

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

CRIMINAL WRIT PETITION NO. 479 OF 2019

1) Shirish Subhash Kekan
Age; 31 years, Occ; Business,

2) Subhash Genaji Kekan
Age; 63 years, Occ; Nil,

3) Kaushalya Subhash Kekan
Age; 58 years, Occ; Nil,

All R/o Rameshwar Colony, Pimpargavan,
Road, Dist. Beed.

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

V E R S U S

1) The State of Maharashtra
Through Police Inspector,
Shivajinagar Police Station,
Beed.Tq. & Dist. Beed.

2) Shilpa Chandan Kekan
Age; 30 years, Occ; Nil,
R/o; C/o; Dinkar Tandale,
Near Asha Talkies, Pingle Nagar,
Dhanora Road, Beed,
Tq. & Dist. Beed.

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

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Advocate for the Petitioners : Shri. A.S. Kale h/f Shri Mewara Rajesh H.
A.P.P.for Respondent No. 1: Shri M.M. Nerlikar
Advocate for Respondent No. 2 : Shri C.V.Dharurkar
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**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

DATE : 05/01/2021

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

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally at the admission stage.
2. This writ petition is preferred by the petitioners for quashing of the First Information Report (F.I.R.) under Article 226 and 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure.
3. Facts giving rise to this petition are that respondent No. 2 (the informant herein) is the wife of Chandan Subhash Kekan. Their marriage was solemnized on 29.5.2011. Petitioner No. 1 is the brother-in-law, Petitioner No. 2 is the father-in-law and petitioner No. 3 is the mother-in-law of respondent No. 2.
4. After marriage, respondent No. 2 started cohabitation at her matrimonial place. She was maintained well by the petitioners for about six months. Her husband Chandan Kekan, at the time of marriage was serving at Panvel, District Raigad. In the month of October, 2011, her husband Chandan Kekan shifted to Goa as he got job there. Respondent No. 2 also moved to Goa along with her husband Chandan Kekan. It is alleged that after her delivery in the month of August, 2012, on the day of Dasra she was mercilessly beaten by her husband Chandan Kekan. Her husband dropped her at her maternal place at Beed, till the month of February, 2013. In the month of April, 2014, she was driven out of the house from Goa along with her

daughter. In the month of July, 2015 she was dropped at her maternal place when she had been to attend the marriage of her maternal sister. Her husband used to chat with his girl friend on mobile. Whenever, respondent No. 2 objected to it, her husband beat her by means of belt, cable wire and by means of other article that came handy. On 3.4.2016, her husband said to her that she should bring Rs. 5,00,000/- from her parents for the repayment of installments of car loan and on that count, beat her by means of belt and with kicks and fist blows. He was demanding divorce from her. While beating, he had kept his mobile phone on, so that her father could hear sounds of beating. On 6.4.2016 her father along with his three friends had been to Goa to convince her husband but her husband assaulted them. On 7.4.2016 at 10.30 p.m., her husband beat her with fists and kick blows, therefore, she dialed No. 100 and called the police. On 9.4.2016 she came to her maternal place with her father. On 11.4.2016 at 3.00 p.m., she went to her husband and sought time for making arrangement of amount. Thereupon, her husband beat her and petitioner No. 3 held her by her hair. On 12.4.2016 at 5.00 p.m., her husband came home drunk and did not allow her to enter his house. On these allegations she lodged a report with the police station, on the basis of which offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the I.P.C. have been registered against petitioners and others.

5. Heard Shri A.S. Kale h/f Shri Mewara Rajesh H., the learned

counsel for the petitioners, Shri M.M. Nerlikar, the learned A.P.P. for Respondent No. 1 and Shri C.V.Dharurkar, the learned counsel for Respondent No.2.

6. Shri Kale, the learned counsel for the petitioners submitted that all the allegations are against the husband of respondent No. 2. Not a single allegation is made against petitioner Nos. 1 to 3. He submitted that the whole grievance of the respondent No. 2 is against her husband Chandan Kekan. Therefore, no offence is made out against petitioner Nos. 1 to 3.

7. Shri Dharurkar, learned counsel for respondent No. 2 submitted that petitioner Nos. 1 to 3 have subjected her to cruelty. He further submitted that trial has commenced in the Trial Court. The statements of the informant and her parents have been recorded. If any order is passed in this matter, it will have direct bearing on the merits of the matter. He further submitted that specific allegation against petitioner No. 3 is to the effect that she had held respondent No. 2 by her hair. He submitted that the date of this incident is 11.4.2016. He submitted that this clearly shows that offence under Section 498-A is clearly made out against petitioner Nos. 1 to 3. Therefore, no relief can be granted to them.

8. Perusal of papers and the FIR clearly indicate that all the allegations are against the husband of respondent No. 2. Not a single

allegation is made against petitioner Nos. 1 to 3 for the ill-treatment being meted out to her. A bald statement is made against petitioner No. 3 that she had held respondent No. 2 by her hair. Thus, when there are no allegations against petitioner Nos. 1 to 3, it will be an exercise in futility, if prosecution is allowed to continue against them. Even if, trial is commenced, there is no bar for exercising powers under Section 482 of the Cr.P.C. by this Court. In the case of **Anand Kumar Mohatta and Another Vs. State (NCT of Delhi) Department of Home and Another (2019) 11 Supreme Court Cases 706** held as under :

*“30. It is necessary here to remember the words of this Court in **State of Karnataka v. Muniswamy (1977) 2 SCC 699 : 1977 SCC (Cri) 404** which read as follows :*

“7.... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court’s inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.”

9. Thus, even if, trial is commenced and if this Court comes to the conclusion that continuation of prosecution would be an abuse of process of law, power under Section 482 of Cr.P.C. can be invoked.

Section 482 of Cr.P.C. does not create a Bar for exercising powers under Section 482 of Cr.P.C., once trial is commenced. What the Court has to see, while exercising of powers under Section 482 of Cr.P.C. is whether continuation of prosecution is an abuse of process of the Court. Section 482 of Cr.P.C. is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In the case at hand, not only in FIR but also in the statements of father of respondent No. 2 and her mother, there is nothing to indicate that they had inflicted any cruelty on respondent No. 2. In this view of the matter, continuation of prosecution against petitioner Nos. 1 to 3, would be an abuse of process of law. We are therefore, inclined to quash the proceedings against petitioner Nos. 1 to 3. Hence, the following order is passed :

ORDER

- 1) Petition is allowed.
- 2) Relief is granted in term of prayer clause (C).
- 3) Rule is made absolute in those terms.

(M.G. SEWLIKAR)
JUDGE

(T.V. NALAWADE)
JUDGE