

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

CRIMINAL APPLICATION NO. 3302 OF 2018

1. Shaikh Mohammed Juned Mohammed Jalal,
Age:23 Years, Occu.- recommended for
CJJD & JMFC by MPSC
R/o.: Degloor Naka, Nanded.
2. Shaikh Mohammed Aamer Mohammed Jalal
Age:27 Years, Occ.-Advocate,
R/o. C/o. C.J.J.D., & J.M.F.C.
Tq. Ghansavangi, District – Jalna. ... **Applicants**

Versus

1. State of Maharashtra
2. Gulafshar Sultana W/o Shaikh Washim Akram
Age 25 years, Occ. Household,
R/o.: Government Colony,
Haji Ali Building No.12,
16-A, 6th Floor, K.K. Marg, Mumbai. ... **Respondents**

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Mr. N.S. Ghanekar, Advocate for the Applicants.
Mr. S.B. Yawalkar, A.P.P. for respondent no.1-State.
Mr. R.S. Deshmukh, Advocate for Respondent No.2.

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WITH

CRIMINAL APPLICATION NO. 3338 OF 2018

1. Fajiloddin S/o Khaliloddin Siddiqui
[Shaikh Javed Siddiqui as referred in FIR]
Age:36 Years, Occu.- Service
R/o. As above.
2. Farha Naaz W/o Fajiloddin Siddiqui
[Shaikh Farah Naaz Shaikh Javed as referred in FIR]
Age:30 Years, Occ.-Household,
R/o. As above. ... **Applicants**

Versus

1. State of Maharashtra,
Through Police Station Officer,
Itwara Police Station, Nanded,
District – Nanded.
2. Gulafshar W/o Shaikh Wasim Akram
Age 25 years, Occ. Household,
R/o.: At present C/o. Mr. Maqsood Ali
Building No.2, Flat No.A-16,
Haji Ali Govt. Colony,
K.K. Marg, Mumbai -34.

... Respondents

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Mr. S.S. Rathi, Advocate for the Applicants.
Mr. S.B. Yawalkar, A.P.P. for Respondent no.1-State.
Mr. R.S. Deshmukh, Advocate for Respondent No.2.

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**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**

DATE OF RESERVING THE JUDGMENT : 14.03.2019

DATE OF PRONOUNCING THE JUDGMENT : 03.04.2019

JUDGMENT :- (Per: Mangesh S. Patil, J.)

Heard. Rule in both the applications. It is made returnable forthwith. The learned A.P.P. waives service for the state. The learned advocate Mr. Rajendra Deshmukh waives service for the respondent no.2 in both the applications.

2. The applicants are praying for quashing of Crime No.180 of 2018 registered with Itwara Police Station, Nanded for the offences punishable under Section 354, 395, 498-A, 504, 506, 120-B read with Section 34 of the I.P.C. and also under Section 4 of the Dowry Prohibition Act. The applicant

nos.1 and 2 in Criminal Application No.3302 of 2018 are the accused nos. 4 and 5 and real brothers of the husband of the respondent no.2 whereas the applicant nos. 1 and 2 in Criminal Application No.3338 of 2018 are his sister and her husband.

3. The respondent no.2 lodged the F.I.R. on 22.06.2018 alleging that her marriage was solemnized on 11.12.2016. At that time her husband was posted as a Civil Judge at Kelapur. She started cohabiting with her in laws in their house at Nanded. The marriage of her brother in law Aamer was also performed on the next day i.e. 12.12.2016. Her sister in law Farha Naaz's husband Javed has been posted as a Civil Judge at Mahur. She alleged that when her engagement took place on 02.10.2015 a dowry of Rs.5,00,000/-, 25 tolas of gold, a gold chain, two gold rings and a Hyundai make Verna model car was demanded. Her father in law Jalal himself had given the list about it in his own hand writing which he had handed over to her father and the middleman.

4. She further alleged that her husband Wasim then expressed that he wanted a Creta car and demanded Fifteen Lakh Rupees. When his father tried to convince him but since he was adamant her father called off the marriage.

5. She further alleged that after about a month and a half her

husband and other in laws hatched a conspiracy and to wreck vengeance and to extort money, her husband telephoned her father and said that he did not want any car and was ready to marry her. This telephonic conversation was duly recorded. Thereafter again her parents were called for taking a decision about the marriage. When they went to her father in laws' place again the subject of gifting a car was raked up. When her parents refused to pay any money for the car her in laws became aggressive and persuaded them to finalize the marriage.

6. She then alleged that a day prior to the marriage again her father in law and mother in law demanded her father an amount of Rs. 4,00,000/- for paying as a down payment for the Creta car purchased by his son by obtaining a loan, else the marriage would not be performed. Somehow her father managed to collect an amount of Rs. 3,50,000/- and paid it to her husband and father in law in presence of one advocate Moinuddin. At that time her father in law also warned that her father will have to pay the balance amount of Rs.11,50,000/-.

