

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

CRIMINAL WRIT PETITION NO. 1299 OF 2018

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| 1 | Vaibhav S/o Sukram Chaudhari,
Age: 27 years, Occu. Service,
R/o Chaure Sir, Last Lane,
Near Railway Station, Shikshak
Colony,
Pachora Road, Jamner,
Tal. Jamner, Dist. -Jalgaon.
Cell No. 9561743787 | .. | Petitioner No.1
(Original accused) |
| 2 | Ratnabai w/o Sukram Chaudhari,
Age: 45 years, Occu. Household,
R/o : as above. | | |
| 3 | Sukram s/o Tukaram Chaudhari,
Age: 55 years, Occu. Nil.
R/o: as above. | | |
| 4 | Sagar s/o Sukram Chaudhari,
Age: 24 years, Occu. Education,
R/o: as above. | .. | Petitioners No.2 to
6 (original accused)
are deleted in this
proceeding under
Order of this Court,
dated 04-07-2019. |
| 5 | Kiran S/o Jairam Chaudhari,
age: 21 years, Occu. Education,
R/o: Wavre Nagar, Kammathawada,
Nashik, Tq. And Dist. Nashik | | |
| 6 | Gopal S/o Raman Chaudhari,
Age: 31 years, Occu. Business,
R/o: as above. | | |

VERSUS

- | | | | |
|---|---|--|--|
| 1 | The State of Maharashtra,
Through : Police Inspector,
Harsool Police Station,
Aurangabad, Tq. And
Dist. Aurangabad. | | |
| 2 | Mrs. Jyoti w/o Vaibhav Chaudhari,
Age : 21, Occ - Education,
Plot No. 28, Mohini Raj Puram,
Bhagat Sing Nagar Road, Harsool,
Tal and Dist: Aurangabad.
Cell No. 9325142238 | | |

RESPONDENTS

Petitioner No. 1 - Mr. Vaibhav Sukram Chaudhari, Party-in-person.
 Petitioners No.2 to 6 are deleted as per order dated 04-07-2019.
 Mr. A.S. Shinde, APP for respondent No. 1-State.
 Respondent No. 2 - Mrs. Jyoti w/o Vaibhav Chaudhari, Party-in-person.

...
 WITH

CRIMINAL APPLICATION NO. 3818 OF 2018

1. Sukram S/o Tukaram Chaudhari,
 Age: 55 years, Occu. Nil.,
 R/o : Chaure Sir, Last Lane,
 Near Railway Station, Shikshak Colony,
 Pachora Road, Jamner.
2. Ratnabai w/o Sukram Chaudhari,
 Age : 45 years, Occu. Household,
 R/o: as above.
3. Sagar s/o Sukram Chaudhari,
 Age : 24 years, Occu. Education,
 R/o: as above.
4. Kiran s/o Jairam Chaudhari,
 Age: 21 years, Occu. Education,
 R/o: Wavre Nagar, Kammathwada,
 Nashik, Tq. And Dist. Nashik.
5. Gopal s/o Raman Chaudhari,
 Age: 31 years, Occu. Business,
 R/o : As above.

...APPLICANTS
 (Ori. Accused)

VERSUS

1. The State of Maharashtra,
 Through : Police Inspector,
 Harsool Police Station,
 Aurangabad, Tq. And
 Dist. Aurangabad.
2. Mrs. Jyoti w/o Vaibhav Chaudhari,
 Age 22 years, Occu. Education,
 Plot No. 28, Mohini Raj Puram,
 Bhagat Sing Nagar Road, Harsool,
 Tal and Dist. Aurangabad
 Cell No. 9325142238

...RESPONDENTS

...
 Mr. S.M. Pandit, Advocate for applicants.
 Mr. A.S. Shinde, APP for respondent No. 1
 Respondent No. 2 - Mrs. Jyoti w/o Vaibhav Chaudhari, Party-in-person.
 ...

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

DATED : 25th JULY, 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 point of controversy in both the proceedings are centered on the issue of quashing and setting aside the criminal proceeding bearing Crime No. 150 of 2018 on the similar and identical facts and circumstances, therefore, both these allied proceedings are dealt with together for its decision on merit by this Common Judgment.

3. The petitioners-applicants preferred present application/petition 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. 150 of 2018 registered at Harsool Police Station, Aurangabad, District Aurangabad for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC as well as the criminal proceeding bearing Regular Criminal Case No. 1718 of 2018 filed pursuant to aforesaid crime.

