

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

CRIMINAL APPLICATION NO. 3213 OF 2018

- 1 Dnyaneshwar Shaligram Kuwar,
Age 32 years, Occu. Service,
R/o. MSEB Colony, Shingave Shivar,
Shirpur, Taluka Shirpur, District Dhule.
 - 2 Sakhubai Shaligram Kuwar,
Age 62 years, Occu. Household,
R/o. At Post Waghadi, Taluka Shirpur,
District Dhule.
 - 3 Shaligram Malji Kuwar,
Age 60 years, Occu. Service,
R/o. At Post Waghadi, Taluka Shirpur,
District Dhule.
 - 4 Ujjwala Bapu Borase,
R/o. 43, Madanpura-10, Ambika Nagar,
Udhna Yard, Limbayat Surat City,
Udhana, District Surat (Gujarat).
 - 5 Ratna Rajendra Borase,
Age 30 years, Occu. Household,
R/o. Shivaji Road, Behind Ram Mandir,
Nandurbar, Taluka and District Nandurbar.
 - 6 Kavita Rajendra Nikumbh,
Age 18 years, Occu. Education,
R/o. 44, Ambika Nagar -2, Madanpura,
Near Vegetable Market, Limbayat Surat
City, District Surat, Gujarat.
- ..APPLICANTS
(Ori.
Accused)

VERSUS

- 1 The State of Maharashtra,
Through the Police Inspector,
Shahada Police Station,
Taluka Shahada, District Nandurbar.
 - 2 Suvarna Dnyaneshwar Kuwar,
Age 28 years, Occu. Household,
R/o. C/o. Rajaram @ Raju Budha Jadhav,
17/A- Nagraj Nagar, Shahada,
Taluka Shahada, District Nandurbar.
- RESPONDENTS

...
Mr. Chetan V. Bhadane, Advocate for Applicants.
Ms. V. N. Patil Jadhav, APP for Respondent No. 1
Mr. A. S. Savale, Advocate for Respondent No. 2
...

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

DATED : 16th JULY, 2019.

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

Rule. Rule made returnable forthwith. Heard finally, with the consent of learned counsels for parties.

2. The applicants 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 No. 333 of 2018 registered at Shahada Police Station, Taluka Shahada, District Nandurbar, for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code ("IPC") as well as criminal proceeding bearing RCC No. 169 of 2018 initiated pursuant to aforesaid FIR.

3. The prosecution case in short compass is that, the first informant Suwarna Dnyaneshwar Kuwar on 02-10-2018 visited to the Police of Shahada Police Station, Shahada, District Nandurbar and filed the report that her marriage was solemnized on 19-02-2017 with applicant No. 1-Dnyaneshwar. According to complainant, after marriage she joined the company of husband in the joint family comprising in-laws and niece - Kavita at Shirpur. She received the proper treatment for a period of two/three months of the marriage at her matrimonial home.

But, thereafter, applicant-husband, in-laws placed demand of Rs. 7 lakhs from the parents of complainant-wife to purchase four wheeler. It has been contended that the complainant-wife tried to convince the husband that her parents are not in a position to cough up the demand due to financial crises. However, applicant-husband and in-laws subjected the complainant to mental torture on trifle reason. The applicant No. 6 Kavita, niece of her husband was also instigating that the complainant-wife has on extra-marital affairs and she used to talk on cellphone to somebody else. The applicant-husband, in the month of June 2017 beaten up the wife and sent her to maternal uncle's home at Dondiacha. According to complainant, for about one month she stayed at the house of maternal uncle. Thereafter, she came to matrimonial home with maternal uncle and aunt, but her husband and in-laws picked up quarrel and assaulted them. The mother-in-law applicant - Sakhubai filed FIR of the incident to the Police against maternal uncle and aunt of the complainant. Even thereafter complainant cohabited for 7/8 months with applicants. Whenever the applicants No. 4 and 5 visited her matrimonial home at Shripur that time they used to scold her on account of assault by maternal uncle on applicant Sakhubai. Applicants No. 4 and 5 were insulting and humiliating the complainant-wife on one or other pretext. They did not allow the complainant wife to have conversation with parents. The applicant – husband gave threats to bring amount of Rs. 7 lakhs from her parents otherwise she would not be allowed for cohabitation. The applicants also hatched conspiracy to set her ablaze. Thereafter, the complainant since 23-02-2018 came to reside with parents at Shahada, District

Nandurbar. It has been contended that there was endeavour on 24-06-2018 for settlement of marital dispute amicably with intervention of respectable persons from the society. But, applicant-husband and father-in-law demanded amount of Rs.7Lakhs for allowing the complainant wife to cohabit at matrimonial home. During the course of amicable settlement, the applicant-husband attempted to assault complainant-wife. They abused and jostled the complainant, her parents and others. The applicant gave threats of life to the parents, brother, and complainant herself and went away. At last hapless complainant-wife approached to the Woman Grievance Redressal Cell at Nandurbar and filed the report. The applicant-husband refused to allow the complainant-wife for cohabitation, therefore, the report of the complainant was sent to the Police Station for further process.

