

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

CRIMINAL APPLICATION NO. 3102 OF 2018

- 1 Ratan S/o. Datta Jadhav,
Age 40 years, Occu. Government Servant,
R/o. Beed Bye Pass, Satara Parisar,
Aurangabad, District Aurangabad.
- 2 Kantabai Dattarao Jadhav,
Age 63 years, Occu. Household,
R/o. As above.
- 3 Ravibhushan Dattarao Jadhav,
Age 38 years, Occu. Labour work,
R/o. As above.
- 4 Madhukar Dattarao Jadhav,
Age 36 years, Occu. Government Service,
R/o. As above.
- 5 Prema Dattarao Jadhav,
Age 33 years, Occu. Household,
R/o. Gaondevi Chowk, Belapur,
Navi Mumbai.

APPLICANTS

.. (Original accused)

VERSUS

- 1 The State of Maharashtra,
Through Police Inspector,
Police Station, Islapur,
Taluka Kinwat, District Nanded.
- 2 Sagarbai W/o. Ratan Jadhav,
Age 32 years, Occu. Household,
R/o. Nandgaon, Taluka Kinwat,
District Nanded.

RESPONDENTS

(R.No.2 - Original

.. Complainant)

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Mr. Kshitij Surve h/f. Mr. Hemant Surve, Advocate for applicants.
Mrs. D. S. Jape, APP for respondent No. 1-State.
Mr. K.D. Jadhav and Mr. P.S. Bhalerao, Advocate for Respondent No. 2.

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

DATED : 01st OCTOBER, 2019.

ORAL JUDGMENT :- (Per: K.K. SONAWANE, J.)

1. Rule. Rule made returnable forthwith. Heard finally, with the consent of learned counsel appearing for the parties.

2. The applicants - original accused 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 Crime No. 51 of 2018 registered at Police Station, Islapur, Taluka Kinwat, District Nanded, for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code (IPC) as well as the criminal proceeding bearing Charge-sheet No. 5 of 2018 (RCC No. 6 of 2019) filed pursuant to aforesaid Crime.

3. The prosecution case in short compass is that the first informant – complainant Sagarbai Ratan Jadhav, on 06-09-2018, approached to the Police of Islapur Police Station, Taluka Kinwat, District Nanded, and ventilated the grievance that her marriage was solemnized on 19-05-2002 with applicant No. 1 – Ratan Jadhav, who is serving as Sale Tax Inspector and posted at Aurangabad. The complainant-wife begotten a daughter from their wedlock namely, Shubhangi, now she is 13 years old. The applicant No. 2 is mother-in-law, whereas, applicants No. 3 and 4 are the brothers-in-law and applicant No.5 is the sister-in-law of complainant – wife. After marriage, complainant-wife joined the company of husband for cohabitation at Parbhani. Initially, for about 8 to 10 years, the complainant was residing at Parbhani. According to complainant, after one year from the marriage, all the applicants started scolding the complainant-wife on flimsy reasons as well as they used to allege that her parents did not pay any dowry nor honoured them in proper manner in the marriage. The applicants mentally harassed and tortured her. The applicant - husband was transferred at Mumbai, therefore, complainant-wife was with him for a

period of four to five years. In the year 2017, applicant-husband again came to be transferred to Aurangabad. The applicant-husband placed demand of amount for purchasing Car from her parents and harassed her mentally and physically. Due to such maltreatment, in the month of May, she came at her parents home. Thereafter, on 07-07-2018, applicant-husband had been to parents' home and asked the complainant-wife as to why her parents did not satisfy his demand of money. He started to beat her with fists and kick blows, by pulling hairs and dragged her on road. At that time, neighbours namely - Shrihari Tope and Laxman Motiram Petewad thronged at the spot and extricated the complainant-wife from the clutches of her husband. The father and respectable persons from the village made endeavour to give understanding to the husband and in-laws to behave with the complainant in proper manner. But, it did not evoke any result. However, her ordeals did not come to an end. At last, she filed report to the Police of Islapur Police Station, Taluka Kinwat, District Nanded, for penal action against the present applicants.

