

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

CRIMINAL APPLICATION NO. 3211 OF 2018

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| 1 | Santosh S/o. Sudhir Patil,
Age: 29 years, Occu. Business, | |
| 2 | Sudhir S/o. Digambar Patil,
Age: 60 years, Occu. Retired,
Both R/o : Venktesh Nivas, Keshav
Nagar, Latur, District Latur. | |
| 3 | Gauri W/o. Santosh Kulkarni,
Age: 34 years, Occu. Household,
R/o. Esha Krika Society,
New D.S.K. Vishwa, Dhayri, Pune. | |
| 4 | Kshma Prasad Naik,
Age: 32 years, Occu. Household,
R/o. 15-6-160, Kolsa Wadi,
Begum Bazar, Hyderabad.
(Telangana State). | .. APPLICANTS |

VERSUS

- | | | |
|---|---|----------------|
| 1 | The State of Maharashtra,
Through Mukhed Police Station,
District Nanded. | |
| 2 | Avani W/o. Santosh patil,
Age: 22 years, Occu. Household,
R/o. Virbhadrha Mandir Galli,
Mukhed, Taluka Mukhed,
District Nanded. | .. RESPONDENTS |

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Mr. Ramkrushna P. Adgaonkar, Advocate for Applicants.
Mr. A. R. Kale, APP for respondent No. 1-State.
Mr. P. P. Uttarwar, Advocate for Respondent No. 2.

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

DATED : 19th SEPTEMBER, 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. 304 of 2018 registered at Mukhed Police Station, Taluka Mukhed, 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. 119 of 2018 filed pursuant to aforesaid Crime.

3. The prosecution case in short compass is that the first informant – complainant Awani W/o Santosh Patil, on 22-10-2018 approached to the Police of Mukhed Police Station, Taluka Mukhed, District Nanded, and ventilated the grievance that her marriage was solemnized on 16-10-2015 with accused No. 1 – Santosh Patil. The applicant No. 2 is father-in-law whereas applicants No. 3 and 4 are sister-in-laws of the complainant - wife. After marriage, complainant - wife joined the company of husband for cohabitation at Mukhed. Initially, for a period of one year the husband and other inmates of matrimonial home behaved with complainant in proper manner. The complainant wife delivered a female child during wedlock with husband - Santosh. Thereafter, father-in-law and husband started demanding amount of Rupees three lakhs for installation of water filter plan and on that count they used to maltreat her. Even after such ill-treatment the complainant-wife stayed at her matrimonial home for a period of one and half year for better future matrimonial life. Meanwhile, the sister-in-laws used to instigate husband – Santosh to beat complainant-wife. They also used to take suspicion of her character. They kept her unfed and harassed her mentally and physically. According to complainant, on 03-06-2018 the husband and father in law of complainant tried to kill

her by putting pillow on her mouth and threatened her that if she failed to go to her parental home, they would kill her. Thereafter, complainant wife initially filed complaint in MIDC Police Station and thereafter on 04-07-2018 with the Superintendent of Police for penal action against applicants. It has been alleged that on 07-07-2018 when the husband and father-in-law had been to Mukhed Court for giving evidence, they had been to house of complainant in Virbhadra Mandir Galli, Mukhed. The applicant - husband assaulted the complainant-wife with fist and kick blows by pulling her hairs. That time, father-in-law assaulted the sister of complainant-wife with fist and kick blows and threatened her mother to kill. Thereafter, Sachin Jadhav and Manik Boinwad tried to intervene in the quarrel. Eventually, she filed report to the Police of Mukhed Police Station for penal action against husband, father-in-law and present applicants.

4. Pursuant to FIR, Police of Mukhed Police Station, Taluka Mukhed, District Nanded 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 Charge-sheet No. 119 of 2018.

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 the quarrelsome behaviour of wife created tense atmosphere in the house. She is not interested for cohabitation with husband. Learned counsel further added that though applicants made endeavour to settle the dispute, however, the complainant wife did not give response to their request. The circumstances constrained to file divorce proceeding under section 13(1)(i-a) of the Hindu Marriage Act, 1955 so also proceedings under Section 11 of the Hindu Marriage Act for annulment of marriage. The complainant wife also filed the proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005. The present FIR is off-shoot of matrimonial dispute. The applicants No. 3 and 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. 3 and 4 are married sister-in-law and since their marriage they are residing with their husband at matrimonial home at Pune and Hyderabad. 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. The complainant wife also filed the proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005. She has also filed proceeding for restitution of conjugal right in the Court at Kandhar. It seems that despite such unbearable harassment, she is interested in cohabitation. There were allegations of physical and mental torture to the complainant for unlawful demand on the part of applicants. The complainant – wife filed her affidavit on record.

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 and 2 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 and 2. Accordingly, leave was granted for withdrawal of application to their extent only.

8. In regard to allegations nurtured against applicants No. 3 and 4,

we find that the allegations cast on behalf of complainant - wife against applicants No. 3 and 4 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. 3 and 4 for their act of cruelty to the complainant or for demand of money, etc. The allegations about cruelty at the hands of applicants are found stray and sweeping in nature. Applicant Nos. 3 and 4 are the married sister-in-law of the complainant and they are residing with their husband at their matrimonial home located in Pune and Hyderabad. Therefore, it can be perceived that these applicants have no 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. 3 and 4. 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 applicant Nos. 3 and 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 and 2 stands disposed of as withdrawn.
- iii. The Criminal Application in respect of applicants No. 3 and 4 is allowed.
- iv. The penal proceeding initiated against applicants No. 3 and 4 bearing FIR/Crime No. 304 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Police Station, Mukhed, Taluka Mukhed, District Nanded, as well as criminal proceeding bearing Charge-sheet No. 119 of 2018 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".
- vi. The Criminal Application is disposed of in above terms.
- vii. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE