

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

CRIMINAL APPLICATION NO.3710 OF 2018

1. Shakur Rashid Khan,
Age 65 years, Occu. Business,
R/o Room No.3, Shiv Shankar Chawl,
Hanuman Tekadi, Shiv Vallabh Road,
Behind Classic Building,
Boriwali (E), Mumbai-66.
2. Imran Baba Khan,
Age 33 years, Occu. Business,
R/o Shop No.1/2 Ground Floor,
Parth Apartment, Plot No.12,
Sector 26A, Koparigaon,
Navi Mumbai, Washi,
District Thane.
3. Parvin Imran Khan,
Age 28 years, Occu. Business,
R/o Shop No.1/2 Ground Floor,
Parth Apartment, Plot No.12,
Sector 26A, Koparigaon,
Navi Mumbai, Washi,
District Thane.
4. Arbaj Shirajkhan,
Age 20 years, Occu. Business,
R/o Boriwali Bruhun Mumbai,
Mumbai.

... **Applicants**

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Paranda,
District Osmanabad.

2. Sadiya Firozkhan
Age 22 years, Occu. Nil,
R/o Jawala, Tal. Paranda,
Dist. Osmanabad.

... **Respondents**

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Mr. A.S.More, Advocate for Applicants.

Mr. S.B.Yawalkar, APP for Respondent-State.

Mr. Jaydip B. Paikrao, Advocate for Respondent No.2
(appointed).

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**CORAM : T.V.NALAWADE AND
MANGESH S. PATIL, JJ.**

DATE : 02.04.2019

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

Heard. Rule. The Rule is made returnable forthwith. The learned APP waives service for the Respondent-State. The learned advocate Mr. Jaydip B. Paikrao waives service for 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 FIR of Crime No.195 of 2018 registered with Paranda Police Station, District Osmanabad for the offences punishable under Section 498-A, 504, 506 read with Section 34 of

the Indian Penal Code.

3. After hearing arguments of both the sides when this court expressed its disinclination to grant any relief to applicant No.4, his learned advocate, on instructions, seeks leave to withdraw the application to his extent.

4. Respondent No.2 lodged the FIR inter alia alleging that her marriage was solemnized on 24.04.2017. After her marriage, once she was taken to the Government Hospital at Mumbai when she complained of abdominal pain. He informed her father telephonically that there was a stone in her kidney. When her father came down to Mumbai and undertook another investigation from a doctor it was noticed that she was having bladder stone. All the applicants and her husband as well as her mother-in-law subjected her to ill-treatment on account of such disease. Her father was made to bear the expenses of her medical treatment. With a view to allow her to get some rest her father took her to his home. However since thereafter her husband never allowed her to resume cohabitation. On the contrary, he sent a notice to her. When her father and some interveners approached her

husband and in-laws, they refused to allow her to resume cohabitation under the pretext that she was taking ill frequently and they would not be able to bear the expenses. She then lodged a complaint under the Domestic Violence Act in the Court at Paranda. Her husband thereafter without her consent solemnized second marriage and ultimately they told her father that they would allow her to resume cohabitation only if money was paid to them.

5. According to the learned advocate for the applicants, applicant No.3 is the sister of the husband whereas applicant No.2 is her husband and applicant No.1 is the paternal uncle of the husband. Though they have been named in the FIR, the allegations against applicant Nos.1 to 3 are omnibus and vague. In fact they have been residing separately and not in the matrimonial house of Respondent No.2. There was no occasion for them to subject her to any ill-treatment muchless on account of any demand for money. Merely because of the matrimonial dispute and out of frustration the Respondent No.2 has unnecessarily roped in them. It

would be a sheer misuse of process of the law if they are made to face the investigation and the charge.

6. The learned APP and the learned advocate for Respondent No.2 oppose the application. They submit that at this juncture minute scrutiny of the material is not permissible. Prosecution needs to be extended an opportunity to substantiate the charge which is possible only during the course of trial and the application may be rejected.

7. Perusal of the FIR reveals that nothing special and precise has been attributed to any of the applicant Nos.1 to 3 either in respect of the demand for money or in subjecting her to cruelty. A bald and omnibus allegation is levelled by referring them collectively.

8. Besides, the applicants have produced the photo copies of their respective Aadhar Cards showing that they are residents of some different place other than the matrimonial home of Respondent No.2. Taking note of these facts, in our considered view, the case in hand presents yet another instance as to how in a complaint

under Section 498-A of the IPC not only the husband and his parents or brother cohabiting with a wife are arrayed as accused but even the distant relations and married sister is being roped in for the obvious reason. The case of the applicant Nos.1 to 3 is squarely covered under Category 1, 3 and 8 of Bhajan Lal's case. The application therefore, deserves to be allowed to the extent of applicant Nos.1 to 3.

9. The application to the extent of applicant Nos.1 to 3 is allowed. The rule is made absolute in terms of prayer clause 'B' to their extent.

10. The application to the extent of applicant No.4 is disposed of as withdrawn.

11. The fees of the learned advocate Mr. Jaydip B. Paikrao appointed to represent Respondent No.2 is quantified at Rs.3,000/- and shall be paid through the High Court Legal Services Authority.

(MANGESH S. PATIL, J.)

(T.V.NALAWADE, J.)

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vmk/-