4. It has been alleged on behalf of prosecution that the first informant – complainant Mrs. Jyoti Chaudhari, approached on 18-08-2018, to the Police of Harsool Police Station, Aurangabad, District Aurangabad, and ventilated the grievance that the

petitioner- Vaibhav S/o Sukram Chaudhari (in Cri. WP No. 1299 of 2018) is her husband, whereas, applicants No. 1 to 3 (in Cri. Application No. 3818 of 2018) are the in-laws and brother-in-law of the complainant-wife respectively. The rest of the applicants are cousin brothers of husband of complainant. Her marriage was solemnized on 01-07-2017 with petitioner- Vaibhav. After marriage, complainant - wife joined the company of husband for cohabitation at Jamner. The spouses were residing in rented premises with in-laws and brother-in-law. After the marriage, inmates of matrimonial home treated her in proper manner for about two/three months. But, thereafter, the complainant - wife was subjected to mental torture by the applicant-mother-in-law on account of domestic work. The inmates of matrimonial home used to instigate the applicant-husband, which resulted into abusing and beating to the complainant-wife. According to complainant, whenever she had been to parents' home, she used to disclose her ordeals to the parents. But, they used to give understanding to the complainant-wife and send her back for cohabitation. The father of complainant also made endeavour to give understanding to the in-laws for proper treatment to the complainant, but all efforts found unavailing. It has been alleged that father-in-law was demanding Rs. Twenty Lakhs for purchasing the house property and motorcycle for the applicant-husband. They insisted the complainant-wife to bring the amount from her parents and on that count also she was being harassed and abused by the applicants. The father-in-law also

used to advise the applicant-husband to keep the complainant-wife unfed until she satisfy the demand of money. He had also hurled abuses and given threats of life to the complainant. The applicants - cousin brothers of husband of complainant-wife also attempted to instigate the in-laws and husband against complainant and consequently, the complainant-wife had to face mental and physical torture at the hands of husband and other inmates of matrimonial home. According to complainant, her husband was on training at WALMI, Aurangabad, for a period of one month, and therefore, he left the complainant-wife at the house of her parents. But, at that time applicant-husband was taking suspicion on her character and abused the complainant and her parents. Eventually, she approached to the Women's Grievance Redressal Forum, but all her efforts did not evoke result. At last, she filed present report to the Police of Harsool Police Station for penal action against the applicants.

5. Pursuant to FIR, Police of Harsool Police Station, Aurangabad District Aurangabad registered the crime and set the penal law in motion. Investigating Officer recorded statements of witnesses acquainted with the facts of the case. He collected relevant documents of matrimonial dispute between the spouses. The Investigating Officer after completion of investigation filed the charge-sheet under Section 173 of Cr.P.C. The petitioner/applicants prayed to absolve from the charges pitted against them and quashed and set aside the FIR bearing Crime No. 150 of 2018 and

consequential proceeding arising thereof bearing RCC No. 1718 of 2018, pending before the learned Magistrate at Aurangabad for further process.

6. Before embarking into the merits of the matter, in view of nature of allegations made against each other by the spouses, their young age and period of marital life since July-2017 after performing marriage ceremony, the educational career of spouses being an Graduate in Civil Engineering, etc. we find it justifiable to provide reasonable opportunity to the spouses to get their marital discord settled amicably. Therefore, we, on couple of occasions, postpone the hearing of present proceeding. But, all our efforts did not evoke favourable result. Both the spouses are bent upon for fighting a legal battle. At last, we preferred to proceed further for adjudication of matter-in-issue on merit.

7. The petitioner-husband - Vaibhav Chaudhari, party in person (in Cri.W.P. No. 1299 of 2018) submits that there were no physical and mental cruelty to the complainant-wife on his part or by any other members of her matrimonial home. But, she has filed present false penal proceeding with an *malafide* intention to harass all of them. The behaviour of respondent No. 2 was adamant and arrogant in nature. The respondent No. 2 wife was insisting to reside separately from his family members and tortured him on flimsy reasons. In the aftermath, he (husband) filed divorce petition under Section 13 (1)(1A) of the Hindu Marriage Act, 1995 for

dissolution of marriage. The husband in-person further submits that the allegations made in the FIR are totally false, baseless and general in nature. There was no demand of any kind on the part of his parents. The present complaint is nothing but an abuse of process of law. It would unjust and improper to compel the applicants including himself to face the agony of trial. In case, the present penal proceeding is not quashed and set-aside, it would cause serious prejudice and injustice to him. He relied upon the legal ratio laid down in the case of **Madhavrao Jiwaji Rao Schindia and another Versus Sambhajirao Chandrojirao Angre and others,** reported in **AIR 1988 SC 709.**

8. The learned counsel for applicants (in Criminal Application No. 3818 of 2018) vehemently submits that there were no physical and mental cruelty to the complainant on the part of these applicants. But, she has filed present false penal proceeding with purported motivation to harass the applicants. There were no specific allegations about maltreatment and torture meted out to the complainant - wife. According to learned counsel, all the applicants are residing separately from the spouses. Learned counsel further added that petitioner-husband has filed the proceedings for dissolution of marriage. However, instead of cohabitation, she filed the FIR against husband and others. Learned counsel for applicants submits that relations between husband and wife became strain and she is not interested for cohabitation with the husband. The applicants 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 domestic affairs of the spouses. The complainant did not mention any specific instances of maltreatment at the hands of other applicants. The learned counsel submits that 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.