4. Pursuant to FIR, Police of Shahada Police Station, District Nandurbar registered the crime and set the penal law in motion. Investigating Officer recorded statements of witnesses acquainted with the facts of the case. He collected relevant documents of matrimonial dispute between the spouses. The Investigating Officer after completion of investigation filed the charge-sheet under Section 173 of Cr.P.C. The applicants prayed to absolve from the charges pitted against them and quashed and set aside the criminal proceeding bearing RCC No. 169 of 2018 initiated pursuant to aforesaid FIR.

5. Learned counsel for applicants vehemently submits that applicants are innocent of the charges pitted against them. They have

not committed any crime, but they are falsely implicated in this case. According to learned counsel, the complainant was not interested in cohabiting with applicant-husband. Her behaviour was also objectionable one and she was keeping adulterous relationship with one Manoj. There were no unlawful demand of money. According to learned counsel, there was no any specific allegations against applicants for cruelty as contemplated under Section 498-A of the IPC. The learned counsel submits that applicants No. 2 and 3 are old aged in-laws and applicants No. 4 and 5 are sisters-in-law of respondent No. 2. The applicant No. 6 is the niece of husband of complainant-wife. Learned counsel submits that all the applicants are residing separately from the husband of complainant-wife. Applicants No. 4 to 6 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. All the allegations are general and vague in nature. The present complaint filed only with an ulterior motive to harass the applicants. It is nothing but an abuse of process of law. It would unjust and improper to compel the applicants to face the agony of trial. Hence, learned counsel explained the attending circumstances on record in detail and urged to quash and set aside the penal proceeding initiated against 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 read with section 34 of the IPC. The

complainant categorically described the episode of her maltreatment and torture at the hands of applicants. There was unlawful demand of money from applicants for purchasing four wheeler. There were allegations of physical and mental torture to the complainant for unlawful demand of money on the part of applicants.

7. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into the relevant documents produced on record as well as factual aspects of the matter. We find that there is no scope for exercise of inherent powers under Section 482 of the Cr.P.C. in favour of applicants No. 1 to 3. It appears from the FIR that *prima facie* case is made out against them. There are specific allegations cast against husband and inlaws about cruelty as envisaged under Section 498-A of I.P.C. Therefore, we expressed that, this Court is not inclined to nod in favour of applicants No. 1 to 3 for grant of relief in their favour. Eventually, learned counsel for applicants No. 1 to 3 seeks leave to withdraw the proceeding to their extent. Accordingly, leave was granted and application to the extent of applicants No. 1 to 3 came to be disposed off as withdrawn.

8. In regard to allegations made against applicants No. 4 to 6, we find that during crucial period of co-habitation of complainant with husband, the applicants No. 4 and 5 were not available in the company of complainant. The entire allegations about cruelty are against husband and in-laws. There was reference that applicants No. 4 and 5 harassed the complainant mentally and physically, but all the aspersion against them are vague, and general in nature. It has also

alleged that the applicant No. 6 used to instigate applicant No. 1 husband that the complainant-wife has an extra-marital affairs and she used to talk on cellphone with somebody else. But, these allegations are also sweeping and omnibus in nature not sufficient to blame the applicant No. 6 for charges of cruelty under section 498-A of the IPC. There was no specific instance or details of participation of applicants No. 4 to 6 in the alleged act of cruelty available on record for adverse inference about their involvement into the crime. There are no specific allegations attributing overt-act of applicants No. 4 to 6 to maltreat and harass the complainant. But, these allegations are stray and omnibus in nature. Therefore, it would unjust and improper to compel the applicants No. 4 to 6 to face the agony of trial before criminal Court following marital discord between 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 Schindia 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 instant case, it would be unjust and improper to allow the prosecution to proceed against applicants No. 4 to 6. It would be an futile efforts and would cause injustice to them. It would also dissipate the precious time of Court of law as the possibility of 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

litigations before the Criminal Court. Hence, penal proceeding initiated against these applicants No. 4 to 6 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is partly allowed.
- ii. Application in respect of applicants No. 1 to 3 stands dismissed as withdrawn.
- iii. Application in respect of applicants No. 4 to 6 is hereby allowed.
- iv. The penal proceeding initiated against applicants No. 4 to 6 bearing FIR No. 333 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Shahada Police Station, Taluka Shahada, District Nandurbar, and criminal proceeding bearing RCC No. 169 of 2018 initiated pursuant to aforesaid FIR, is ordered to be quashed and set aside.
- v. Rule is made absolute partly in terms of prayer clause "B and BB".
- vi. Criminal Application is disposed of in above terms.
- vii. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE