

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

CRIMINAL APPLICATION NO. 3842 OF 2018

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| 1 | Bhaskar Narhari Bansode,
Age : 48 years, Occu. Service,
R/o: Shivajinagar, Parali Vaijenath,
Tal. Parali Vaijenath, Dist. Beed | | |
| 2 | Madan Narhari Bansode,
Age: 45 years, Occu. Labourer,
R/o: Nisarg Colony, Aurangabad,
Tq. Aurangabad, Dist. Aurangabad. | | |
| 3 | Vinod Ganesh Ujagare,
Age : 30 years, Occu. Nil,
R/o: Mahalunge, Tal: Mulshi,
Dist.Pune. | | |
| 4 | Ganesh Tukaram Ujagare,
Age: 50 years, Occu. Nil,
R/o: Mahalunge, Tql. Mulshi,
Dist. Pune. | | |
| 5 | Akshaya Sahebrao Tarkase,
Age 20 years, Occu. Education,
R/o. Panchshil Nagar, Beed,
Tal and District : Beed. | .. | Applicants |

VERSUS

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| 1 | The State of Maharashtra
Through Incharge Police Station Officer
R/o: Sangamner City Police Station,
Sangamner, Taluka Sangamner, &
Dist. Ahmednagar. | | |
| 2 | Varsha W/o Balbhim Bansode,
Age : 30 years, Occu. Household,
R/o: Ashok Sarode, Bhimshakti Nagar,
Chinchawad, Pune, Dist. Pune | .. | Respondents |

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Mr. Santosh B. Bhosale, Advocate for Applicants.
Mrs. V.N. Patil (Jadhav), APP for Respondent No. 1 - State.
Mr. Anil S. shivpuje, Advocate for Respondent No.2 (Appointed)

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

DATED : 13th JUNE, 2019.

JUDGMENT :- (Per: K.K.SONWANE, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for parties at admission stage.
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. I-79 of 2018 registered at Sangamner Police Station, Sangamner, District Ahmednagar, for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code ("IPC") as well as the criminal proceeding initiated on the basis of aforesaid FIR.
3. Prosecution case, in nut-shell, is that – the complainant Varsha W/o Balbhim Bansode approached to the Sangamner Police Station, Sangamner, District Ahmednagar, on 07-03-2018 and ventilated the grievance that her marriage was solemnized with one Balbhim Narhari Bansode, brother of applicants No. 1 and 2. She begotten one son during wedlock from husband- Balbhim. After some days of marriage, she came to know about first marriage of her husband. But, she prepared herself for cohabitation because of her minor son. The husband was reluctant to allow her for cohabitation at matrimonial home. The complainant – wife insisted husband to take her with him at the place of his avocation. But, her mother-in-law was reluctant to allow the complainant Varsha with her son Balbhim. There were frequent quarrels in between spouses and in-laws. She was subjected to cruelty and maltreatment on flimsy reasons. The husband and mother-in-law used to beat and abused her. The applicant No. 5-Akshay was residing with husband of the complainant and he has also

used to scold and abused her son. According to complainant, the applicants frequently harassed, tortured and abused her on account of her disabled son. Eventually, the circumstances constrained wife-Varsha to approach to the Police to lodge report for penal action against husband and others. Pursuant to FIR, Police of Sangamner Police Station, District Ahmednagar registered the crime and set the penal law in motion against applicants.

4. Pending investigation, applicant preferred the present application invoking remedy under Section 482 of the Cr.P.C. for relief to quash and set aside the penal proceeding initiated against them bearing FIR No. I-79 of 2018 as well as the criminal proceeding, if any, initiated on the basis of aforesaid FIR and pending before the learned Magistrate at Sangamner.

5. Learned counsel for applicants vehemently submits that the applicants are implicated in this case without any reasonable cause. There were no physical and mental cruelty to the complainant Varsha, on the part of these applicants. According to learned counsel, the applicants are residing separately from husband and in-laws of the complainant Varsha. Moreover, there are no specific allegations about maltreatment and torture to the complainant at the hands of complainant. There are sweeping and vague allegations nurtured on behalf of complainant in the FIR. They had no any reason to cause any interference in the marital life of spouses and in no manner they could be beneficiaries of the alleged mental and physical cruelty to the complainant Varsha. However, the complainant embroiled all these applicants in order to settle the scores.

6. The learned APP as well as learned counsel for respondent No. 2-first informant raised the objections to the contentions propounded on behalf of applicants and submit that the complainant was subjected to maltreatment and harassment on the part of applicants. They used to abuse, harass the complainant and her son on account of domestic reasons.

7. Having given anxious consideration to the rival submissions advanced on behalf of both sides, we find that the arguments advanced on behalf of learned counsel for the applicants appear much more sustainable and considerable one. Admittedly, there are no specific allegations cast on behalf of complainant in the FIR against the present applicants. The complainant stated in her FIR that applicant No. 5-Akshay was son of maternal aunt of her husband and he and residing at Pune with her husband used to scold and abused her on account of his disabled son. It is to be noted that there were no allegations against applicant No. 5 that he had participation in the ordeals of complainant for cruelty as envisaged under section 498-A of IPC.

8. In respect of other applicants No. 1 to 4 there were sweeping and general allegations that they frequently used to harass her on account of her son. But, the complainant did not mention any specific incident about involvement of these applicants, which would be considered as a torture or cruelty to the complainant-wife. It is also worth to mention that husband or in-laws of the complainant - Varsha W/o Balbhim Bansode did not appear before this Court for any sort of relief. The present applicants are distant relatives of her husband being brother etc. In such circumstances, it would fallacious to allow

prosecution to proceed further against these applicants for trial before criminal Court for charges under Section 498-A of the IPC. It would be an futile efforts and chances of ultimate conviction into the matter to the extent of these applicants are totally bleak and no fruitful purpose would be served.

9. At this juncture, it would be profitable to make a reference and observations of 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."*

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 Schindia 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 matter in hand, it would unjust and improper to allow the prosecution to proceed against applicants. It would be an futile efforts and cause injustice to them. It would also dissipate the precious time of Court of law. The ends of justice would be served by ensuring that the applicants may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against them deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is allowed.
- ii. The penal proceeding initiated against applicants bearing FIR No. I-79 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC registered with Sangamner Police Station, Sangamner District Ahmednagar, is hereby quashed and set aside as well as the criminal proceeding initiated on the basis of aforesaid FIR.
- iii. Rule is made absolute in terms of prayer clauses "C & C-1".

- iv. The fees of the learned counsel appointed is quantified as Rs. 3000/- (Rupees Three Thousand only) which would be payable by the High Court Legal Services, Sub-Committee, at Aurangabad.
- v. Criminal Application is disposed of in above terms.
- vi. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

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