

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3519 OF 2018

- 1 Nitin Annasaheb Dandage,
Age: 29 years, Occupation: Labour,
R/o Dudhagaon, Tq. Jintur,
Dist. Parbhani.
- 2 Annasaheb Tukaram Dandage
Age: 65 years, Occupation: Labour,
R/o As above
- 3 Godubai Annasaheb Dandage,
Age: 59 years, Occupation : Labour,
R/o As above
- 4 Babasaheb Annasaheb Dandage,
Age: 35 years, Occupation : Private Service, R/o
Kankuri Road, Shivaji Nagar, Shirdi, Tq. Rahta,
Dist. Ahmadnagar.
- 5 Bhaskar Annasaheb Dandage,
Age : 28 years, Occupation: Private Service, R/o
as above. ... Applicants

VERSUS

- 1 The State of Maharashtra,
Through the Police Station, Mondha Parbhani,
Dist Parbhani).
- 2 Chaya Anand Lahade,
Age 50 years, Occu. Labour,
R/o Pimpri, Tq. Jintur,
Dist. Parbhani. At present,
Durgadi Killa, Retibandar,
Kalyan, Dist. Thane ... Respondents

...

Mr. Ganesh Kore, Advocate for Applicants.
Mr. M. M. Nerlikar, APP for Respondent No. 1
Mr. Ashok L. Saudagar holding for
Mr. H. V. Waghmare for Respondent No. 2

...

**CORAM : T. V. NALAWADE
& K .K. SONAWANE, JJ
DATE : 19th JULY, 2019.**

ORAL JUDGMENT : [PER K.K. SONAWANE,J] :-

1. Heard. Rule. Rule is made returnable forthwith. Matter is taken up for finality 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. 176/2018 registered at Parbhani (New Mondha) Police Station for the offence punishable under Sections 498-A, 306 read with Section 34 of the Indian Penal Code ("IPC").

3. The prosecution case, culled out in brief is as under :-

It has been alleged on behalf of prosecution that the first informant – complainant Chhaya Anand Lahade appeared before the police station Nawa Mondha, Parbhani, on 2/6/2018 and ventilated the grievance that marriage of her daughter - Radha was solemnized on 18/5/2016 with applicant No. 1 – Nitin Annasaheb Dandge. The applicant No. 2 is the father-in-law of deceased, whereas, applicant No.3 is mother-in-law of deceased and applicant Nos. 4 and 5 are her brothers-in-laws. According to prosecution, after marriage, deceased – Radha joined the company of husband for cohabitation at Dudhgaon. It has been alleged that initially for about 4-5 months, she received the proper treatment at her matrimonial home but

thereafter she was maltreated and harassed by the members of the matrimonial home. There was a demand of 5 gram gold ring which was agreed to be given in dowry. She was kept unfed. They used to torture her mentally and physically. She was not allowed to go outside the house. It has been alleged that on 4.5.2017, the elder sister namely Vidya had been to Dudhgaon to meet deceased Radha. The members of the matrimonial home sent Radha with Vidya and asked her to bring 5 Gram Gold ring while returning to matrimonial home. Thereafter, Radha started living at Kalyan in her parental home. When she was pregnant of seven months, members of her matrimonial home were invited for a baby shower family function, but nobody else attended the function. When deceased Radha accompanied with parents had been to Radha's matrimonial home, that time, the applicants refused to allow victim Radha for cohabitation. There were efforts to settle the dispute but found unavailing. Radha was taken back to her parental home. On 21.10.2017, she gave birth to a female child. The in-laws of Radha came to Pimpri and took her back to matrimonial home. After about six days, Radha told on phone that her family members were torturing her. It has been alleged that on 21.02.2018, at 6.30 p.m. her nephew Kailas Lahade informed on phone that father in law of Radha, namely, Annasaheb Dandge, told him that Radha killed her 4 month's old daughter, namely, Sharda and ran away. The complainant alongwith her sons and daughter Vidya came to Parbhani on 22.02.2018, thereafter to Dudhgaon at the house of deceased Radha. The inmates of Radha's matrimonial home picked up quarrel with them. On 24.2.2018, during

the search Radha was spotted on an over-bridge at Parbhani. Then she was taken to the house of uncle Paraji Lahadi at Parbhahni. On 25.2.2018 at 7.00 am. they found that Radha has committed suicide by hanging herself to the iron hook of the roof. Eventually, the complainant lodged the present complaint against the husband, mother-in-law, brother-in-law, as well as sisters-in-laws etc. for cruelty and abetment to commit suicide by victim Radha.

4. Pursuant to FIR, Police of New Mondha Police Station, Parbhahni registered the crime against the applicants 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 penal proceeding initiated against them.

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 penal proceeding with ulterior motive to harass the applicants. There were no specific allegations about maltreatment and torture meted out to the deceased Radha. The allegations in the FIR are vague and baseless. There was no direct and indirect involvement of applicant Nos. 4 and 5. The brothers-in-law are roped in this false case without any reasonable cause. According to learned counsel, the allegations made in the FIR are vague and general in nature. The FIR does not make out the offence of abetment to commit suicide by victim Radha, against applicant. According to learned counsel, the victim Radha might have committed suicide due to sudden

death of her newly born baby. 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 vociferously 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 punishable under Sections 498-A, 323, and 504 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 Gold Ring of 5 grams by the applicants. Moreover, due to continuous maltreatment, the victim Radha committed suicide and applicants are responsible for her death. They abetted the commission of suicide by victim Radha. The respondent No.2 – First informant filed the affidavit in reply 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 to 3 for exercise of inherent powers under Section 482 of Cr.PC. Eventually, learned counsel for applicants seeks leave to withdraw the proceedings to the extent of applicants No. 1 to 3. Accordingly, leave was granted for withdrawal of application to the extent of applicants No. 1 to 3.

8. In regard to allegations nurtured against applicants Nos. 4 and 5, we find that the allegations cast on behalf of complainant – Chhaya against

both the brothers-in-law are vague and general in nature. There are no specific allegations attributing overt-act of these applicants to maltreat and harass the deceased Radha. There were no detail particulars given in the FIR about the participation of these applicants No. 4 and 5 for their act of humiliation or insult to the deceased on account of demand of Gold Ring. The allegations about cruelty by these applicants are found stray and sweeping in nature. Moreover, the applicant Nos. 4 and 5 are residing separately. They have no reason to cause interference in marital life of deceased nor there are allegations of harassment to the deceased sufficient to prompt her to commit suicide. These applicants No. 4 and 5 are not the beneficiaries following marital discord between the spouses.

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 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.”

11. 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.*

12. 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.”*

9. It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Schindia AIR 1988 SC 709** above 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.”

10. 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.

11. In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicants No. 4 and 5. There is no harassment to the deceased or abetment of suicide by the applicant Nos. 4 and 5. 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 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 litigations before the Criminal Court. Hence, penal proceeding initiated against these applicant Nos. 4 and 5 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- 1] The criminal application in respect of applicant Nos. 1 to 3 stands disposed of as withdrawn.
- 2] The criminal application in respect of applicant Nos. 4 and 5 stands allowed partly.
- 3] Rule is made absolute in terms of prayer clause "B" to the extent of applicant Nos. 4 and 5.
- 4] The Fees of appointed counsel is quantified at Rs. 3,000/- to be paid to him through High Court Legal Services Authority, Sub-Committee, Aurangabad.

**[K.K. SONAWANE]
JUDGE.**

**[T. V. NALAWADE]
JUDGE**

grt/-