9. Respondent No. 2-first informant party in person opposed the contentions put-forth on behalf of petitioner/applicants and submits that the allegations of ill-treatment nurtured on her behalf 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 petitioner/applicants. There was unlawful demand of Rs. Twenty Lakh from the petitioner/applicants for purchasing house property and motorcycle etc. There were allegations of physical and mental torture to the complainant for unlawful demand on the part of applicants. Respondent No.2-complainant has filed affidavit-in-reply on record.

10. Having given anxious consideration to the arguments advanced on behalf of both sides, we find that there is no scope for exercise of inherent powers under Section 482 of the Cr.P.C. in

favour of applicants No. 1 to 3 (in Criminal Application No. 3818 of 2018) as well as petitioner-husband (in Cri. Writ Petition No. 1299 of 2018) as it appears from the FIR that *prima facie* case is made out against them. There are specific allegations cast against husband, in-laws and brother-in-law about cruelty as envisaged under Section 498-A of I.P.C. There was unlawful demand as well as physical and mental torture to the complainant following marital discord. We do not find force in the submission advanced on behalf of husband himself and learned counsel appearing for applicants No.1 to 3. Therefore, we are not inclined to grant any relief in favour of the applicants No. 1 to 3 (in Criminal Application No. 3818 of 2018) as well as petitioner-husband (in Cri. Writ Petition No. 1299 of 2018). It cannot be said that the present criminal proceeding against applicants No. 1 to 3 (in Criminal Application No. 3818 of 2018) as well as petitioner-husband (in Cri. Writ Petition No. 1299 of 2018) is abuse of process of law. However, the allegations nurtured on behalf of complainant-wife and applicant-husband against each other are to be tested on the anvil of merit in detail trial before concerned Court of Magistrate.

11. In regard to allegations nurtured against applicants No. 4 and 5 i.e. Kiran S/o. Jairam Choudhari and Gopal Raman Choudhari (in Criminal Application No. 3818 of 2018) , we find that the allegations cast on behalf of complainant - wife against these applicants No. 4 and 5 are totally vague and general in nature. There are no specific allegations attributing overt-act of these applicants No. 4 and 5 to

maltreat and harass the complainant - wife. There were no detail particulars given in the FIR about participation of No. 4 and 5 for their act of cruelty to the complainant or for demand of money etc. The allegations about cruelty by No. 4 and 5 are found stray and sweeping in nature. The complainant-wife attempted to put-forth that the applicants No. 4 and 5 – the cousin brothers of her husband always made endeavour to instigate her husband and misguided him in the marital affairs between spouses. But, these allegations are omnibus and general in nature. The complainant-wife produced the extract of messages forwarded on cell-phone to fortify her contentions. It is to be noted that the applicants No. 4 and 5 are the distant relatives and residing separately from husband and complainant. In view of factual aspect of the matter, it would hard to perceive that the applicants No. 4 and 5 have any purported motivation to cause interference in the marital affairs of the spouses. It is fallacious to appreciate that they are the beneficiaries from the marital discord between the spouses.

12. 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."

13. 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.*

14. 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."

15. It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Schindia and another Versus Sambhajirao Chandrojirao Angre and others**, (*supra*), 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."

16. 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.

17. 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 and 5 (in Criminal Application No. 3818 of 2018). 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 is totally bleak. The ends of justice would be served by ensuring that the applicants may not be forced unnecessarily to go on litigation before the Criminal Court. Hence, penal proceeding initiated against these applicants No. 4 and 5 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Writ Petition No. 1299 of 2018 stands dismissed. Rule stands discharged.
- ii. The Criminal Application bearing No. 3818 of 2018 is partly allowed.
- iii. The Criminal Application No. 3818 of 2018 in respect of applicants No. 1 to 3 stands dismissed.

- iv. The Criminal Application No. 3818 of 2018 in respect of applicants No. 4 and 5 is hereby allowed.
- v. The penal proceeding initiated against applicants No. 4 and 5 (in Criminal Application No. 3818 of 2018), vide FIR bearing Crime No. 150 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Harsool Police Station, Aurangabad, District Aurangabad, as well as criminal proceeding bearing Regular Criminal Case No. 1718 of 2018 pursuant to aforesaid crime is ordered to be quashed and set aside.
- vi. Rule is made absolute in terms of prayer clauses "B and C" of Criminal Application No. 3818 of 2018.
- vii. The Criminal Application is disposed of in above terms.
- viii. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

Sd/-

[T.V. NALAWADE]
JUDGE

MTK