4. Pursuant to FIR, Police of Islapur Police Station, Taluka Kinwat, District Nanded, registered the crime and set the penal law in motion. Pending the investigation, the applicants moved present Application by invoking remedy under Section 482 of the Cr.P.C. for relief to quash and set aside the impugned FIR. But, meanwhile, Investigating Officer after completion of investigation filed the charge-sheet. The applicants, simultaneously, prayed to absolve from the charges pitted against them in the proceedings bearing Chargesheet No. 5 of 2018 (RCC No. 6 of 2019).

5. Learned counsel for applicants vehemently submits that there were no physical and mental cruelty to the complainant on the part of applicants. But, she has filed present false 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. Learned counsel further submits that the applicant No.1 is a Government servant and having good reputation in the society. Therefore, applicant No.1 has no necessity to demand dowry that too after 16 years of the marriage. The rest of the applicants 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 instance of maltreatment at the hands of applicants. The learned counsel submits that the allegations made in the FIR are vague and general in nature. There was no demand of any kind on the part of applicants. According to learned counsel, applicant No. 2 is the old aged mother-in-law, whereas, applicants No. 3 and 4 are the brothers-in-law and applicant No.5 is the sister-in-law of complainant- wife. They all are residing separately. He submits that 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.

6. The learned APP as well as learned counsel for respondent No. 2-first informant opposed the contentions put-forth on behalf of applicants. They submit that the allegations of ill-treatment nurtured

on behalf of complainant in the FIR disclose commission of crime under Sections 498-A, 323, 504 and 506 etc. read with Section 34 of IPC. The complainant categorically described the episode of her maltreatment and torture at the hands of applicants. There were allegations of physical and mental torture to the complainant for unlawful demand of amount on the part of applicants.

7. Having given anxious consideration to the arguments advanced on behalf of both sides and after perusal of contents of FIR/chargesheet and other relevant documents placed on record, this Court was not inclined to nod in favour of applicant No. 1-husband for exercise of inherent powers under Section 482 of Cr.P.C. Eventually, learned counsel for the applicants seeks leave to withdraw the proceedings against applicant No.1 and leave was granted to his extent only.

8. In regard to allegations nurtured against applicants No. 2 to 5, we find that the allegations cast on behalf of complainant - wife against applicants No. 2 to 5 are totally vague and general in nature. There are no specific allegations attributing overt-act of these applicants to maltreat and harass the complainant-wife. There were no detail particulars given in the FIR about participation of applicants No. 2 to 5 for their act of cruelty to the complainant or for demand of money, etc. The marriage of the spouses was solemnized in the year 2002. There are no allegation of cruelty by the applicants No. 2 to 5 after marriage. It transpired that the spouses are residing separately for the maximum period of marriage at the place of employment of husband. The

allegations about cruelty at the hands of applicants No. 2 to 5 are found stray and sweeping in nature. The applicant No. 2 is the old aged mother-in-law, whereas, applicants No. 3 and 4 are the brothers-in-law and applicant No.5 is the sister-in-law of complainant- wife. They are residing separately from the spouses. They have no any reason to cause interference into the domestic affairs of the spouses. Therefore, it can not be perceived that these applicants have reason to cause interference in the marital life of spouses. It is fallacious to appreciate that they are beneficiaries from the marital discord between the spouses.

9. 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."*

10. 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.*

11. 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."

12. It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Scindia and another Versus Sambhajirao Chandojirao 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."

13. 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.

14. In the light of aforesaid expositions of law, in the instant case, it would be unjust and improper to allow the prosecution to proceed further against applicants No. 2 to 5. It would be an futile efforts and would cause injustice to them, if they are compelled to face agony of trial before criminal Court. It would also dissipate the precious time of Court of law as the possibility of their ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicants may not be forced unnecessarily to go on litigation before

the Criminal Court. Hence, penal proceeding initiated against applicants No. 2 to 5 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is partly allowed.
- ii. The Criminal Application in respect of applicant No. 1 stands disposed of as withdrawn.
- iii. The Criminal Application in respect of applicants No. 2 to 5 is allowed.
- iv. The penal proceeding initiated against applicants No. 2 to 5 bearing FIR/Crime No. 51 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Police Station, Islapur, Taluka Kinwat, District Nanded, as well as criminal proceeding bearing Charge-sheet No. 5 of 2018 (RCC No. 6 of 2019) pursuant to aforesaid crime, is ordered to be quashed and set aside to their extent only.
- v. Rule is made absolute in terms of prayer clause "C and C-1".
- vi. The Criminal Application is disposed of in above terms. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE