

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

CRIMINAL APPLICATION NO.3205 OF 2018

1. Annasaheb S/o Radhakisan Falke
Age 60 years, Occ : Retired,
R/o 117, Kasliwal Purva Society,
Near Indoworld Hospital,
Chikalthana, Aurangabad.
2. Minakshi W/o Annasaheb Falke
Age : 51 years, Occ : Household,
R/o 117, Kasliwal Purva Society,
Near Indoworld Hospital,
Chikalthana, Aurangabad.

..APPLICANTS

-VERSUS-

Priyadarshnee W/o Rahul Falke
Age : 25 years, Occ : Household,
R/o C/o Sawyamprabha Dhananjaya Patil
Shrisamarth Apartment, Second Floor,
Near Jagtap Hospital,
Rajiv Gandhi Chowk, Latur,
Tal. & District Latur.

..RESPONDENT

...

Mr.N.T. Tribhuwan, Advocate for Applicants.
Mr.V.D. Salunke, Advocate for Respondent.

...

CORAM: V.L. ACHLIYA, J.
DATE : 17.06.2019

ORAL JUDGMENT:

Rule. Rule made returnable forthwith
and by consent heard finally.

2. By this application filed under Section 482 of the Code of Criminal Procedure, the applicants have prayed for quashment of private complaint case i.e. R.C.C. No.218 of 2017 registered under Section 498-A of the Indian Penal Code pending on the file of the learned 2nd Chief Judicial Magistrate, Latur.

3. By referring the overall facts of the case and more particularly, the allegations made in the complaint and role attributed to the applicants in commission of offence, learned counsel submits that filing of such complaint and prosecution thereof is nothing but gross abuse of process of law. It is submitted that in the complaint itself, it is pleaded that the marriage of Respondent was solemnized with the son of the applicants on 25th November, 2016. On 26th November, 2016, they came to Aurangabad for cohabitation. On 27th November, 2016, there was religious ceremony at her matrimonial house at Aurangabad. On 29th November, 2016, Respondent made complaint to her mother against her husband. On 30th November, 2016, Respondent

went along with her mother. On 3rd December, 2016, she came to Aurangabad and later on went to Pune to cohabit with her husband. She stayed with her husband from 03.12.2016 to 12.12.2016. On 12th December, 2016, she went to her parents house. Subsequently, the complaint came to be made to Women Grievance Redressal Cell at Latur. To bring settlement between the Respondent and her husband, they were called on 16th April, 2016. On 16th April, 2016, some quarrel had taken place between the respondent and her husband. She filed complaint U/Sec. 498-A of the Indian Penal Code against her husband and his relatives. In this background the learned counsel submits that the Respondent has hardly stayed with the present applicants i.e. in-laws for not more than 3 days. By referring the allegations made in the complaint, learned counsel submits that the allegations are too vague and general in nature. No specific act amounting to offence punishable U/Sec. 498-A of I.P.C. has been attributed to the present applicants. It is further submitted that this Court vide order dated 17th October, 2018 in an application filed by co-accused i.e. accused Nos.4 to 15 U/Sec. 482 of the Code of

Criminal Procedure, quashed the proceedings against them. It is submitted that the case of the applicants stands on par with the accused against whom the complaint has been quashed by this Court (Coram : K.L. WADANE,J) vide order dated 17th October, 2016 in Criminal Application No.5465 of 2017. In the background of overall facts of this case, the acts attributed to the applicants and the order passed by this Court, learned counsel submits that continuation of proceedings against the present applicants amounts to gross abuse of process of law. For no criminal act committed on their part, they are subjected to face the criminal prosecution on the basis of false and frivolous complaint filed by the respondent on account of matrimonial discord with her husband.

4. On the other hand, learned counsel for the respondent opposed the maintainability of the application with contention that the applicants have alternate remedy by way of revision to challenge the order of issuance of process. By referring the allegations made in the complaint,

learned counsel submits that the allegations made in the complaint make out a case to proceed against the applicants. It is further submitted that while deciding the Criminal Application filed by the co-accused Nos. 4 to 15 vide order dated 17th October, 2018, this Court has observed that the Respondent was residing in the company of the accused Nos.2 and 3 i.e. the applicants and there is prima facie case to proceed against them.

5. I have carefully considered the submissions advanced in the light of broad principles laid down by the Apex Court in the case of **State of Haryana and others V/s Ch. Bhajan Lal and others** reported in **AIR 1992 S.C. 604**, wherein the Apex Court has laid down the following broad principles to be borne in mind while dealing with the application for quashing the proceedings :-

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.*

6. On due examination of the allegations made, I am of the view that the case is made out to exercise the powers U/Sec. 482 of the Code of Criminal Procedure to quash the complaint against the applicants. The matrimonial discord between the Respondent and her husband i.e. son of the applicants, leads to filing of private complaint as against her husband and 14 other persons, which includes the present applicants. The filing of the complaint as against such large number of accused persons itself spell out the intention of the Respondent to implicate and harass in-laws and relatives of the husband. The Apex Court has time and again observed that while dealing with the complaints filed U/Sec. 498-A of the I.P.C., the Police must be cautious

while registering the case against accused, in view of the tendency being noticed to implicate the innocent persons with ulterior motive to harass such persons. The complaint filed against accused Nos.4 to 15 i.e. the relatives of the husband of Respondent has been quashed by this Court vide order dated 17th October, 2018. While passing the order, the Court has closely scrutinized the complaint made at the instance of the Respondent and categorically observed that the incident dated 16th April, 2017, which leads to filing of the complaint, no way make out the case for the offence punishable U/Sec. 498-A of the I.P.C. against the accused Nos.4 to 15. It is further observed that the demand of Rs.25 Lakhs found to be improbable.

7. If we closely scrutinize the complaint filed by the respondent then except some vague allegations made against the applicants to force her to transfer the land in the name of husband of respondent, no specific overt acts attributed to applicants amounting to offence of cruelty, as explained under clause (a) and (b) of Section 498-A of

the I.P.C. It is quite settled position in law that all sort of cruelty not amounts to act of cruelty as contemplated U/Sec. 498-A of the I.P.C. In order to constitute the offence punishable U/Sec. 498-A of the I.P.C., there must an act of cruelty as defined under clause (a) or (b) of Section 498-A of the I.P.C. If we consider the allegations made in the complaint and taken at their face value and accepted in their entirety still it spell out no act of cruelty as contemplated under clause (a) and (b) of Section 498-A. Stay of the applicants in her matrimonial house with the applicants was not more than 3 days. The marriage was solemnized on 25th November, 2016. Respondent left the matrimonial house on 30th November, 2016. In the light of allegations made in the complaint and more particularly as against the applicants, it is difficult to believe that the Respondent was subjected to illtreatment and harassmt with an intention to force her to submit to demand of dowry. In fact there are no specific allegations that the dowry was fixed in the marriage and for non-fulfillment of demand of such dowry, the respondent was subjected to illtratment and

harassment. It is also difficult to believe that within a period of three days of marriage, the demand of Rs.25 Lakhs to purchase a flat was made at the instance of the applicants and other co-accused. The allegations made in the complaint are vague and general in nature. The complaint appears to be a motivated and filed with ulterior motive to harass the in-laws of her husband on account of matrimonial discord with husband. In absence of any prima facie case being made out to proceed against the accused, the complaint filed against the present applicants deserves to be quashed and set aside.

8. The order to issue process appears to have been passed in casual manner. No scrutiny of allegations appears to have been made before passing the order. The mandatory requirement of law as contemplated U/Sec. 202 of Code of Criminal Procedure to hold the enquiry before issuing process has not been followed while passing the order of issuance of process. It is apparent from the face of complaint and order passed that the complaint has been filed and process has been issued by

the Chief Judicial Magistrate at Latur against the applicants who are residents of Aurangabad, situated outside the territorial jurisdiction of Chief Judicial Magistrate, Latur. The Apex Court in the case of **Birla Corporation Limited v. Adventz Investments and Holdings Limited (2019 SCC Online SC 682)** has held that the requirement of Section 202 of Code of Criminal Procedure to hold an enquiry before issuing the process U/Sec. 202 is a mandatory requirement of law. In that view also the complaint deserves to be quashed to the extent of applicants.

9. Thus in view of conclusions to which arrived at that the complaint filed against the applicants is a gross abuse of process of law and filed with malafide intention to harass the applicants, in my view it is a fit case to invoke powers U/Sec. 482 of the Code of Criminal Procedure, to quash the proceeding against the applicants. The continuation of the proceeding against them would subject them to face rigours of criminal prosecution without any case to proceed against them. So also, in absence of compliance of Section 202 of the Code of

Criminal Procedure and the complaint filed do not make out prima facie case to proceed against the applicants U/Sec. 498-A of the I.P.C., the complaint deserves to be quashed and set aside. Accordingly, the application is allowed in terms of prayer Clause "B". The proceedings of R.C.C. No.218 of 2017 pending on the file of learned Chief Judicial Magistrate, Latur is quashed to the extent of the applicants.

10. It is clarified that the observations made hereinabove are confined to quashment of the proceedings which is the subject matter of present application. None of the observations made in the foregoing paras shall have no bearing upon the other proceedings filed at the instance of respondent.

11. Rule made absolute in the above terms.

[V.L. ACHLIYA]
JUDGE

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