7. The respondent no.2 further alleged that since the day of her marriage her mother in law started treating her as a maid and made her to perform daily chores. She also started teasing and taunting her. Her brother in law then even said that she should be sent back to her parents. Her mother

in law, sister in law and the husband of the sister in law instigated her husband. Aamer even said that she should be divorced saying that as he has pressurized his in laws even her parents should be pressurized so that they will shell out money. She then alleged that her parents in laws, brother in laws and sister in law never allowed her husband to accompany her to her parental home by saying that they would permit him to go only if they were paid the money. Even she was not allowed to go to the place of his posting and she was compelled to stay at Nanded. When she informed her father about the ill-treatment meted out to her her father took her to his house. After about a week when she along with her parental uncle went back to the in laws place her parent in laws did not allow her to enter into the house on the ground that they were not paid money.

8. She then alleged that after a lot of persuasion by many persons somehow her parents in law took her to Kelapur where her husband was posted as a Civil Judge. However, even at Kelapur they continued to ill-treat her on account of their demand for money and even threatened her of dire consequences. She was also assaulted. At the request of her father the District Judge of Kelapur also called her husband and convinced him. Her father was then called to Kelapur and couple of District Judges posted at Kelapur tried to mediate.

9. On 14.04.2017 when she came to her in laws place at Nanded along with her father and Advocate Muzammil Chaush and Moinudduin, her husband, brother in law Javed Siddiqui and latter's wife and other family members were present. But even at that time there was demand for money and they asked her father to take her away if he was not ready to pay money. Her in laws also declared that they would allow her to come back if the money was paid. During that episode even her gold ornaments weighing 25 tolas were stolen from her purse. When her father threatened of lodging a police complaint regarding stealing of the gold ornaments those were returned to her. Since thereafter from 14.04.2016 she was staying at her parental house.

10. The respondent no.2 has then narrated an episode dated 06.01.2018. On that day she went to Kelapur at the place of posting of her husband but the door of the house was locked. She stayed with the landlady. When her husband arrived home she along with the landlady knocked at the door but instead of opening it he fled from the back side door and by approaching police lodged a false complaint against her. When the police arrived to arrest her in the mid-night her landlady assured police to keep her present in the morning and therefore the police went back.

11. Then on 27.05.2018 when she learnt that her husband had come back to Nanded she went to Nanded. Having seen her the in-laws threatened

her to kill, her husband snatched the bag containing 25 tolas gold worth Rupees Eight Lakhs. Her father in law was carrying a knife. Her brother in laws Aamer and Juned with an ill eye tried to drag her to the terrace but when her husband scolded them they released her. Lastly she alleged that since she was hoping that her matrimonial life would resume she lodged the report belatedly.

12. The learned advocates for Juned and Aamer who are the brothers of the husband of the respondent no.2 submitted that in fact two crimes were registered in succession at the instance of the respondent no.2 for same offences. The F.I.R. No.179 of 2018 was initially registered on 21.06.2018 whereas F.I.R. No.180 of 2018 was registered on 22.06.2018 and there is variance in the allegations made in these two F.I.R.'s. It is alleged that applicant Aamer was present at the meeting on 14.04.2017 when in fact he was present on duty of his posting as a Civil Judge at a distance of 200 k.m. from Nanded at Ghansavangi.

13. He would point out that even the accused No.6-Javed who is the husband of the sister of the husband and working as a Civil Judge and posted at Mahur is being falsely roped in. The father of the respondent no.2 is working as a Joint Charity Commissioner Worli, Mumbai and by exerting influence has lodged F.I.R. in Crime No. 179 of 2018 and substituted it with

the present F.I.R. The allegations as against applicants Juned and Aamer are improbable and no reasonable man could believe it. The crime has been registered in such a manner as to cause humiliation to them and to create obstruction in applicant Juned securing the employment as he has already been selected as a Civil Judge but is yet to join and the crime has been registered to wreck vengeance against all the family members. The allegations do not attract the ingredients for the offence punishable under Section 395 of the Indian Penal Code and therefore applying the principles laid down in the case of **State of Haryana and Ors. V/s. Bhajan Lal and Ors.; AIR 1992 SUPREME COURT 604** the crime needs to be quashed as against the applicant Juned and Aamer.

14. The learned advocate for the applicants in Criminal Application No. 3338 of 2018 submits that the applicant no.2 is the sister of the husband of the respondent no.2, whereas the applicant no.1 is her husband and both of them have been roped in without any rhyme or reason. The applicant no.1 is also serving as a Judicial Officer and is posted at Mahur and the applicant no.2 is cohabiting with him. The allegations against them are omnibus and vague and it is only to harass them that they have been roped in falsely. The applicant no.1 was in fact discharging his duty as a Judicial Officer from 25.05.2018 and 28.05.2018 when according to the respondent no.2 he had participated in the episode which had taken place during that period.

