

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

CRIMINAL APPLICATION NO. 2854 OF 2019

- 1) Vinayak s/o Eknath Borse,
Age; 36 years, Occ; Service,
R/o; Ahmed Tower, Room No. 405,
4th Floor, Madhav Gagan Road,
Aagripada, B.I.P. In-front of Chawl No. 3,
Mumbai-400011.
- 2) Eknath s/o Bhatu Borse,
Age; 67 years, Occ; Retired,
R/o; As above.
- 3) Sow. Kalpanabai Eknath Borse,
Age; 57 years, Occ; Housewife,
R/o; Shivaji Nagar No. 3,
HUDKO Kulthe Colony,
Tq. Nandgaon, Nagapur,
Nashik 423104.
- 4) Madhukar s/o Dayaram Sonwane,
Age; 53 years, Occ; Service,
R/o; HUDKO, 28/09, Shivaji Nagar No. 3,
Kulthe Colony, Manmad,
Dist. Nashik 432 104.
- 5) Shalini w/o Vivek Borse,
Age; 48 years, Occ; Service,
R/o; Near Madhumati Shop,
Soap Factory, Old Barrack No. T-52,
Room No. 3-A, Chembur Colony,
FCI Mumbai-400074.
- 6) Ramesh Lekhraj Alimchandani,
Age; 63 years, Occ; Retired,
R/o; Flat No. 1002, 10th Floor,
Orchad Residency, Tower No. 7ELM,
LBS Marg, Behind R City Mall,
Mumbai, Ghatkopar (West),
Kurla, Mumbai Suburban-400086.

**...APPLICANTS
(Orig. Accused)**

V E R S U S

- 1) The State of Maharashtra
Through Police Inspector,
Police Station, Decpur,
Dhule, Dist. Dhule.
- 2) Sow. Yogita w/o Vinayak Borse,
Age; 27 years, Occ; Household,
R/o; Ahmed Tower, Room No. 405,
4th Floor, Madhav Gagan Road,
Aagripada, B.I.P. In-front of Chawl No. 3,
Mumbai-11
At present R/o; Plot No. 38 (A),
Dhandayee Nagar, Deopur,
Dhule, Dist; Dhule.

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

.....
Shri. R.B. Narwade, Advocate for the Applicants
Shri S.G. Sangle, learned A.P.P. for the Respondent No.1
Smt. S.T. Kazi, Advocate for Respondent No.2
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**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

DATE : 17th FEBRUARY, 2020

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

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

2. This is an application filed under Section 482 of the Code of Criminal Procedure, for quashing of the First Information Report, No. 103 of 2019, registered with Police Station, Deopur, Dist. Dhule for the offences under Sections 498-A, 323, 504, 506 read with Section 34 of

the Indian Penal Code.

3. Facts giving rise to this application are that the applicant No. 1 is the husband of the respondent No. 2. Their marriage was solemnized on 25.5.2013. The applicant No. 2 is the father and the applicant No. 3 is the mother of the applicant No. 1. The applicant No. 4 is the maternal uncle of the applicant No. 1. The applicant No. 5 is the sister of applicant No. 3. The applicant No. 6 is the friend of the applicant No. 2.

4. After marriage the respondent No. 2 realized that the applicant No. 1 was unemployed. It was also misrepresented to her that her husband Vinayak is graduate but in fact he is 12th Standard fail. It is further alleged that her father-in-law, her mother-in-law, her brother-in-law and the sister of applicant No.1 all were living together at the time of her marriage. The applicants would ill-treat her saying that the marriage was not performed in proper manner. The respondent No. 2 was required to do household chores more than her physical capacity and she used to be kept starved. She delivered a baby girl out of the wedlock. The applicants started demanding Rs. 10,00,000/- to be brought from her parents for the business. On all these counts she was beaten and driven out of the house. Thereafter, on 4.7.2019, she lodged this F.I.R. against the applicants.

5. Heard Shri. R.B. Narwade, learned counsel for the Applicants, Shri. R.D. Sanap, learned A.P.P. for the State/Respondent No.1 and Smt. S.T. Kazi, learned counsel for the Respondent No.2 .

6. Having regard to the allegations in the F.I.R., it is evident that all the allegations are made against the applicant Nos. 1 to 3 only. The applicant No. 4 is the resident of Manmad, District Nashik, whereas, the applicant Nos. 1 and 2 live at Agripada, Mumbai and the applicant No. 3 lives at Nandgaon, District Nashik. The applicant No. 5 lives at Chembur, Mumbai and the applicant No. 6 lives at Ghatkopar, Mumbai.

7. Since we were not inclined to grant relief to the applicant Nos. 1 to 3, Shri Sonwane, the learned counsel sought permission to withdraw the application to the extent of the applicant Nos. 1 to 3.

8. So far as, the applicant Nos. 4 to 8 are concerned, no specific act is attributed against any of them. Similarly, no overt act is alleged against any of them i.e. the applicant Nos. 4 to 6. Having regard to the nature of the allegations, it cannot be said that the commission of any cognizable offence is made out against the applicant Nos. 4 to 6. 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".

Having regard to the allegations made in the F.I.R., it cannot be said that the commission of a cognizable offence is made out against the applicant Nos. 4 to 6. Therefore, their case is squarely covered by the principles laid down by the Hon'ble Supreme Court in the case of "**State of Haryana and Ors. V/s. Ch. Bhajan Lal and Ors; AIR 1992 Supreme Court 604**". In this view of the matter, if prosecution is allowed to be continued, it would be nothing but an exercise in futility.

9. In such circumstances, it cannot be said that offence under Section 498-A of I.P.C. is made out against the applicant Nos. 4 to 6. Therefore, the continuation of the prosecution against them would be an abuse of the process of the Court. We are inclined to quash the FIR against applicant Nos. 4 to 6. Hence, the following order :

ORDER

- 1) Application of the applicant Nos. 1 to 3 stands disposed of as withdrawn.
- 2) Application of the applicant Nos. 4 to 6 is allowed.
- 3) Relief is granted in terms of prayer clause 'B'.
- 4) Rule is made absolute in those terms.

(M.G. SEWLIKAR, J.)

(T.V. NALAWADE, J.)