

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

CRIMINAL APPLICATION NO.3059 OF 2018

- 1) Shripad Pandurang Waghmare
Age : 33 years, Occ : Service,
R/o Nalegao, Tal.Nagar,
District : Ahmednagar.
- 2) Pandurang Jankiram Waghmare
Age : 71 years, Occ : Retired,
R/o Nalegao, Tal.Nagar,
District : Ahmednagar.
- 3) Mira Pandurang Waghmare
Age : 71 years, Occ : Household,
R/o Nalegao, Tal.Nagar,
District : Ahmednagar.
- 4) Mangesh Pandurang Waghmare
Age : 39 years, Occ : Service,
R/o Nalegao, Tal.Nagar,
District : Ahmednagar.
- 5) Prerna Mangesh Waghmare
Age : 32 years, Occ : Household,
R/o Nalegao, Tal.Nagar,
District : Ahmednagar.
- 6) Bebitai Jankiram Waghmare
Age : 76 years, Occ : Household,
R/o 07, Suyog Park, Nagar-Kalyan road,
District – Ahmednagar.
- 7) Manjiri Pramod Bidve
Age : 38 years, Occ : Household,
R/o 302, 1st Floor, 'E' Building,
Phase 2, Neo City, Near JSPM college,
Bakori Road, Wagholi, Pune.

- 8) Janavi @ shridevi Ajit Pawar
Age : 36 years, Occ : Service,
R/o 162, Narayan Peth,
N.C. Kelkar Road, Near Baba Bhide Pool,
District : Pune.

..APPLICANTS

-VERSUS-

- 1) The State of Maharashtra
- 2) Sau. Priyanka Shripad Waghmare
Age : 25 years, Occ : Household,
R/o A/P : Maniknagar, Parli,
District Beed.

..RESPONDENTS.

Mr.P.K. Phale, Advocate for applicants
Mr.M.M. Nerlikar, APP for respondent/State
Mr.S.V. Suryawanshi, Advocate for respondent
No.2

...
CORAM: T.V. NALAWADE AND
V.L. ACHLIYA, JJ.

DATE : 30th JULY, 2019

JUDGMENT (PER V.L. ACHLIYA, J):

. Rule. Rule made returnable forthwith. By
consent heard finally.

2. Heard learned counsel for the applicants,
learned APP and the learned counsel representing
the respondent no.2/complainant. Perused the
charge-sheet.

3. On instructions, learned counsel for the applicants urged to withdraw the application to the extent of applicant nos.1 to 3. Accordingly, the application is disposed of as withdrawn to the extent of applicant nos.1 to 3.

4. By referring the overall facts of the case, the allegations attributed to applicants in first information report lodged by respondent no.2 and the statements of the witnesses recorded during the course of investigation, learned counsel for the applicants submits that the allegations made against applicant-accused nos.4 to 8 are vague and general in nature and make out no case to proceed against them. It is submitted that the proceeding has been initiated at the instance of respondent no.2-complainant to take vengeance on account of matrimonial discord with her husband i.e. accused no.1. It is submitted that accused no.1 is the husband and accused nos.2 and 3 are the father-in-law and mother-in-law of

respondent no.2. Accused nos.4 and 5 are the brother-in-law and sister-in-law of respondent no.2. The accused no.6 is the sister of accused no.2. Accused nos.7 and 8 are sister-in-law of respondent no.2. They are residing with their husband and children at their matrimonial house at Pune. They are not concerned with day today life of respondent no.2. By referring the allegations made in the first information report lodged by respondent no.2, the learned counsel submits that the allegations made in the complaint lodged by respondent no.2 are primarily against her husband i.e. accused no.1. The allegations made against accused nos.4 to 8 are vague and general in nature. They are deliberately implicated in the case only with intention to harass them on account of matrimonial discord between accused no.1 and respondent no.2. It is contended that the continuation of proceeding against applicants would amount to gross abuse of process of Court and in order to meet the ends of justice, it is necessary to quash the proceeding against them.

5. On the other hand, learned counsel for respondent no.2 opposed the application with contention that there is strong prima facie case to connect each of the applicants with the offences registered against them. By referring the overall facts of the case and more particularly the allegations made in the complaint, learned counsel submits that the complaint lodged by respondent no.2 and the evidence gathered by the prosecution make out strong case to prosecute the applicants for commission of offences punishable U/Sec. 498-A, 323, 504, 506 read with 34 of Indian Penal Code.

6. We have carefully considered the submissions advanced in the light of overall facts of the case and evidence gathered by the prosecution to prosecute the accused. In the first information report dated 26.02.2018 lodged by respondent no.2/complainant-wife, the respondent no.2 has alleged that she got married with accused

no.1 on 05.02.2014. Initially for the period of about six months, she was treated properly. Thereafter, the accused persons started causing illtreatment to her. They used to tell her that she is fatty and they did not like her. They asked her to bring Rs.10,00,000/- from her father for construction of house. Accused nos.4 to 8 used to instigate her husband to commit assault on her. They used to tell her husband to take divorce from her. At the instigation of accused nos.4 to 8, her husband used to cause physical and mental illtreatment to her. With a hope that things will improve by the passage of time she ignored the harassment. However, as illtreatment continued and as it become unbearable for her to suffer such illtreatment and harassment, she left her matrimonial house and came to house of her parents. She lodged complaint with Women Counselling Center at Parali. On 23.08.2017, the accused persons though attended for counselling but no settlement reached between them. Thereafter, on 14.02.2018, her husband visited her

parents house and assaulted her. He asked for divorce and gave threat to kill her. Therefore, she lodged complaint.

7. On close scrutiny of allegations made in the first information report lodged by respondent no.2-complainant and the statements of the witnesses recorded by the Investigating Officer, we are of the considered opinion that the allegations made against the applicants-accused nos.4 to 8 are vague and general in nature. There are no specific allegations amounting to 'cruelty' as explained under clause (a) or (b) of section 498-A of IPC made against them. It is an admitted position that accused nos.7 and 8 are the married sisters of accused no.1. They are residing at their respective matrimonial house at Pune. Accused no.5 is the sister of accused no.1 who is residing separately from accused no.1 and residing with her husband i.e. accused no.4. The accused no.6 is the sister of accused no.2 and paternal aunt of accused no.1. It is highly improbable to

accept that the accused nos.6 to 8 who are residing separately use to regularly visit the house of accused no.1 with sole intention to illtreat and harass the respondent no.2. There is no reason for accused nos.4 and 5 to illtreat and harass the respondent no.2. The marriage between accused no.1 and respondent no.2 was solemnized on 05.02.2014. The complaint against the accused lodged on 26.02.2018 i.e. after a period of more than three years of marriage and alleged harassment caused to respondent no.2. Not a single complaint made against applicants/accused nos.4 to 8 prior to lodging of present complaint and registration of offence at the instance of respondent no.2.

8. It is quite settled position in law that the powers conferred U/Sec. 482 of the Cr.P.C to be exercised sparingly and that too in an exceptional circumstances made out for invoking such powers. In the case of *State of Haryana and others V/s Ch. Bhajan Lal and others* reported in

1992 Cri.L.J. 527, the Apex Court has considered the scope of exercise of powers U/Sec. 482 of the Cr.P.C. and laid down categories of cases. In para 108, the Court has observed as under :-

"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. *Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and*

accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. *Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
4. *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
5. *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act,*

providing efficacious redress for the grievance of the aggrieved party.

7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

9. In the case of ***Geeta Mhrotra and another Vs. State of Uttar Pradesh and another***, reported in ***(2012) 10 SCC 741***, the Apex Court has noted the tendency on the part of informant to rope in as many as possible relatives of husband and quashed the complaint against the married sister of the complainant's husband, not living with the family of the complainant's husband by observing that High Court ought not to have relegated the sister-in-law to the ordeal of trial. It is held, where large of number of family members are included in F.I.R. by casually mentioning their names and complaints did not disclose their active involvement, cognizance of matter against them not to be justified and amounts to abuse of judicial process and fit case for quashment of proceedings

against them U/Sec. 482 of Cr.P.C. is justified. In para 18 and 21, the Hon'ble Apex Court has observed as under :-

"18. Their Lordships of the Supreme Court in Ramesh Vs. State of T.N., (2005) 3 SCC 507, had been pleased to hold that the bald allegations made against the sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge sheet furnished the legal basis for the magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge sheet, none of the alleged offences under Section 498A, 406 and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's

husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have related the sister in law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.

21. *It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of **G.V.Rao Vs.L.H.V. Prasad**, reported in (2000) 3 SCC 963 wherein also in a matrimonial dispute, this Court has held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that*

: (SCC p.698, para 12)

"12. There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude

and in that process the parties lose their 'young' days in chasing their 'cases' in different courts."

10. Thus, if we consider overall case of the prosecution against the applicants – accused nos.4 to 8 then except the vague and general allegations of illtreatment and harassment no specific allegations have been made to prima facie attract commission of offences registered against the applicants. In order to constitute the offence U/Sec. 498-A of IPC, there must be an act of 'cruelty' as explained under clause (a) or clause (b) of Section 498-A of the I.P.C. None of the act attributed to the accused nos.4 to 8 can be termed as an act amounting to 'cruelty' as defined in explanation clause (a) or (b) of Sec. 498-A of the I.P.C. There is no reason for all the accused including the married sisters of husband of respondent no.2 to invariably visit the matrimonial house of respondent no.2 just to illtreat and harass her. The applicant nos.7 and 8

are undisputedly residing at Pune. The applicant no.6 is the sister of father-in-law of respondent no.2 and aged about 76 years residing separately from accused nos.1 to 3. It is difficult to believe that the applicant no.6, who is aged more than 76 years old joining hands with the co-accused used to visit the matrimonial house of respondent no.2 with sole intention to illtreat and harass her. The accused nos.4 and 5 are the brother-in-law and sister-in-law of respondent no.2 – complainant. Although the applicant nos.4 and 5 are residents of the same village, but they are claimed to be residing separately. It is pertinent to note that the age of accused nos.2 and 3 i.e. father-in-law and mother-in-law of respondent no.2 shown as 71 years. It is highly improbable to accept the case of prosecution that all the accused in furtherance of their common intention made demand of dowry and for that purposes continuously illtreated respondent no.2 for more than 4 years and thereby committed the offence punishable U/Sec. 498-A, 323, 504, 506

read with section 34 of the I.P.C. Except the vague and general allegations that the accused illtreated and harassed the complainant, there is nothing placed on record to substantiate such allegations.

11. The statements of the witnesses recorded during the course of investigation spell out they are close relatives of the respondent no.2. Their statements forming the part of the charge-sheet and relied as evidence against the applicants reflects that the statements recorded are stereotype statements. Except the name of the witness, the entire contents of statements of such witnesses is nothing but inverbatim reproduction of statement of father of respondent no.2 recorded by Investigating Officer. As such there is no evidence sufficient to proceed against applicant – accused nos.4 to 8. Therefore, the continuation of proceeding against applicants/accused nos.4 to 8 be gross abuse of process of Court at the instance of respondent no.2.

12. It is apparent from the face of record that the criminal proceeding has been initiated against the applicant nos.4 to 8 for wreaking vengeance against them on account of the personal grudge the respondent no.2 carrying against her husband and in-laws on account of matrimonial discord. It is difficult to believe that the applicant nos.4 to 8/accused nos.4 to 8 in furtherance of their common intention along with accused nos.1 to 3 illtreated and harassed the complainant for more than four years and forced her to bring Rs.10 Lacs from her parents for the purpose of construction of house.

13. We are of the view the continuance of criminal proceeding against the applicant nos.4 to 8 would amount to gross abuse of process of Court and in order to secure the ends of justice, it is necessary to invoke powers U/Sec. 482 of the Cr.P.C. to quash the proceedings to their extent. We are therefore inclined to allow the application

to the extent of applicant nos.4 to 8 and pass the following order :-

ORDER

(i) The application is disposed of in respect of petitioner/applicant nos.1 to 3 as withdrawn.

(ii) The application is allowed in terms of prayer clause "B" to the extent of applicants nos.4 to 8/accused nos.4 to 8.

(iii) Rule made absolute in the above terms with no order as to costs.

(V.L. ACHLIYA, J.)

[T.V. NALAWADE, J.]

sga/-