Therefore, applying the principles in the case of **Bhajan Lal** (supra) the crime may be quashed as against these applicants as well.

15. The learned A.P.P. and the learned advocate for the respondent no.2 strongly oppose both the applications. They submitted that following the principles laid down in the case of **Taramani Parakh V/s State of Madhya Pradesh and Others; (2015) 11 Supreme Court Cases 260** no minute scrutiny can be resorted to ascertain and decipher the role attributable to all these four applicants. They submit that the two brother in laws of the respondent no.2 and the sister in law's husband are from Judicial fraternity. Albeit, one of them is only selected by the M.P.S.C. The husband is also a Judicial Officer and his father is a lawyer. They have systematically subjected the respondent no.2 to cruelty by demanding money. There is strong material to corroborate her version regarding demand for money not only in the form of a hand written chit prepared by the father in law but even there are witnesses who incidentally are from the same community and are lawyers themselves. There is strong material to show that since the date the marriage was being arranged, there was a demand for money. Even it was on the verge of breaking up. Only after about a month a part of money was paid still, on the verge of marriage, a demand was raised for the balance.

16. They would further point out that the brother in laws of the

respondent no.2 had molested her and physically attempted to drag her to the terrace and but for the intervention of her husband they would have certainly succeeded and therefore merely because one of them is already a Judicial Officer and the other is now selected to the post, no lenient view be taken.

17. Similarly even the sister in law and her husband have played their part in subjecting the respondent no.2 to cruelty and both the applications may be rejected.

18. It is apparent that neither the husband nor his parents are before this court. It is only brother in laws, sister in law and sister in law's husband who are before this Court seeking quashment. Admittedly, one of the brother in laws, Aamer is posted as a Judicial Officer at a place Ghansavangi in district Jalna whereas the sister in law is married and has been cohabiting with her husband who is also a Judicial Officer posted at Mahur in Nanded district. It is important to note these facts since, as is noticed by the Supreme Court in catena of cases i.e. **Geeta Mehrotra & Anr. V/s. State of U.P. & Anr.; AIR 2013 SC 181, Preeti Gupta and Anr. V/s. State of Jharkhand and Anr.; (2010) 7 Supreme Court Cases 667, Arnesh Kumar V/s. State of Bihar and Anr; AIR 2014 SC 256** and in the case of **K. Subba Rao & Ors. V/s. The State of Telangana; (Criminal Appeal No.1045 of 2018** arising out of SLP (Cri)No.3286 of 2016), there is a usual tendency in proceedings under Section

498-A to rope in as many relations of the husband as possible. It is necessary to remind ourselves of this universal truth since the matters present yet another instance of a kind. It is to be remembered that it is not that the husband, one brother in law and the husband of sister in law of the respondent no. 2 alone are Judicial Officers. Admittedly, even father of the respondent no.2 is also a Judicial Officer. Therefore, none of the side can be allowed to make capital of this fact. Applying the principles laid down in the case of **Taramani Parakh** (supra) if one needs to approach to the facts and circumstances and the material on record to discern as to what role if any has been played by the applicants. Merely because they are the relations of the husband one cannot *per se* jump to a conclusion that they are even falsely implicated to wreck vengeance.

19. True it is that in fact two crimes have been registered in succession with a little variance bearing Crime No.179 of 2018 and Crime No.180 of 2018. The applicants are resorting to this circumstance to contend that the father of the respondent no.2 being a Judicial Officer has managed to improvise and file a second complaint i.e. the present one by resorting to a meticulous drafting. It is indeed the state of affair. However what had prompted the respondent no.2 and her father to register a second complaint contending almost similar allegations is purely a matter of fact which can only be gone into at a full fledged trial. At this juncture, it would not be

appropriate to draw any interference either way.

20. A meticulous reading of the F.I.R. and all the material collected during the investigation reveals that the applicant Aamer and applicant Fajillodin have been posted as Judicial Officers at their respective postings i.e. Ghansavangi, district Jalna and Mahur, district Nanded on the date of filing of the F.I.R. Through out the F.I.R. they have been referred to but only by way of vague and bald statements. The allegations apparently are precisely against the husband, father in law and mother in law of the respondent no.2 in demanding money and subjecting her to ill-treatment on that count. It is alleged that for all these meetings prior to the marriage even the brother in laws were present as well as the sister in law and her husband were also present. It is alleged that applicant Aamer had aggressively rushed towards her father. It is then *inter alia* alleged that in an episode dated 27.05.2018 both the brother in laws Juned and Aamer with an ill intention pulled her with her hands in order to take her to the terrace but when her husband intervened they released her. True it is that apart from this episode, the role attributed to the applicants is only vague and omnibus. It has been alleged that all the applicants along with the other accused were present at various meetings and were supporting her husband and parents in laws in their demand for money. No specific and precise role is attributed to the sister in law and her husband who has been posted at Mahur as a Judicial Officer.

