

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

CRIMINAL APPLICATION NO.3552 OF 2018

1. Shabana Shahabuddin Shaikh
Age : 35 years, Occ : Household,
R/o Naikwadi Mohalla, Shevgaon,
Tq. Shevgaon, Dist. Ahmednagar.
 2. Shahabuddin Hashimoddin Shaikh
Age : 40 years, Occ : Garrage Owner,
R/o Naikwadi Mohalla, Shevgaon,
Tq. Shevgaon, Dist. Ahmednagar.
 3. Nazmin W/o Altaf Shaikh
Age : 30 years, Occ : Household,
R/o Shoaib Furniture, Azad Chaok,
Aurangabad, Dist. Aurangabad.
 4. Nasrin W/o Sameer Shaikh
Age : 30 years, Occ : Household,
R/o Shoaib Furniture, Azad Chaok,
Aurangabad, Dist. Aurangabad.
- ..APPLICANTS

-VERSUS-

1. The State of Maharashtra
 2. Anjum Sarfaraz Shaikh
Age : 25 years, Occ : Household,
R/o Rajuri (Navgan), Tq. Beed,
Dist. Beed.
- ..RESPONDENTS

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Mr.Shaikh M.A. Jahagirdar, Advocate for the applicants.

Mr.A.P. Basarkar, APP for respondent/State.

Mr.V.P. Savant, Advocate for respondent no.2.

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CORAM: V.L. ACHLIYA, J.

DATE : 21.08.2019

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. With the consent of learned Advocates representing the parties, the petition is heard finally.

2. By this application filed U/Sec. 482 of the Code of Criminal Procedure, the applicants-original accused nos.4 to 7 in Misc. Criminal Case No.956/2018, pending on the file of Judicial Magistrate, First Class Court No.5, Beed have prayed for setting aside the order of issuance of process dated 17.10.2018 passed in the case and to quash criminal proceedings to the extent of applicants-accused nos.4 to 7.

3. Heard learned counsel for the applicants and respondents. Perused the copy of private complaint filed by respondent – complainant and order of issuance of process passed thereon.

4. Mr.M.A. Jahagirdar, learned counsel for the applicants assailed the order of issuance of process with contention that the order has been passed without proper

application of mind. It is submitted that even if the allegations made in the complaint are taken to its face value and accepted as true, still it make out no case to issue process against accused nos.4 to 7. By referring the allegations against the accused nos.4 to 7, learned counsel submits that the allegations are vague and general in nature. It is submitted that no specific act amounting to offence punishable U/Sec. 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code has been attributed to the applicants. The accused nos.1 to 3 are the husband and in laws of respondent – complainant residing at Khamkheda, Tq. and Dist. Beed. The accused nos.4, 6 and 7 are married sisters of accused no.1. They are residing at their respective matrimonial home much prior to marriage of the respondent/complainant with accused no.1. The accused no.5 is the husband of accused no.4. By referring the allegations made in the complaint, learned counsel submits that, it is highly improbable to accept that the accused nos.4 to 7 joining hands with accused nos.1 to 3 cause illtreatment and harassment to respondent – complainant. It is pointed out that though it is mentioned in the complaint that accused nos.1 to 7 have

forcibly administered poison to complainant but in the verification statement recorded on oath, the complainant has stated that the poison was administered by her husband. Neither the presence of present accused shown at the time of alleged incident of administration of poison nor any overt act is attributed to them. In the background of overall facts of the case and the allegations made in the complaint, learned counsel submits that filing of such complaint at the instance of the respondent – complainant is nothing but gross abuse of process of law. For no offence committed on the part of accused nos.4 to 7, they have been falsely implicated in the case only due to matrimonial discord between the respondent – complainant and accused no.1. In order to harass the entire members of family of accused no.1, they are made accused. In order to meet the ends of justice and to save them from further humiliation and harassment and ordeal of trial urged to invoke powers U/Sec. 482 of the Code of Criminal Procedure to quash the proceedings.

