

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

CRIMINAL APPLICATION NO. 3531 OF 2018

- | | | |
|---|--|--------------------------------|
| 1 | Maqsood S/o Jamil Shaikh,
Age: 31 years, Occu. Service,
R/o : Room No. 2, Building No. 36,
Zone 90, Street 920, Old Wakra, Doha,
QATAR | |
| 2 | Jamil Ahmed S/o Khalil Ahmed
Age: 60 years, Occ: Retired,
R/o: B/3-502, Asmita Orchid-3,
Naya Nagar, Mira Road (East) Thane. | |
| 3 | Zubeda Begum W/o Jamil Ahmed,
Age: 55 years, Occ. House wife,
R/0: B-3-502, Asmita Orchid-3,
Naya Nagar, Mira Road (East) Thane. | |
| 4 | Shabnam Shaikh D/o Jamil Ahmed,
Age: 25 years, Occ: House Hold,
R/0: B-3-502, Asmita Orchid-3,
Naya Nagar, Mira Road (East) Thane. | |
| 5 | Hajira W/o Sajeed Shaikh,
Age: 30 years, Occ: Housewife,
R/o Villa No. 20, Near Indian Embassy,
Al Hital Doha, QATAR. | ..APPLICANTS
(Ori. Accused) |

VERSUS

- | | | |
|---|--|---------------------------------|
| 1 | The State of Maharashtra
Through Begumpura Police Station,
Aurangabad. | |
| 2 | Bushra Kausar W/o Maqsood Shaikh,
Age: 24 years, Occu: Household
R/o: C/o Majed Shaukat Hussain,
Flat No. 4, 1 st Floor, Sana Plaza, Opp.
Ambedkar Satute, Bhadkal Gate,
Aurangabad. | RESPONDENTS
(Non-applicants) |

...

Mr. S.M. Biyani, Advocate for Applicants.
 Mr. D.R. Kale, APP for Respondent No. 1.
 Mr. Abhishek Kulkarni, Advocate for Respondent No. 2.

...

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

DATED : 21st JUNE, 2019.

ORAL JUDGMENT :- (Per: K.K.SONWANE, 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. 64 of 2018 registered at Begumpura Police Station, Aurangabad for the offence punishable under Sections 498-A, 494 and 504 read with Section 34 of Indian Penal Code ("IPC") and Sections 3 and 4 of Dowry Prohibition Act and criminal proceeding bearing RCC No. 1664 of 2018 initiated pursuant to aforesaid FIR.

3. It has been alleged on behalf of prosecution that the first informant – complainant Bushra Kausar approached to the Police of Begumpura Police Station, Aurangabad, on 11-04-2018 and ventilated the grievance that her marriage was solemnized with applicant No. 1 – Maqsood Jamik Shaikh on 02-02-2017. Applicant Nos. 2 and 3 are in-laws whereas applicants No. 4 and 5 are sister-in-laws of the complainant. It has been alleged that after marriage, complainant -wife joined the company of husband for cohabitation at Thane. She was residing in the joint family of her husband, father-in-law, sister-in-laws etc. According to complainant after two weeks of the marriage her husband went to Qatar on 15-02-2017. Thereafter, the complainant

- wife started residing with applicants No. 2 to 4 at Thane. She stayed for a period of one month at Thane. During the said period her husband and father-in-law asked her to bring amount of Rs.1,00,000/- from her parents for purchasing car. It has been alleged that father of complainant - wife paid amount of Rs.1,00,000/- to the applicants. Thereafter, for some days applicants treated the complainant-wife properly. But once again the applicants demanded Rs. 50,00,000/- for purchasing flat. As father of complainant-wife could not satisfy the demand, she was being maltreated and harassed on account of domestic reason. The complainant ventilated the grievance that when she was pregnant, she was harassed physically and mentally by the applicants. Due to such ill-treatment, she became ill. Therefore, she had been to Aurangabad at her parental house. There she had given birth to male child, but no one else from her matrimonial home turned up to see the child or to fetch her for cohabitation. It has been alleged that when father of complainant-wife made request to the applicants to take newly born baby and complainant - wife back to matrimonial home for cohabitation, that time the applicant informed that if amount of Rs. 50,00,000/- is not paid they would not allow the complainant - wife for cohabitation. It has been alleged that the husband performed second marriage with one Heena from Mumbai on 03-09-2017. Thereafter, complainant-wife filed complaint on 08-02-2018 to the Woman Redressal Forum, Aurangabad. Eventually, she approached to the Police Station and filed report.

4. Pursuant to FIR, Police of Begumpura Police Station registered the crime and set the penal law in motion. Thereafter, investigation

was entrusted to the Police Inspector. The Investigating Officer, after completion of Investigation, filed charge-sheet in the Court of Law. Pending the proceedings before the learned Magistrate, applicants moved present application by invoking remedy under Section 482 of the Cr.P.C. for relief to quash and set aside the penal proceedings initiated against them bearing RCC No. 1664 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 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. According to learned counsel, all the applicants are residing separately from the complainant-wife. Learned counsel further added that wife - respondent No. 2 resided separately since year 2017 at her parents house. Applicants No. 2 to 5 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. There is inordinate delay in filing the complaint. The complainant did not mention any specific instances of maltreatment at the hands of applicants. According to learned counsel, the allegations made in the FIR are vague and general in nature. 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.

7. 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 under Sections 498-A, 494, and 504 etc. of the IPC. The complainant categorically described the episode of her maltreatment and torture at the hands of applicants. There were unlawful demand of money from the applicants to purchase the flat. It has also been alleged that though she gave birth to male child, out of wedlock of complainant with applicant No. 1, but no one else from the applicants visited to the complainant to see the child.

8. 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.P.C. 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.

9. In regard to allegations nurtured against applicants No. 4 and 5, we find that the allegations cast on behalf of complainant - wife against sister-in-laws are 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 these applicants No. 4 and 5 for their act of cruelty to the complainant or for demand of money. The allegations about cruelty by these applicants are found stray and

sweeping in nature.

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.*"

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. 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 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 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 disposed of as withdrawn.
- iii. Application in respect of applicants No. 4 and 5 is hereby allowed.
- iv. The penal proceeding initiated against applicants No. 4 and 5, bearing FIR No. 64 of 2018, for the offences punishable under Sections 498-A, 494 and 504 read with Section 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act, registered with Begumpura Police Station, Aurangabad, and criminal

proceeding bearing RCC No. 1664 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".
- 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