

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

CRIMINAL APPLICATION NO. 3808 OF 2018

1. Sachin Ravikant Deshmukh,
Age- 36 years, Occu – Service,
R/o: Pimple Gurav, New Sangvi,
Pune.
2. Ravikant Dattarao Deshmukh,
Age – 64 years, Occu- Retired,
R/o: Vijay Nagar, Nanded.
3. Sau. Shobha Ravikant Deshmukh,
Age: 60 years, Occu. Household,
R/o: Vijay Nagar, Nanded.
4. Rahul Ravikant Deshmukh,
Age -37 years, Occu-Business,
R/o Jagrut Hanuman Nagar,
Near Phurande Nagar Jawal,
Nanded.
5. Sau. Smita Rahul Deshmukh,
Age - 33 years, Occu-Household,
R/o Jagrut Hanuman Nagar,
Near Phurande Nagar Jawal,
Nanded.
6. Sau. Manisha Dattatrya Sawant,
Age – 38 years, Occu - Service,
R/o: Near Ambika Mangal Karyalay,
Dnyaneshwar Nagar, New Nanded.
7. Dattatrya Ramrao Sawant,
Age-40 years, Occu- Service,
R/o: Near Ambika Mangal Karyalay,
Dnyaneshwar Nagar, New Nanded.
8. Smt. Prathibha Santosh Deshmukh,
Age - 62 years, Occu - Household,
R/o: Vijay Nagar, Nanded.
9. Tushar Santosh Deshmukh,
Age -42 years, Occu-Service,
R/o: 201, Punyarthi Tower,
Beturkar Pada, Kalyan West
Dist. Thane.

10. Sau. Sarika Vijay Deshmukh,
Age- 41 years, Occu- Service,
R/o: Near Vijay S. Deshmukh
Hasur Gharkul, Jadhav Lay Out Pusad,
Dist. Yawatmal.
11. Sau. Anjali Satish Devsarkar,
Age – 39 years, Occu- Household,
R/o : Satish J. Devsarkar, At Post
Devsari, Tq. Umarkhed,
Dist. Yawatmal.
12. Sau. Manju Shitalkumar Tawar,
Age-39 years, Occu-Household,
R/o: Hanuman Warde, Umarkhed,
Dist : Yawatmal.

... APPLICANTS.

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Police Station, Vazirabad,
Nanded.
2. Snehal Sachin Deshmukh,
Age -32 years, Occu- Household,
R/o V.S. Deshmukh, Near Basin Mangal
Karyalay, Gowardhan Ghat, Road,
Vazirabad, Nanded.

... RESPONDENTS

...
Mr. M.V. Salunke, Advocate for applicants
Mr. R.D. Sanap, APP for respondent No. 1-State
Mr. G.G. Kadam, Advocate for Respondent No. 2
...

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

DATED : 27th 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. 360 of 2018 registered at Vazirabad 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 Sau. Snehal W/o Sachin Deshmukh, on 24-11-2018, approached to the Police of Vazirabad Police Station, Nanded, District Nanded, and ventilated the grievance that her marriage was solemnized on 26-02-2012 with applicant No. 1 – Sachin Deshmukh, resident of Vijay Nagar, Nanded. The applicants No. 2 and 3 are in-laws, applicant No. 4 is the brother-in-law and applicant No. 6 is the sister-in-law of the complainant-wife. Applicant No. 5 is wife of applicant No. 4. Applicant No. 7 is the husband of applicant No. 6. Applicant No. 8 is Aunt (widow) of applicant No. 1. Applicant No. 9 is the son of applicant No.8. Applicants No. 10 to 12 are the cousin sister-in-laws of complainant-wife. After the marriage, complainant-wife joined the company of husband for cohabitation in Nanded Housing Society, Vijaynagar, Nanded, in a joint family comprising in-laws, brother-in-law and sister-in-law. It has been alleged that since inception the inmates of matrimonial home used to harass the complainant on the ground that they were not satisfied about the dowery amount, gold ornaments, etc. given in her marriage. The husband, in-laws, brother-in-law, his wife and four sister-in-laws took the complainant in a room and disclosed that she is beautiful and educated lady, and therefore, they allowed the applicant Sachin to marry with her. But, they did not receive sufficient dowery found

suitable to their status in the society. The other persons in the society were ready to give Rs. One Crores towards dowry. According to complainant, she narrated all these facts to her husband and requested him to take her for cohabitation at his service place – Pune. But, her husband also asked the complainant to bring Rs. 15 Lakhs from her parents to purchase a flat at Pune. In the month of March-2012, father and brother of complainant paid amount of Rs. 15 Lakhs to her husband. Accordingly, he has purchased a flat within the limits of Pimpalegurav. In the month of April-2012, the applicant-husband took the complainant wife at Pune. The inmates of matrimonial home used to visit at Pune. They used to instigate the applicant-husband to harass the complainant-wife. They used to abuse and humiliate her. They insist to bring amount of Rs. Ten lakhs and 25 Tolas gold from her parents.