5. On the other hand, learned counsel for the respondent – complainant opposed the

application with contention that the application is not maintainable. It is submitted that as against the order of issuance of process, the applicants are provided remedy by way of revision before the Sessions Court. So far as the merit of case, learned counsel submits that the allegations made in the complaint are more than sufficient to make out case for issuance of process U/Sec. 498-A, 323, 504, 506 r/w section 34 of the IPC. It is submitted that though the applicants have pleaded that they are residing far away from the place of residence of the accused nos.1 to 3 and they are residing at their respective matrimonial houses but the notice dated 20th August, 2018 issued by the accused no.1 reveals that notice was sent from Advocate practicing at Shevgaon, Dist.Ahmednagar, the place where the accused nos.4 to 7 are residing. It is submitted that the accused nos.4 to 7 have mentally and physically harassed and ill-treated the complainant. By referring the allegations made in the complaint, learned counsel submits that, it is specifically alleged that on 23rd July, 2018, accused nos.1 to 7 in furtherance of their common intention cause the miscarriage of child in the womb of

the complainant. They administered poisonous substance to the complainant. It is submitted that while issuing process, the Court is not required to hold an inquiry in-depth. The scope of inquiry at the stage of cognizance of offence confines to consider the allegations made in the complaint from limited point of view to find out whether case of issuance of process is made out. It is submitted that the allegations made in the complaint are more than sufficient to make out case for issuance of process against accused nos.4 to 7 to prosecute them for committing offence punishable U/Sec. 498-A, 324, 504, 506 r/w section 34 of the IPC.

6. In order to appreciate the submissions advanced, I have carefully scrutinized the complaint filed by the complainant – respondent. The complainant has filed complaint as against her husband, in-laws and the present applicants seeking prosecution for committing offences punishable U/Sec. 498-A, 323, 504, 506 r/w section 34 of the IPC. The accused nos.4, 6 and 7 are the married sisters of accused no.1 and sisters-in-laws of the complainant. The accused no.5 is husband of the accused no.4.

The accused no.1 is the husband of the complainant. The accused nos.2 and 3 are the father-in-law and mother-in-law of complainant. The complainant has claimed that her marriage with accused no.1 was solemnized on 22nd May, 2011 as per the customs and rituals prevailing in Muslim community. Out of her wedlock with accused no.1, she is having one child. At the time of filing complaint, she claimed to be in advanced stage of pregnancy. She has alleged that for a period of 2-3 months after the marriage, she was treated properly by the accused persons. Thereafter she was ill-treated and harassed by accused nos.1 to 7 as she could not conceive child for the period of about five years from marriage. They used to tell her that she is barren. After taking treatment she begotten child who is named as "Anas". The entire expenditure of her delivery was borne by her parents. She thought that after the birth of child, the accused persons would change their behaviour. However, they have not changed their conduct and continued to illtreat and harass. The accused tried to play black magic upon her. They kept her starving. They used to ask her to bring Rs.2 Lacs from her parents. The

accused nos.1 to 7 used to tell that her child is not born out of wedlock with the accused no.1. They used to say that her child is illegitimate child. In order to abort child in her wombs, they forcibly administered her poisonous substance used for killing the rat.

7. On consideration of allegations made in the complaint and the statement of the complainant recorded on oath, learned Magistrate has issued process U/Sec. 498-A, 323, 504, 506 r/w section 34 of the IPC, vide order dated 17.10.2019. Being aggrieved by the complaint filed and process issued, the applicants-accused nos.4 to 7 have moved this Court to quash the proceedings in exercise of powers U/Sec. 482 of the Code of Criminal Procedure.

