

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

CRIMINAL APPLICATION NO. 3499 OF 2018

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| 1 | Tatyaram Parmeshwar Sondage,
Age: 45 years, Occ. Service,
R/o: Flat No. 10, Samrudhi
Apartment, Chakradhar Nagar,
Pangari Road, Beed, District Beed | |
| 2 | Shushama W/o Tatyaram
Sondage, Age: 39 years, Occu.
Household, R/o Flat No. 10,
Samrudhi Apartment, Chakradhar
Nagar, Pangari Road, Beed,
District Beed. | |
| 3 | Radhabai W/o Rohidas Tekale,
Age: 64 years, Occ: Household,
R/o Kranti Nagar, Patoda, Tq.
Patoda, District Beed. | |
| 4 | Rohidas Ranjanrao Tekale, Age:
67 years, Occ. Pensioner, R/o
Kranti Nagar Patoda, Tq. Patoda,
District Beed. | ..APPLICANTS
(Ori.
Accused) |

VERSUS

- | | | |
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| 1 | The State of Maharashtra,
Through Shivaji Nagar Police
Station, Beed. | |
| 2 | Manisha Rajesh Tekale,
Age: 34 years, Occ: Service
(Gram-Sevak)
R/o: Mauli Row House, Balasaheb
Shinde Nagar, Kaku Nagari Road,
Beed, District Beed. | RESPONDENTS |

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Mr. A.B. Anjanwatikar, Advocate h/f Mr. S.B. Chaudhary, Advocate
for Applicants.

Mrs. V.N. Patil- Jadhav, APP for Respondent No. 1

Mr. Kuldeep Kahalekar, Advocate h/f Mr. N.S. Ghanekar, Advocate
for Respondent No. 2.

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

DATED : 2nd JULY, 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 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. 686 of 2018 registered at Shivajinagar Police Station, Beed, District Beed for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code ("IPC") and criminal proceeding bearing RCC No. 44 of 2019 initiated pursuant to aforesaid FIR.

3. The prosecution case in short compass is that, first informant Smt. Manisha Rajesh Tekale on 19-10-2018 visited to the Police of Shivajinagar Police Station, Beed and filed the report that her marriage was solemnized on 06-05-2006 with Rajesh Tekale, son of applicants No. 3 and 4. The applicant No. 2 is the sister-in-law of the complainant, whereas, the applicant No. 1 is the husband of applicant No. 2. According to complainant, they both spouses are Government Servant working as Gramsevak in the Beed Revenue District. After the marriage, complainant joined the company of husband in the joint family comprising in-laws and sister-in-law at Beed. The complainant begotten one son – Vedant of 12 years old

and a daughter – Sai of 06 years old during wedlock from husband. It has been alleged that initially for about three months of marriage, husband, in-laws and other relatives behaved with her in proper manner. But, thereafter, her husband and inmates of matrimonial home used to tease her on account of performing the marriage in village and also not giving hand sum dowry in marriage. They also mentally and physically tortured her on flimsy reasons. According to complainant, the sister-in-law i.e. applicant No.2 used to instigate her husband on account of her physique. After attending the program at the houses of relatives, her sister-in-law, husband and mother-in-law used to scold the complainant that her marriage was performed with husband Rajesh in post-haste manner. According to complainant, since her sister-in-law was not conceived for about seven years of her marriage, therefore, the inmates of matrimonial home insisted the complainant for abortion. But, she did not budge for the same. In the aftermath, the inmates of matrimonial home kept her unfed and used to beat and torture her on one or other pretext. It has been alleged that when complainant was pregnant, the applicants demanded Rs.10 Lakhs from her parents. They gave warning that, if she deliver female child, she will not be allowed for cohabitation. According to complainant, there were endeavour to give understanding to the husband and in-laws of the complainant. Thereafter, the complainant was allowed for cohabitation with husband at matrimonial home. The inmates of matrimonial home used to ask the complainant to leave the job and to work in the

field. It has been alleged that her husband forcibly used to withdraw her salary. It has been contended that whenever her husband came in an inebriated state, he used to pick-up quarrels with the complainant. The inmates of matrimonial home instead of giving understanding to husband of complainant instigated him against wife. According to complainant, the husband Rajesh did not maintain marital relations with the complainant for about six months only at the instance of sister and mother. It has been alleged that after the marriage of brother-in-law, husband Rajesh under the influence of liquor assaulted the complainant with the help of wooden bat and caused fracture injuries to the hand of complainant. She was admitted in Sahyadri Hospital, Beed, and surgery was performed on her. The husband Rajesh expressed his regret for such injury to wife, therefore, no complaint was lodged about the incident. But, her ordeal was continued, she was being abused for about two months by the husband Rajesh. The complainant grumbled that her husband get transferred all the amount from the bank account of complainant to his account and collected the documents of LIC etc and gold ornaments from her. Due to marital discord the children of spouses were kept in Hostel. The applicants did not allow the complainant to see the children in the Hostel. She was not allowed to see the children even during their ailment. Eventually, on 18-07-2018, husband and father-in-law assaulted, threatened and driven her out of the house. Thereafter, complainant came to her parents home for residence. Meanwhile, husband filed

a petition for divorce, whereas, the complainant also filed an application with Women's Redressal Forum, Beed. Despite efforts, there were no positive result. At last, she approached to the Police and filed report for penal action against the applicants.

4. Pursuant to FIR, Police of Shivajinagar Police Station, Beed District Beed 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. After completion of procedural formalities, Investigating Officer filed charge-sheet bearing RCC No. 44 of 2019, which is pending before the learned Magistrate at Beed.

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. There was no unlawful demand of money. According to learned counsel, the complainant was not interested in cohabiting with husband. Learned counsel submits that she is residing in the house purchased by her husband. She herself did not allow the husband and his parents to stay in the house and she is residing with her parents. She used to pick up quarrels with husband and other inmates of matrimonial home. There was no any specific allegations against applicants for cruelty as contemplated under Section 498-A of the IPC. All the allegations are general and

sweeping in nature. The present complaint is nothing but an abuse of process of law. It would be unjust and improper to compel the applicants to face the agony of trial. Hence, learned counsel 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 etc. 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 the 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. 3 and 4. Therefore, we expressed that this Court is not inclined to nod in favour of applicants No. 3 and 4 for grant of relief in their favour. Eventually, learned counsel for applicants No. 3 and 4 seeks leave to withdraw the proceeding to their extent. Accordingly, leave was granted and application to the extent of applicants No.3 and 4 came to be disposed off as withdrawn.

8. In regard to the allegations made against applicants No. 1 and 2, we find that during crucial period of co-habitation of complainant with husband, the applicants No. 1 and 2 were not available at matrimonial home of complainant. They resided separately in Beed town. The applicant No.1 is the Senior Lecturer in College at Majalgaon. The marriage of applicants No. 1 and 2 was performed in the year 2001. There was no specific instance or participation of applicants No. 1 and 2 in the alleged act of cruelty mentioned for adverse inference about their involvement into the crime. We find that these sort of allegations are totally omnibus and general in nature and not sufficient to prove charges of cruelty against them.

9. Be that as it may, there are no specific allegations attributing overt-act of applicants No. 1 and 2 about maltreatment and harassment to the complainant-wife. There were no particulars given in the FIR for their nexus into the crime. The circumstances demonstrate that, it would difficult for the prosecution to establish the charges against applicant Nos. 1 and 2 for the allegations nurtured on behalf of complainant. It would cause injustice to them, in case, they are compelled to face agony of the trial.

10. 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**.

Versus 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."*

11. In the case of - **Preeti Gupta and another Versus 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.*

12. Likewise, in the case of - **Arnesh Kumar Versus 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."

13. 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."

14. 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.

15. In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicants No. 1 and 2. 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. 1 and 2 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. 3 and 4 stands disposed of as withdrawn.

- iii. Application in respect of applicants No. 1 and 2 is hereby allowed.
- iv. The penal proceeding initiated against applicants No. 1 and 2, bearing FIR No. 686 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Shivaji Nagar Police Station, Beed District Beed, and criminal proceeding bearing RCC No. 44 of 2019 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 B-1".
- 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

MTK