruelty. Her mother-in-law used to taunt her whereas her father-in-law used to abuse her. The brother-in-law used to instigate her husband saying that she was

useless and on that count her husband used to beat her. She further alleged that her husband then left her with her parents saying that she should resume cohabitation only when she could bring money.

4. It is alleged that on 26.05.2018 her paternal uncle, mother and some relatives with the intervention of some persons went to the house of the applicants and paid an amount of Rs.2,00,000/-. However her mother-in-law used filthy language and refused to allow her to resume cohabitation. Applicant Nos.1 to 4 assaulted her and her parents with sticks and stones. When her paternal uncle tried to intervene the mother-in-law also assaulted him. So far as applicant Nos.5 to 8 are concerned it is alleged that even they assaulted her parents and paternal uncle. It is alleged that the husband also inflicted a blow of a weapon '*Katti*' on her shoulder and she had to take a treatment therefor in the Government Hospital. Based on the report the crime was registered.

5. The learned advocate for the applicants submits that the FIR has been lodged out of sheer vengeance. In

fact only after a month of marriage she had deserted the husband and had gone back to her parental home. He had to file a proceeding for restitution of conjugal rights but to no avail. He then preferred Hindu Marriage Petition No.31 of 2017 and sought a divorce. Respondent No.2 did not appear even in that proceeding. A decree for dissolution of marriage was passed by the learned Civil Judge ex-parte against her. It is only thereafter that the FIR has been lodged based on imaginary facts. There was no occasion for the applicants to subject her to any ill-treatment muchless on account of any demand. The allegations in the FIR are completely vague and omnibus. No precise dates have been given. Applicant Nos.5 to 8 are only distantly related to the rest of the applicants and have been roped in being their neighbours.

6. The learned advocate for applicants further submits that in fact, with a view to reach some amicable settlement, Respondent No.2 along with her parents were called to the house of applicant Nos.1 to 4 on 26.05.2018. The discussion turned violent and she, her

parents and other 20 to 25 persons assaulted applicant Nos.1 to 4 brutally and all of them had to be treated at the Civil Hospital, Nanded. The applicant No.1 filed FIR No.95 of 2018 on 28.06.2018. It is only by way of counter blast to it that the present FIR has been lodged. Therefore following the principles laid down by the apex Court in the case of ***State of Haryana Vs. Bhajan Lal ; AIR 1992 S.C. 604, Rajesh Sharma Vs. State of U.P. ; 2017 SCC Online SC 821, Bhushan Kumar Meen Vs. State of Punjab ; 2011 (4) Mh.L.J. (Cri.) 488, Geeta Mehrotra Vs. State of U.P. ; AIR 2013 SC 181***, the FIR may be quashed.

7. The learned APP and the learned advocate for Respondent No.2 strongly oppose the application. They submit that there is prima facie material. The allegations in the FIR are sufficient to constitute the offences. Specific role is attributed to each of the applicants. The FIR is not supposed to be an encyclopedia. At this juncture, there is not enough material to doubt the allegations being attributed by

Respondent No.2 which could be tested only during the trial and the application may be rejected.

8. We have carefully considered the decisions cited by the learned advocate for the applicants, the FIR and the papers. Obviously the FIR is not supposed to be an encyclopedia. The couple was married in the year 2015 and the FIR alleges that after few months of marriage respondent No.2 was subjected to ill-treatment, mental as well as physical. It has been alleged that attempts were made with the intervention of some villagers to settle the dispute and she could resume cohabitation only after an amount of Rs.3,00,000/- was paid to the applicant Nos.1 to 4.

9. Much emphasis has been laid upon the fact that applicant Nos.1 to 4 were in fact assaulted by Respondent No.2 and her paternal side relations on 26.05.2018 in respect of which a separate crime has been registered on the basis of the FIR lodged by applicant No.1 bearing FIR No.95 of 2018 on 28.06.2018. At the first blush it does appear that the present FIR

has been lodged subsequent to this FIR lodged by applicant No.1 and the circumstance is being tried to be made capital of to argue that the present FIR has been lodged only to wreck vengeance.

10. However, one can look upon this circumstance from a different perspective as well. It prima facie lends credence to the allegations of Respondent No.2 that on 26.05.2018 indeed she along with her parents and other relatives had come to the house of applicant Nos.1 to 4 and some deliberations had taken place to settle the dispute. If one refers to the ex-parte decree of dissolution of marriage which was passed on 23.08.2018 one cannot comprehend any reason as to why even according to the applicant Nos.1 to 4, going by the allegations in the FIR lodged by applicant No.1 any meeting was arranged at all for reaching some settlement when he had already succeeded in obtaining a decree for dissolution of marriage. Without expressing any concrete opinion as to the veracity or otherwise of the allegations in the FIR lodged by Respondent No.2, this circumstance indeed lends credence to her

allegations.

11. Perusal of the FIR clearly shows that precise and specific allegations have been levelled against applicant Nos.1 to 4 regarding subjecting Respondent No.2 to cruelty within the meaning of Section 498-A of IPC. The allegations as against them for the offences can easily be made out.

12. However so far as applicant Nos.5 and 6 are concerned, the allegations in the FIR are certainly vague and omnibus. They have been named in the FIR and in a vague statement it has been alleged that even they had assaulted her parents and paternal uncle. Even it is not clear as to how they can be regarded as relatives of applicant No.1. There is a usual tendency in the marital dispute to rope in relatives of the husband and bearing in mind such observations by the Supreme Court in catena of cases (supra), it would be a sheer abuse of process of the Court if the applicant Nos.5 to 8 are made to face the trial.

13. Taking into account the overall conspectus of the matter the application deserves to be allowed only partly. It is accordingly allowed to the extent of applicant Nos.5 to 8 in terms of prayer clause 'A'. Rule is made absolute in those terms as far as applicant Nos.5 to 8 are concerned.

14. The application of applicant Nos.1 to 4 is rejected and the rule is discharge to their extent.

(MANGESH S. PATIL, J.)

(T.V.NALAWADE, J.)

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