8. On due consideration of the submissions advanced, in the light of overall allegations made in the complaint, I am of the view that the case is made out to invoke the powers U/Sec. 482 of the Code of Criminal Procedure to quash the proceedings to the extent of applicants – accused nos.4 to 7. The availability of remedy by way of revision

U/Sec. 397 cannot operate as a bar for this Court from invoking powers U/Sec. 482 of the Code of Criminal Procedure. The legal position to this effect has been crystallized by the Apex Court in the cases of (i) **Rasiklal V/s Kishore** reported in (2009) 4 SCC 446 and (ii) **Prabhu Chawala V/s State of Rajsthan** reported in (2015) 17 SCC 562. The Apex Court has held that availability of remedy by way of revision does not operate as bar to invoke the jurisdiction U/Sec. 482 of the Code of Criminal Procedure. In that view, the objection raised as to the maintainability of the application, cannot be accepted.

9. So far as merit of the submissions advanced, I am of the view that the allegations made in the complaint are too general and vague in nature. If we read the complaint as a whole then no specific acts amounting to offences U/Sec. 498A, 323, 504, 506 of the I.P.C. have been attributed against the accused nos.4 to 7. The allegations made in the complaint are made as if the accused nos.1 to 7 throughout ill-treated and harassed the complainant after few months of her marriage with accused no.1.

The marriage of the respondent – complainant with accused no.1 came to be solemnized in the year 2011. The complaint in the nature of private complaint first time filed after seven years of marriage. Although it is claimed that in the year 2017, the incident of forcible administration of poison has taken place but no such complaint lodged with Police.

10. In order to attract the offence U/Sec. 498-A of the IPC, there must be an act of cruelty as defined under clause (a) or (b) of Explanation to Section 498-A of the IPC. All acts of ill-treatment and harassment cannot be termed as an act of cruelty to attract the offences U/Sec. 498-A of the IPC. If we read the allegations, then no such acts are attributed to accused nos.4 to 7 so as to prima facie satisfy the ingredients of provisions of Section 498-A of the IPC. It is nowhere stated that the accused nos.4 to 7 have ill-treated and harassed her with an intention to coerce the complainant to submit to demand of dowry. So also there are no such acts attributed so as to infer that alleged acts of ill-treatment and harassment caused with intention to drive the

complainant to commit suicide and to cause grave injury or danger to her life or limb. Thus examination of the allegations made in the complaint on the touchstone of act of 'cruelty' as explained U/Sec. 498-A of IPC, I am of the view that, the complaint lacks in particulars and ingredients of offence U/Sec. 498-A of the IPC against the accused nos.4 to 7 i.e. present applicants.

11. So far as contention of the learned counsel for the respondent-complainant that the complainant has made specific allegations that an attempt was made to abort her pregnancy by forcible administration of poison used for killing rat. In this context the learned counsel for the applicants has rightly pointed out that though the allegations have been made in the complaint, but in the verification statement made on oath before the Court before issuance of process, the complainant has not stated anything as to the role attributed to the accused nos.4 to 7 in the alleged act of administration of poison to the complainant. In the statement on oath made before the Magistrate, the said act of forcible administration of poison to terminate her

pregnancy has been attributed only to accused no.1 i.e. her husband. If we consider the statement on oath recorded before the Court then no specific act has been attributed to the accused nos.4 to 7 to attract the offences punishable U/Sec. 498-A, 323, 504, 506 r/w section 34 of the IPC as against them. In that view the complaint filed by the complainant to the extent of accused nos.4 to 7 make out no case for issuance of process for offence punishable U/Sec. 498-A, 323, 504, 506 r/w section 34 of the IPC. Admittedly, the accused nos.4, 6 and 7 are married sisters of the accused no.1 and residing at their respective matrimonial houses. The accused no.5 is the husband of accused no.4. It is difficult to believe that the accused nos.4 to 7 used to visit the house of accused nos.1 to 3 only for the purpose of ill-treating and harassing the complainant. It is difficult to believe that accused nos.4 to 7 used to regularly visiting house of accused no.1 only for the purpose of causing ill-treatment and harassment to complainant.

12. It is noticed that now a day there is growing tendency on the part of the

complainant to make the complaint in such fashion on account of matrimonial discord so as to implicate entire members of family of her husband to harass them. In view of such tendency, the Apex Court has time and again issued a note of caution to the Investigating Agency as well as Courts of law to be cautious while registering the offences as well as issuance of process in cases arising out of matrimonial discord. The Apex Court in the case of **Social Action Forum for Manav Adhikar and ors V/s Union of India Ministry of Law and Justice and others** reported in (2018) 10 SCC 443 has issued detailed guidelines to be followed while registering the offence U/Sec. 498-A as well as arrest and remand of the accused.

13. Perusal of the order passed by learned Judicial Magistrate reflects total non-application of mind and casual approach in passing the order to issue process against the applicants. In the case of **Pepsi Foods Ltd. and another V/s Special Judicial Magistrate and others** reported in (1998) 5 SCC 749, the Apex Court has observed that the issuance of process is a serious matter and criminal law cannot be set into motion as a

matter of course. The Court must be cautious in invoking such powers. In para No.28, the Apex Court has observed as under :-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself

put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

14. In the case of ***Geeta Mhrotra and another Vs. State of Uttar Pradesh and another***, reported in ***(2012) 10 SCC 741***, the Apex Court has noted the tendency on the part of informant to rope in as many of the relatives of husband as possible and quashed the complaint against the married sister of the complainant's husband, not living with the family of the complainant's husband by observing that High Court ought not to have relegated the sister-in-law to the ordeal of trial. It is held, where large of number of family members are included in F.I.R. by casually mentioning their names and complaint did not disclose their active involvement, cognizance of matter against them not to be justified and amounts to abuse of judicial process and fit case for quashment of proceedings against them U/Sec. 482 of Cr.P.C. is justified. In para 18 and 21, the

Hon'ble Apex Court has observed as under :-

"18. Their Lordships of the Supreme Court in Ramesh Vs. State of T.N., (2005) 3 SCC 507, had been pleased to hold that the bald allegations made against the sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge sheet furnished the legal basis for the magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge sheet, none of the alleged offences under Section 498A, 406 and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court

were pleased to hold that the High Court ought not to have related the sister in law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.

21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of **G.V.Rao Vs.L.H.V. Prasad, reported in (2000) 3 SCC 963** wherein also in a matrimonial dispute, this Court has held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that : (SCC p.698, para 12)

"12. There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young

couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts."

15. If we consider the case in hand in the light of statement of the complainant recorded then the complainant has not made any specific allegations against accused nos.4 to 7. She has made general and vague allegations against accused nos.4 to 7 in the complaint. The learned Judge has not taken pains to read the complaint and verification statement before passing the order of issuance of process. Summoning the person to face the prosecution results into a serious consequences. It is duty of the Court while passing the order of issuance of process to exercise the powers with utmost care and caution and ensure that no innocent person subjected to harassment and humiliation on account of such orders to be passed in a private complaint case filed at the instance of the complainant.

16. The Apex Court in the case of **State of Haryana and others V/s Ch. Bhajan Lal and others** reported in **AIR 1992 S.C. 604** has laid down the following broad principles to be borne in mind while dealing with the application for quashing the proceedings :-

1. Where the allegations made in the First

Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- 4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- 5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- 6. Where there is an express legal bar*

engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

17. On due consideration of the facts of the case in hand in the light of guidelines of the Apex Court in the case of **State of Haryana and others V/s Ch. Bhajan Lal and others** (supra), I am of the view that the case in hand is a fit case wherein the powers U/Sec 482 of the Code of Criminal Procedure deserves to be invoked to quash the proceedings against the applicants to save them from facing further rigours of criminal proceedings and humiliation and harassment. I am therefore inclined to allow the application and quash the proceedings to the extent of applicants-accused nos.4 to 7. Accordingly, the Application is allowed in

terms of prayer clause "B" to the extent of applicants – accused nos.4 to 7 only.

It is expressly made clear that quashing of criminal proceedings shall have no bearing upon the continuation of proceedings as against the accused nos.1 to 3, who are not party to the proceedings.

18. Rule made absolute in above terms.

[V.L. ACHLIYA]
JUDGE

SGA