

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

CRIMINAL APPLICATION NO. 3134 OF 2018

- 1 Prashant S/o Ramdas Dongre,
Age: 29 years, Occu.: Government
Service, R/o: C-35 M-10, Sahar P.N. T.
Colony, Andheri East, Mumbai-400 099.
- 2 Ramdas S/o Pandharinath Dongre,
Age : 62 years, Occ. Agriculture,
R/o : Matoshri Nivas, Savargaon (pu)
Kalamb, District Osmanabad.
- 3 Kevalbai W/o Ramdas Dongre,
Age: 58 years, Occ. Housewife,
R/o : Matoshri Nivas, Savargaon Pu,
Kalamb, District Osmanabad.
- 4 Bhagyashree Mahadev Khape,
Age: 36 years, Occ: Teacher,
R/o: Raosaheb Nagar, Visava Corner,
B. Raghunath Road, Parbhani.

..APPLICANTS
(Ori. Accused)

VERSUS

- 1 The State of Maharashtra,
Through : its Police Inspector,
Police Station Kalamb.
- 2 Nayna W/o Prashant Dongre,
Age : 27 years, Occ. Housewife,
R/o : Savargaon (pu) Kalamb,
Tql. Kalamb, District Osmanabad.

RESPONDENTS

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Mr. L.N. Kawade, Advocate for applicants
Mr. R.D. Sanap, APP for respondent No. 1-State
Mr. S.A. Wakure, Advocate for Respondent No. 2

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

DATED : 9th AUGUST, 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 - 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. 200 of 2018 registered at Kalamb Police Station, Taluka Kalamb, District Osmanabad 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 Regular Criminal Case No. 21 of 2019 filed pursuant to aforesaid Crime.

3. The prosecution case in short compass is that the first informant – complainant Nayna W/o Prashant Dongre, on 20-09-2018 approached to the Police of Kalamb Police Station, Taluka Kalamb, District Osmanabad, and ventilated the grievance that her marriage was solemnized on 04-12-2016 with accused No. 1 – Prashant Ramdas Dongare. The applicants No. 2 and 3 are in-laws whereas applicant No.4 is sister-in-law of the complainant - wife. After marriage, complainant - wife joined the company of husband for cohabitation at Kalamb. The sister-in-law, applicant No. 4 at the relevant time was staying at matrimonial home and she used to tease the complainant on account of her pimples. She also used to scold her for flimsy reasons. The complainant - wife was subjected to mental torture by the applicant No. 4 and humiliate her. Applicant No. 4 used to instigate the mother-in-law and applicant-husband, which resulted into abusing and beating to the complainant-wife. According to complainant, on 08-12-2016 at about 12.00 p.m in the night applicant-husband, after smoking and drinking liquor, was busy in chatting on cell phone. The complainant-wife made endeavour to have

conversation with husband, but, he reprimanded the wife-complainant by saying that he has performed marriage with her for satisfaction of her parents and she should not expect more from him. The applicant-husband also gave threats of life to complainant-wife, if she discloses such fact to in-laws and her parents. It has been alleged that when the spouses had been to Devdarshan that time also applicant-husband picked-up quarrel and abused the complainant-wife. Thereafter, applicant-husband had gone to Mumbai without giving any intimation to the complainant-wife. He always used to say on phone that she will not be allowed for cohabitation. After giving understanding by the relatives, the applicant-husband took her with him at Mumbai on 01-05-2017. But, the applicant-husband started demanding amount of Rs.10 lakhs for repayment of loan availed for purchase of flat at Badlapur. The applicant-husband also assaulted and abused complainant-wife for about 4/5 times at Mumbai. She was beaten-up with kicks at abdomen. The complainant-wife called her father at Mumbai, and thereafter, brother of complainant came to Mumbai and brought her back to Kalamb. The applicant-husband continuously asking the complainant wife that he will not allow her for cohabitation. There were endeavour for reconciliation of marital discord through Women's Grievance Redressal Cell at Osmanabad. But, did not evoke result. Eventually, she approached to the Police of Kalamb Police Station for penal action against applicants.

4. Pursuant to FIR, Police of Kalamb Police Station, Taluka Kalamb District Osmanabad registered the crime and set the penal law in motion. Pending the investigation, 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 RCC No. 21 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 added that complainant-wife is arrogant and adamant. She is not interested for cohabitation with husband. Learned counsel further added that applicant-husband had issued notice to the complainant-wife requesting her for cohabitation, but, there was no response from complainant-wife. As complainant wife did not give response to notices for restitution of conjugal right, the applicant husband constrained to file divorce proceeding under section 13(1)(i-a) of the Hindu Marriage Act, 1955. Despite compromise before the Special Cell, Osmanabad, respondent No. 2 did not ready to cohabit with applicant-husband and preferred to stay away from the applicants. The applicants No. 2 to 4 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. 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, all the applicants are residing separately. Applicants No. 4 is married sister-in-law and since her marriage she is residing with her husband at Parbhani and works as a teacher. The learned counsel produced the documents of her service book on record. 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 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, 504 and 506 etc. of IPC. The complainant categorically described the episode of her maltreatment and torture at the hands of applicants. There was unlawful demand of household articles from the applicants. There were allegations of physical and mental torture to the complainant for unlawful demand on the part of applicants.

7. 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.

8. In regard to allegations nurtured against applicant No. 4, we find that the allegations cast on behalf of complainant - wife against applicant No. 4 are totally vague and general in nature. There are no specific allegations attributing overt-act of this applicant to maltreat and harass the complainant - wife. There were no detail particulars given in the FIR about participation of applicant No. 4 for their act of cruelty to the complainant or for demand of money, etc. The allegations about cruelty by applicants are found stray and sweeping in nature. Applicant No. 4 is the married sister-in-law of the complainant and she is residing with her husband at Parbhani. The applicant No. 4 was employed as an teacher in Secondary Ashram School, Darga Parwa Road, Parbhani. She was in employment since prior to July-2016 i.e. prior to marriage of complainant solemnized in December-2016. Therefore, it can be perceived that this applicant has no reason to cause interference in the marital life of spouses. It is fallacious to appreciate that she is one of the 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 Punjab 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 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."

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 applicant No. 4. It would be an futile efforts and would cause injustice to her, if she is compelled to face agony of trial before criminal Court. It would also dissipate the precious time of Court of law as the possibility of her ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicant may not be forced unnecessarily to go on litigation before the Criminal Court. Hence, penal proceeding initiated against applicant No. 4 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 applicants No. 1 to 3 stands disposed of as withdrawn.
- iii. The Criminal Application in respect of applicant No. 4 is allowed.
- iv. The penal proceeding initiated bearing FIR/Crime No. 200 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Police Station, Kalamb, Taluka Kalamb, District Osmanabad, as well as criminal proceeding bearing Regular Criminal Case No. 21 of 2019 pursuant to aforesaid crime, is ordered to be quashed and set aside to the extent of applicant No. 4.

- iii. Rule is made absolute in terms of prayer clauses "B and B-1".
- iv. The Criminal Application is disposed of in above terms.
- v. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

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