

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

CRIMINAL WRIT PETITION NO. 669 OF 2019

- 1) Ganesh Madhukar Sule,
Age; 44 years, Occ; Service,
R/o; Room No. 1, Sai Krupa
Sadan Chawl, Opposite Municipal
School, Tulshetpada, Bhandup West,
Mumbai 400078.
- 2) Smt. Yashoda w/o Madhukar Sule,
Age; 65 years, Occ; Nil,
R/o; Kusmod Village, Malshias Taluka,
District; Solapur.
- 3) Shri Madhukar Nuvrati Sule,
Age; 71 years, Occ; Retired,
R/o; Kusmod Village, Malshias Taluka,
District; Solapur.
- 4) Shri Prakash Madhukar Sule,
Age; 46 years, Occ; Service,
R/o; Room No. 1, Sai Krupa Sadan Chawl,
Opp. Municipal School, Tulshetpada,
Bhandup West, Mumbai 400078.
- 5) Smt. Manda Prakash Sule,
Age; 33 years, Occ; Housewife,
r/o; As above.

**(Petition is
dismissed as
against the
petitioner No. 1 as
per order dated
28.4.2019.)**

**...PETITIONERS
(Orig. Accused)**

V E R S U S

- 1) The State of Maharashtra,
Through Inspector Incharge,
Dhule City Police Station.
- 2) Reshma Waman Zimbal,

Age; Major, Occ; Nil,
R/o; 16/B, Shree Krishna Colony,
Opp. Om Building Chittod Road,
Dhule, District; Dhule.

**..RESPONDENTS
(Resp. No. 2 is
Original
Complainant)**

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Shri. T.M. Venjene h/f Shri Jitesh Agrawal, Advocate for the Petitioners
Shri M.M.Nerlikar, learned A.P.P.for the Respondent No.1
Shri. H.P. Bondar h/f Shri N.L. Chaudhari, Advocate for Respondent No.2
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**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

DATE : 11th FEBRUARY, 2020

JUDGMENT : [PER : M.G. SEWLIKAR, J.]

Rule. Rule is made returnable forthwith. With consent of the parties, heard finally.

2. This is a writ petition filed under article 226 of the Constitution and under Section 482 of the Code of Criminal Procedure, for quashing of the First Information Report, No. 256 of 2018, registered with Police Station Dhule City, Dist. Dhule for the offences under Sections 498-A, 506, 406, 323, 504 read with Section 34 of the Indian Penal Code.

3. Facts giving rise to this petition are that the respondent No. 2 married the petitioner No. 1 in the year 2006. The petitioner No. 2 is the mother-in-law, petitioner No. 3 is father-in-law, the petitioner No. 4

is the brother-in-law of the respondent No. 2. The petitioner No. 5 is the wife of petitioner No. 4.

4. In the F.I.R. it is alleged by the respondent No. 2 that the petitioner Nos. 2 to 5 were living together at the time of marriage. The respondent No. 2 was treated well for a period of 4 to 5 months after the marriage. Her husband (petitioner No. 1) was employed with a transport company. All the petitioners started saying that she should bring Rs. 1,00,000/-. Because of the poor condition of her father, she could not bring the said amount. The petitioner No. 2 used to be partial to petitioner No. 5. Both the petitioner Nos. 2 and 5 used to pass sarcastic remarks at her and would abuse her parents. They used to provoke the petitioner No. 1 and her husband, owing to which he would beat her. She delivered a male child on 27.10.2007, whose name is Aryan. At the time of naming ceremony of the said Aryan, all the petitioners demanded Rs. 1,00,000/- from her parents. After a period of one year, petitioners took her and her son back. They always used to beat her and send her to her maternal place. Because of this ill-treatment she came back to her parents house in the year 2008, but the petitioners did not come to take her back as their demand of Rs. 1,00,000/- was not fulfilled. In the year 2010 she has filed petition for restitution of conjugal rights. Despite allowing petition the petitioners did not take her back. In the month of May, 2018 she had been to Solapur for the marriage of the son of her cousin brother by name

Ravindra Sule. The petitioner Nos. 2 and 3 had been there. They had assured the respondent No. 2 that she would be maintained well. On the fixed date of the petition for maintenance, the petitioner No. 1 had come to the Court and he assured respondent No. 2 to maintain her well. The brother of the respondent No. 2, Ashok Waman Zimbal said that the respondent No. 2 would be sent through the Court, for which the petitioner No. 1 had objected. In the month of June, 2018, she went to her maternal place. On the assurance of the petitioners, she withdrew the petition for maintenance. She was again subjected to ill-treatment thereafter. Therefore, she has filed this complaint against the petitioner Nos. 1 to 5.

5. By the order of this Court dated 26.4.2019, petition was dismissed against the petitioner No. 1.

6. Heard, Shri. T.M. Venjene, Advocate for the Petitioners, Shri M.M.Nerlikar, learned A.P.P. for the Respondent No.1 and Shri. H.P. Bondar, Advocate for Respondent No. 2.

7. It was brought to the notice of this Court by the learned counsel for the petitioners Shri Bondar that on 15.5.2013 the marriage tie between the petitioner No. 1 and the respondent No. 2 had been dissolved by the Family Court, Mumbai in Petition No. A-790 of 2010. On perusal of the F.I.R., it appears that the entire allegations of ill-

treatment and the demand of money are made only against the husband of respondent No. 2. The allegations against the petitioner Nos. 2 to 5 are vague in nature. No specific allegations are made against any of the petitioners Nos. 2 to 5. The decree of the divorce was passed in the year 2013 and in the year 2013, this F.I.R. has been filed against the petitioners. In view of this, on the basis of omnibus allegations, it cannot be said that a cognizable offence is made out against the petitioner Nos. 2 to 5. The Hon'ble Supreme Court in the case of **Kans Raj V/s State of Punjab (AIR 2000 SC 2324)**, has observed that

"there is a growing tendency to implicate near relatives of the husband in dowry cases".

It is further observed as under :

"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"

8. The easiest way to harass the husband and his relatives is to lodge the F.I.R. against the relatives of the husband. In the present case also the petitioner Nos. 2 to 5 have been implicated, even if, the divorce decree was passed in the 2013. In view of this no cognizable

offence can be said to have been made against the petitioner Nos. 2 to 5. Therefore, for the reasons discussed above, the petition will have to be allowed to the extent of petitioner Nos. 2 to 5. Hence the following order is passed :

ORDER

- 1) Petition in respect of petitioners No. 2 to 5 is allowed.
- 2) Relief is granted in terms of prayer clause 'C'.
- 3) Fees of the appointed counsel is quantified at Rs. 3,000/- and the same be paid by High Court Legal Service Authority Sub Committee, Aurangabad.
- 4) Rule is made absolute in those terms.
- 5) Amount of maintenance deposited in this Court be given to respondent No. 2-wife.

(M.G. SEWLIKAR, J.)

(T.V. NALAWADE, J.)