

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 3417 OF 2019**

- 1) Ajay s/o Machindra Khonde,
Age; 47 years, Occ; Service,
- 2) Madhuri w/o Ajay Khonde,
Age; 37 years, Occ; Household,
- 3) Yashoda w/o Machindra Khonde,
Age; 74 years, Occ; Housewife,

All R/o; Agasti Krupa Chawl, Room No. 1,
Beturkar Pada, Beturkar Pard Road,
Near Shishu Vikas School,
Kalyan (West), Kalyan,
Dist. Thane (M.S.) - 421301.

**...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)**

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Shri. R.B. Narwade, Advocate for the Applicants
Shri. R.D. Sanap, 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 respondent No. 2 is the wife of one Vinayak Borse. Their marriage was solemnized on 25.5.2013. The applicant No. 1 is the son of paternal aunt of the said Vinayak Borse. The applicant No. 2 is the wife of the applicant No. 1, the applicant No. 3 is the husband of the paternal aunt of the said Vinayak Borse.

4. The respondent No. 2 was made to believe that the said Vinayak Borse, her husband was employed in a Company. However, she later on realized that he was unemployed. It was also misrepresented to her that her husband Vinayak is a 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 daughter all were living together at the time of her marriage. They would ill-treat her saying that the marriage was not performed in proper manner. She was required to do household chores more than her physical capacity and applicant used to keep her starved. She delivered a baby girl out of the wedlock. The applicant Nos. 1 to 3 also used to come to Mumbai i.e. at her matrimonial place and instigate her husband and parents-in-laws and would say that the respondent No. 2 should be asked to be within her limits. Her husband, her parents-in-law used to doubt her character. Her husband, parents-in-law started demanding Rs. 10,00,000/- for starting a new shop. On 8.6.2014, on all these counts she was beaten and driven out of the house. Thereafter, she lodged this F.I.R.

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. On perusal of the F.I.R., it is seen that all the allegations are made against her husband and her parents-in-laws. Only allegations against the applicants is that they would come to matrimonial place of respondent No. 2 and would instigate her husband for giving lesson as to how the Respondent No. 2 should be kept under control. Such kind

of allegations cannot be termed as cruelty within the meaning of Section 498-A of the I.P.C. All the allegations are made against the husband and parents-in-laws of the respondent No. 2. Admittedly, the applicant Nos. 1 to 3 are not the residents of matrimonial place of the husband of the respondent No. 2. The husband of the respondent No. 2 lives at Dhule, whereas the applicant Nos. 1 and 2 are the residents of Agnipada, B.I.P. Lane No. 3, Mumbai -11 and the applicant No. 3 is the resident of Kalyan, District Thane. In view of this, it cannot be said that the commission of any cognizable offence is made out against the applicant Nos. 1 to 3. 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.

7. In such circumstances, it cannot be said that offence under Section 498-A of I.P.C. is made out against the applicant Nos. 1 to 3. 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 the applicant Nos. 1 to 3. Hence the following order :

ORDER

- 1) Application is allowed.
- 2) Relief is granted in terms of prayer clause 'B'.

- 3) Rule is made absolute In those terms.

(M.G. SEWLIKAR, J.)

(T.V. NALAWADE, J.)

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