They have only been referred to collectively while referring to the husband and all the in laws. Therefore going by the F.I.R., there is some role attributable to the applicants Juned and Aamer who are the brother in laws of the respondent no.2 but one cannot find any specific and clear role having been played by the sister in law and her husband.

21. Turning to the statements of witnesses, as is laid down in the case of **Taramani Parakh** (supra) we cannot resort to meticulous scanning of their statements but reference to them is indispensable at this juncture to ascertain what evidence is likely to be led against the applicants and whether there is any independent material to *prima facie* corroborate the allegations in the F.I.R. In her supplementary statement dated 23.06.2018 the respondent has stated that having realized that all the version narrated by her was not present in the F.I.R. dated 21.06.2018 she was giving this supplementary statement. So far as the role attributed to the applicants is concerned, in respect of the episode dated 27.05.2018 she has stated that when she along with her paternal uncle Shafiuddin had gone to her in law's place at Nanded all the accused including all the applicants herein were present. They all rushed towards her with aggression. Applicant Juned, applicant's sister in law and mother in law caught hold her and her husband snatched bag containing ornaments from her. She was then threatened by all of them. Applicant Aamer and Javed had caught hold her uncle and applicant Juned then caught

hold her and saying that her father had implicated him in a false case under Section 354 of the Indian Penal Code and he would now show her as to what Section 354 and 376 would be. Aamer then exhorted him by saying that they would take her to terrace and started dragging her to terrace by holding her hand but her husband scolded both of them. Lastly, she states that when she approached the Superintendent of Police on 30.05.2018 only her father in law came there and promised to take her back for cohabitation after the month of Eid and therefore waiting for it she did not lodged any report immediately. At this juncture, her such supplementary statement is apparently corroborated by the statement of her parental uncle but still, these statements attribute some role to the applicant Juned and Aamer who are her brother in laws but do not attribute any specific role to the sister in law and her husband.

22. True it is that in the F.I.R. it has been also alleged that even the sister in law and her husband were involved in not allowing her husband to go to her parental house. However, in our considered view, it seems to be highly improbable that while the parents in law and even the husband were directly involved, the sister in law and her husband could have dictated the terms and could have prevented her husband from going to the paternal home of the respondent no.2.

23. There are statements of witnesses Shaikh Muzammil who is a

practicing advocate at Nanded, Syed Moiunuddin who is also an advocate from Nanded. Both of them have specifically stated about the meetings wherein demand for money was raised by the in laws before and after the marriage. However, both of them do not attribute any specific and exclusive role to sister in law and her husband. The landlord and the landlady of the husband from Pandharkawada, Tq. Kelapur have referred to the episode regarding harassment of the respondent no.2 and demand for money by the husband. Then there is a statement of Anisa Begun who was the Mediator who had helped the parties to perform the marriage she has also spoken about the demand for money before and after the marriage. However, in none of the statements of these witnesses, any role is attributed to the sister in law and her husband. Taking into account all such material available on record, in our considered view, there is indeed some role attributable to the applicant Juned and Aamer in subjecting the respondent no.2 to some physical and mental cruelty. However, no such role is attributable even *prima facie* to the Fajiloddin @ Javed and Farha Naaz, who is the sister in law and her husband. Therefore, the case of the applicant Fajiloddin @ Javed and Farha Naaz does fall in category 1, 3 and 8 of **Bhajan Lal's** case. The Criminal Application No.3303 of 2018 of the brother in laws is therefore liable to be rejected whereas Criminal Application No. 3338 of 2018 deserves to be allowed.

24. The Criminal Application No.3302 of 2018 is rejected. Criminal

Application No.3338 of 2018 is allowed. The Crime No.180 of 2018 registered with Itwara Police Station, Nanded on 22.06.2018 for the offences punishable under Section 354, 395, 498-A, 504, 506, 34 and 120B of the Indian Penal Code against the applicants Fajiloddin S/o Khaliloddin Siddiqui [Shaikh Javed Siddiqui as referred to in the F.I.R.] and Farha Naaz W/o Fajiloddin Siddiqui [Shaikh Farah Naaz Shaikh Javed as referred in the F.I.R.] is quashed and set aside.

25. The rule in Criminal Application No.3302 of 2018 is discharged and the rule in Criminal Application 3338 of 2018 is made absolute in above terms.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]