4. It has been alleged that after the birth of son on 27-01-2013, all the inmates of matrimonial had been to her parents house to see the newly born baby. The parents of complainant in all respect honoured them. However, they placed the demand of Rs.10 Lakh and 25 tolas gold to her parents. But, the parents could not cough-up the demand which resulted into threats to complainant that she would not be allowed for cohabitation unless and until their demands were satisfied. Therefore, she stayed at her parents home till June-2013. The father and other family members of complainant-wife made endeavour to convince the husband and in laws to take her back for cohabitation and gave 10 tolas gold ornament to her son. The complainant wife again joined for cohabitation at her matrimonial home. They treated her in

proper manner for about one month. But, thereafter, she was again maltreated for domestic work, etc. It has been alleged that when she was pregnant for second time in the month of October-2013, her husband beaten-up her under the influence of liquor, which resulted into her miscarriage. Thereafter, she had been to her parental home at Nanded. After taking treatment, she again returned to Pune in the month of January-2014. But, in the year 2015, the applicant-husband maltreated and tortured the complainant-wife severely and driven her out of the house. Since then, she had been to her parents home at Nanded. According to complainant, her father and brother tried to convince the inmates of matrimonial home to treat the complainant in proper manner. The applicant husband left the job and insisted the complainant-wife to bring amount for starting new business from her parents. The parents of complainant did not fulfill the demand. So that, the applicant-husband become angry, assaulted and abused her. Eventually, she approached to the Police Station for penal action against the applicants.

5. Pursuant to FIR, the Police of Vazirabad 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.

6. 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 12 are residing separately. He further added that applicant-husband has filed the proceeding under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights against respondent No. 2. In the said proceeding, the learned Family Court has granted interim maintenance to the respondent-complainant. The present FIR came to be lodged to harass and to take vengeance from the applicants' family. The present FIR is off-shoot of a matrimonial disputes. Learned counsel for the applicants submits that the applicants No. 2 to 12 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 12. 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.

7. 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, etc. 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 purchasing flat, etc. There were allegations of physical and mental torture to the complainant. The complainant-wife has filed affidavit-in-reply on record.

8. Having given anxious consideration to the arguments advanced on behalf of both sides. We do not find merit in the contentions propounded on behalf of applicants No.1 to 3 for exercise of inherent jurisdiction of this Court to exonerate them from charges pitted against them, by exercising the power under Section 482 of Cr.P.C. There are allegations sufficient to make out the case *prima facie* against applicants No. 1 to 3. It cannot be considered that the present penal proceeding against them would be an abuse of process of law. In view of nature of allegations against applicants No.1 to 3, we are unable to persuade ourselves to favour them. Therefore, this Court is reluctant to quash and set aside the impugned penal proceeding against applicants No. 1 to 3.

9. In regard to allegations nurtured against the applicants No. 4 to 12, 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 the applicants No. 4 to 12 to maltreat and harass the complainant-wife. There were no detail particulars given in the FIR about participation of applicants No. 4 to 12 for their act of cruelty to the complainant or for demand of money, etc. The allegations about cruelty by applicants No. 4 to 12 are

found stray and sweeping in nature. The applicant No. 4 is brother-in-law, whereas, applicant No. 5 is his wife and they are residing separately. The applicant No. 6 is the married sister-in-law and since her marriage, she is residing at her matrimonial home with husband i.e. applicant No. 7. The applicant No. 8 is the aunt and she is residing with her son applicant No. 9. The applicants No. 10 to 12 are the married cousin sister-in-laws of the complainant. They are the distant relatives. Therefore, it would difficult to conceive that the applicants No. 4 to 12 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.

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 Punja 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 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."

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 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. 4 to 12. 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. 4 to 12 may not be forced unnecessarily to go on litigation before the Criminal Court. Hence, penal proceeding initiated against applicants No. 4 to 12 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 applicants No. 1 to 3 stands rejected.
- iii. The Criminal Application in respect of applicants No. 4 to 12 is hereby allowed.
- iv. The penal proceeding initiated against applicants No. 4 to 12, bearing FIR No. 360 of 2018, for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC registered with Vazirabad Police Station, Nanded District Nanded, is ordered to be quashed and set aside.
- v. Rule is made absolute partly in terms of prayer clause "B".
- vi. The Criminal Application is disposed of in above terms.
- vii. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE