

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

CRIMINAL APPLICATION NO. 3593 OF 2018

- 1 Mohd. Sajid Khan s/o. Ali Khan,
Age 37 years, Occu. Business,
R/o. Degloor Naka, Nanded,
Taluka and District Nanded.
- 2 Mohd. Imran Khan s/o. Ali Khan,
Age 29 ears, Occu. Business,
R/o. Old Bus Stand, Banchincholi Road,
Hadgaon, Taluka Hadgaon, District Nanded.
- 3 Mohd. Sardar Khan s/o. Ali Khan,
Age 23 years, Occu. Labourer,
R/o. As above.
- 4 Afsari Begum w/o. Mohd. Ali Khan,
Age 68 years, Occu. Household,
R/o. As above.
- 5 Ajmeri Bee w/o. Isaq Shaikh,
Age 39 years, Occu. Household,
R/o. 1-67, Dodarna,
Taluka and District Adilabad
[Telangana State].
- 6 Parveen Begum w/o. Sk. Jameer,
Age 27 years, Occu. Household,
r/o. Tajpura Ward, Umarkhed,
Taluka Umarkhed, District Yeotmal.
- 7 Sarvari Begum @ Hajara Sadaf w/o.
Shaikh Akil,
Age 24 years, Occu. Household,
R/o. Ward No.1, Bas Stand Road,
At Post Telegaon, Taluka Umari,
District Nanded.

Applicants
.. (Original accused)

VERSUS

- 1 The State of Maharashtra,
Through Police Station Officer,
Police Station Bhagyanagar,
Taluka and District Nanded.
- 2 Nazema Khanam w/o. Mohd. Sajid Khan,
Age 30 years, Occu. Household,
R/o. Lane No. 8, Peer Burhan Nagar,
Nanded, Talua and District Nanded.

Respondents
(R.No.2- original
.. complainant)

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Mr. Gajanan G. Kadam, Advocate for Applicants.

Mrs. V. S. Chaudhari, APP for respondent No. 1-State

Ms. Pratibha Suryawanshi, Advocate for Respondent No. 2 (Appointed)

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

DATED : 30th AUGUST, 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. 169 of 2018 registered at Bhagyanagar Police Station, Nanded, District Nanded, for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code (IPC).

3. It has been alleged on behalf of prosecution that the first informant – complainant Nazima Khan Mohd. Sajid Khan, on 11-06-2018, approached to the Police of Bhagyanagar Police Station, Nanded, District Nanded, and ventilated the grievance that her marriage was solemnized on 13-11-2005 with applicant No. 1 – Mohd. Sajid Khan, resident of Degloor Naka, Nanded. The applicants No. 2 and 3 are the brother-in-laws and applicant No. 4 is mother-in-law, applicants No. 5 to 7 are the sister-in-laws of the complainant-wife. After the marriage, complainant-wife joined the company of husband for cohabitation, in a joint family comprising mother-in-law, brother-in-laws and sister-in-laws. It has been alleged that since inception the inmates of matrimonial home used to harass mentally and physically to the complainant on the filmsy ground. It has been contended that the applicant-husband was in habit of drinking liquor. The inmates of

matrimonial home used to instigate applicant-husband to mal-treat the complainant-wife and gave threat of life. Due to quarrels, complainant-wife and her husband started residing separately on rent in Workshop Corner area at Nanded. At that time, mother-in-law and sister-in-laws used to visit and instigate applicant-husband to beat the complainant. The applicant-husband was taking suspicion on her character. They asked the complainant to bring Rs. 5 Lakhs from her parents. She was driven out of the house. The complainant-wife after giving understanding again joined the company of applicant-husband for cohabitation at her matrimonial home. That time, brother-in-law Imran, mother-in-law and applicant-husband maltreated and tortured the complainant-wife severely by pulling her hairs and beaten-up her by means of slaps and fists blows. The applicants abused the complainant in filthy language and harassed her physically and mentally. Eventually, she approached to the Police for penal action against the applicants.

4. Pursuant to FIR, the Police of Bhagyanagar Police Station, Nanded, District Nanded, registered the crime and set the penal law in motion. Pending the investigation, the applicants moved the present application by invoking remedy under Section 482 of Cr.P.C. for the relief to quash and set aside the impugned FIR.

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 false 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, the applicants No. 2 to 7 are residing separately. He further added that complainant-wife has filed the proceeding under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights as well as proceeding for maintenance against the applicant-husband in the Family Court at Nanded. The present FIR came to be lodged to harass and to wreak vengeance from the applicants' family. The present FIR is the off-shoot of a matrimonial disputes. Learned counsel for the applicants submits that the applicants No. 2 to 7 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 marital affairs of the spouses. The complainant did not mention any specific instances of maltreatment at the hands of applicants No. 2 to 7. The allegations made in the FIR are vague and general in nature. There was no demand of any kind on the part of applicants. 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.

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 of 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 for business purpose. There were allegations of physical and mental torture to the complainant.

7. Having given anxious consideration to the arguments advanced on behalf of both sides, we do not find merit in the contentions propounded to the extent of applicant No.1 for exercise of inherent jurisdiction of this Court under Section 482 of Cr.P.C. to exonerate from the charges pitted against him. Eventually, the learned counsel for the applicants seeks leave to withdraw the proceedings to the extent of applicant No.1. Therefore, we allowed the learned counsel to withdraw the proceeding to the extent of applicant No.1 only.

8. In regard to allegations nurtured against the applicants No. 2 to 7, we find that the allegations cast on behalf of complainant-wife against these applicants are totally 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 applicants No. 2 to 7 for their act of cruelty to the complainant or for demand of money, etc. The allegations about cruelty by applicants No. 2 to 7 are found stray and sweeping in nature. The applicants No. 2 and 3 are the brother-in-laws and applicant No. 4 is mother-in-law, whereas, applicants No. 5 to 7 are the sister-in-laws and they are residing separately. The applicant No. 5 to 7 are the married sister-in-law and since their marriage, they are residing at their matrimonial home. The applicant No. 4 mother-in-law is 68 years old. Therefore, it would difficult to conceive that the applicants No. 2 to 7 have any reason to cause interference in the marital life of spouses. It is fallacious to appreciate that they are the

beneficiaries from the marital discord between the spouses. The circumstances on record conjures-up an image that the present FIR came to be filed against these applicants with purported motivation to harass them.

9. 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."*

10. 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.

11. 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."

12. It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Scindia 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."

13. 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.

14. In the light of aforesaid exposition of law, in the instant case, it would be unjust and improper to allow the prosecution to proceed further against applicants No. 2 to 7. It would be an futile efforts and would cause injustice to them, if they are compelled to face agony of trial before criminal Court. It would also dissipate the precious time of Court of law as the possibility of their ultimate conviction in this matter is totally bleak. The ends of justice would be served by ensuring that the applicants No. 2 to 7 may not be forced unnecessarily to go on litigation before the Criminal Court. Hence, penal proceeding initiated against applicants No. 2 to 7 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is partly allowed.
- ii. The Criminal Application in respect of applicant No. 1 Mohd. Sajid Khan S/o. Ali Khan is disposed of as withdrawn.

- iii. The Criminal Application in respect of applicants No. 2 to 7 is hereby allowed.
- iv. The penal proceeding initiated against applicants No. 2 to 7, bearing FIR No. 169 of 2018, for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC registered with Bhagyanagar Police Station, Nanded District Nanded, is ordered to be quashed and set aside.
- v. Rule is made absolute partly in terms of prayer clause "C".
- vi. Fees of the learned Advocate Ms. Pratibha Suryawanshi, appointed on behalf of respondent No.2 is quantified at Rs.3000/- (Rupees Three Thousand only), which would be payable by the High Court Legal Services Authority, Sub-Committee, Aurangabad.
- vii. As this Court has made out order on 11-07-2019 to see that the conveyance expenses of the wife has also been ordered to be given and attempt was made to settle the matter and as she came on three occasions to this Court, hence, conveyance expenses of Rs.1500/- (Rs. One Thousand Five Hundred Only) is to be paid to her immediately today itself and it is to be paid through the High Court Legal Services Authority, Sub-Committee, Aurangabad.
- viii. The Criminal Application is disposed of in above terms.
- ix. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE