

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

CRIMINAL APPLICATION NO. 3588 OF 2018

1. Ismail Babbu Shaikh,
Age: 40 years, Occ. Lawyer
2. Shaikh Babbu Miyaa,
Age: 68 years, Occ. Retired Govt Servant
3. Anwari Bi Shk Babbu Miya
Age: 65 years, Occ. Household

All 1 to 3
R/o: Green Park Society,
Khadka Road, Bhusawal,
Dist Jalgaon.

4. Javed Shaikh Babbu Miya
Age: 38 years, Occ: Service
5. Summaya W/o Javed Shaikh
Age: 35 years, Occ: Service

All 4 & 5 Both
R/o: Heena Park, Near Khadkar Road
Bhusawal, Tal Bhusawal,
Dist. Jalgaon.

6. Shabbana Shaikh Naeem
Age: 35 years, Occ: Household
7. Naeem Shaikh Jafar
Age: 40 years, Occ: Business

Both 7 & 8 R/o:
Bagwan Galli, Bhusawal Bazar Peth,
Bhusawal, Taluka Bhusawal,
District Jalgaon

... **Applicants**

Versus

1. The State of Maharashtra,
Through Police Inspector,
Bazar Peth Police Station,
Bhusawal, Taluka Bhusawal,
Dist. Jalgaon.
2. Ayesha W/o Ismail Shaik Babbu Miya
Age: 38 years, Occ. Household,
Near Abbas Ali Bila Anjum School
Jaam Mohalla, Near Railway Station,
Bhusawal, Taluka Bhusawal,
Dist. Jalgaon.

... Respondents

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Mr. Girish A. Nagori, Advocate for the Applicants.
Mr. M.M. Nerlikar, A.P.P. for respondent no.1-State.
Ms. Zainab Surti, Advocate for Respondent No.2

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**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**
DATE : 19.03.2019

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

Heard. Rule. Rule is made returnable forthwith. Learned A.P.P. waives service for respondent no.1. Learned advocate Ms. Zainab Surti waives service for the respondent no.2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The applicants are seeking quashment of F.I.R. lodged by the respondent no.2 and the Crime No. 449 of 2018 registered with Bazar Peth Police Station, Bhusawal for the offences punishable under Section 498-A, 323, 504, 506 read with Section 34 of the I.P.C.

3. The respondent no.2 lodged the F.I.R. on 14.11.2018 alleging that she was married to applicant no.1 on 25.12.2005. After the marriage she started co-habiting with all the applicants. Applicant nos.2 and 3 are his parents, applicant no.4 is his brother, applicant no.5 is his brother's wife, applicant no.6 is his sister and applicant no.7 is sister's husband. It is alleged that she had put in thirteen years of marital life and all the while was subjected to physical and mental torture. Her husband robbed her of her gold ornaments and cash. When she demanded it back from the applicants she was assaulted. Thereafter her husband started communicating with a lady. When she objected the applicants tried to set her on fire. With a hope that everything will fall in place and looking to the future of her children she tolerated the harassment. However, again the applicant no.1 started demanding an amount of Rupees One Lakh to establish his office and subjected her to cruelty on that count. She then alleged that on 17.08.2018 when she once again objected the applicant while he was talking to a lady on phone he called his parents and then all the applicants went upstairs where he was residing and then all of them assaulted her husband and brother in law caused injury to her vein.

4. The learned advocate for the applicants submits that the applicants are being falsely implicated to wreck vengeance. The respondent no.2 had put in a long marital life of thirteen years and has begotten two

children. It is highly improbable that she could have tolerated physical and mental torture for such a long period. A plain and simple matrimonial dispute has been tried to make capital of to rope in the husband and all the relations from his family 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 F.I.R and the crime may be quashed.

5. The learned advocate for the respondent no.2 and the learned A.P.P. oppose the application. By referring to her affidavit in reply, they submit that there must have been some strong reason for the respondent no.2 to lodge the F.I.R. in spite of having put in thirteen years of marital life. She has specifically mentioned as to how she was demanded money and was assaulted. Even a Non Cognizable Report No. 294 of 2018 was registered at her instance in respect of a similar episode of assault on 03.11.2018 against all the applicants. Even they pointed out the injury certificate showing that she had sustained a major lacerated wound over left forearm which was caused by a sharp object and was grievous in nature. Even prior to filing of the F.I.R. she had approached the police and had lodged a written complaint on 06.09.2018 against all the applicants. Going by the allegations in the F.I.R. and the complaint coupled with the other documents in the form of registration of non-cognizable case and the injury certificate there is enough material to reveal involvement of the applicants in commission of the crime.

6. After this Court expressed disinclination to grant any relief to the applicant nos.1 to 3, their learned advocate, on instructions, seeks leave to withdraw the application to their extent.

7. So far as the role attributable to applicant nos.4 to 7 is concerned, even according to respondent no.2 they are not residing in the same house with her and have been staying separately. Copies of the Aadhar card of applicant nos.4 to 7 also corroborate this fact. Though the applicant nos.4 to 7 have been named in the F.I.R. only a vague and omnibus statement has been made that all the applicants had subjected her to ill-treatment and cruelty without specifying any overt act to applicant nos.4 to 7.

8. As far as applicant no.4 who is her brother in law is concerned the F.I.R. states that the applicant no.1 and the applicant no.4 had cut her vein on 17.08.2018. However in the written complaint filed by her to police on 06.09.2018 i.e. just before the lodging of the F.I.R. she has narrated this episode by saying that it is the applicant no.4 who had caught hold her and the applicant no.1 had cut her vein. It is thus apparent that there is a material contradiction in respect of the allegations leveled against the applicant no.4 as far as this episode is concerned.

9. Besides if this incident had taken place on 17.08.2018, the injury certificate placed on record by the respondent no.2 reveals that she was taken

to the General Hospital, Jalgaon on 25.08.2018 with the aforementioned injury and it was noticed by the Medical Officer that the injury was fresh. It according to her the incident had taken place on 17.08.2018, one cannot find any reason as to how this injury certificate states that there was a fresh injury on her person when she was brought to the hospital on 25.08.2018. We do not intend to go into further scrutiny still we find that there is no material to substantiate these allegations against applicant no.4.

10. Taking in to account all the aforementioned circumstances, in our considered view, there is no precise and specific overt act attributed to applicant nos.4 to 7 to make out all the necessary ingredients for constituting offences punishable under Section 498-A, 323, 504, 506. The case squarely falls in category nos. 1 and 3 of the **Bhajan Lal's** case as far as applicant nos.4 to 7 are concerned. Application is therefore allowed in terms of prayer clause-B to the extent of applicant nos.4 to 7.

11. The application to the extent of applicant nos.1 to 3 is disposed of as withdrawn.

12. The rule is made absolute in above terms.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]