

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

CRIMINAL APPLICATION NO.2001 OF 2019

1. Bandu s/o Dinkar Kathare
Age : 25 years, Occu : Business,
R/o. Navi Galli, Ausa, Tq. Ausa,
Dist. Latur
 2. Dinkar s/o Karan Kathare
Age : 48 years, Occu : Nil,
R/o. Navi Galli, Ausa, Tq. Ausa,
Dist. Latur
 3. Jayshri w/o. Dinkar Kathare
Age : 40 years, Occu : Household,
R/o. Navi Galli, Ausa, Tq. Ausa,
Dist. Latur
 4. Sudamati w/o Karan Kathare
Age : 62 years, Occu : Household,
R/o. Navi Galli, Ausa, Tq. Ausa,
Dist. Latur
- .. Applicants

Versus

1. The State of Maharashtra
Through Police Station, Gandhi Chowk,
Ausa, Tq. Ausa, Dist. Latur
 2. Sow Nandini w/o Bandu Kathare
Age : 22 years, Occu : Household,
R/o. Nandi Stop, Latur, Tq. Latur
Dist. Latur
- ... Respondents

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Mr M.L. Dharashive, Advocate for the Applicants
Mr A.V. Deshmukh, APP for Respondent No.1 / State
Mr M.S. Shaikh, Advocate h/f. Mr Sachin S. Deshmukh, Advocate
for Respondent No.2

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**CORAM : T.V. NALAWADE
AND
B. U. DEBADWAR, JJ.**

DATED : 21-01-2021

ORAL JUDGMENT (PER: B.U. DEBADWAR, J.) :-

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter in short 'CrPC') for quashing of Charge-sheet No.26 of 2018 arising out of FIR No.3 of 2018 on the basis of which case bearing R.C.C. No.29 of 2018 registered against the applicants for the offences punishable under Sections 498-A, 323, 504 r.w. 34 of the Indian Penal Code, 1860 (hereinafter in short 'IPC') pending before learned Judicial Magistrate First Class, Ausa, Dist. Latur.

2. Rule. Rule made returnable forthwith. Heard finally for final disposal.

3. Heard Mr M.L. Dharashive, learned Advocate for the applicants, Mr A.V. Deshmukh, learned APP for Respondent No.1 / State and Mr M.S. Shaikh, learned Advocate h/f. Mr Sachin S. Deshmukh, Advocate for Respondent No.2.

4. The applicants are husband, father-in-law, mother-in-law and grand mother-in-law of respondent no.2, respectively. Marriage of applicant no.1 with respondent no.2 has been solemnized on 13-02-2013 as per the rites and customs prevailing in their community. Agreed dowry of Rs.60,000/- was given to applicant no.1 at the time of marriage. After marriage, respondent no.2 went to her matrimonial house situated at Navi Galli, Ausa and started cohabiting with applicant no.1 - husband by residing in join family consisting of all the applicants. Matrimonial life of respondent no.2 was normal for about one year. During that period from the wedlock with applicant no.1 respondent no.2 gave birth to a male child. After naming ceremony of the child, applicant no.1 along with respondent no.2 shifted to Latur for earning livelihood. He used to daily come home in drunken state and harass respondent no.2 mentally and physically. In the year 2015, applicant no.1 along with respondent no.2 left the Latur and shifted to Bhimakoregaon, Pune and stayed there for about six months. There also, applicant no.1 continued to harass and ill-treat respondent no.2 whenever she used to demand money for meeting household expenses. On one fine morning, applicant no.1 sent respondent no.2 to his native place at Ausa along with son. He told her that he would come to Ausa shortly. On her reaching to Ausa, applicant nos.3 and 4 started insisting her to bring

Rs.Two Lakhs for opening hair salon for applicant no.1 at Ausa and when respondent no.2 told them that her father's financial position is not sound enough to give such huge amount, the applicants drove her out with understanding that she will not be taken in the house unless she fetches Rs.Two Lakhs. Since then she is residing at her parental house. In spite of giving understanding by all the relatives, the applicants did not allow respondent no.2 to come to their house. As such, on 05-01-2018 respondent no.2 reached to Ausa Police Station, Latur and lodged the report narrating aforesaid allegations. On the basis of the said report, FIR bearing no.3 of 2018 for the offences under Sections 498-A, 323, 504 r.w. 34 of the IPC came to be registered against all the applicants and after investigation, they have been charge-sheeted before Judicial Magistrate First Class, Ausa for the said offences.

5. Being aggrieved by the aforesaid FIR and Charge-sheet, the applicants have moved this application for quashing the same.

6. While taking us through FIR, charge-sheet and papers appended to the charge-sheet Mr M.L. Dharashive, Advocate vehemently argued that, allegations made in the FIR and

charge-sheet are false and fabricated allegations. Marriage between applicant no.1 and respondent no.2 took place on 13-02-2013. From the wedlock, they blessed with two children. After the birth of children, applicant no.1 along with respondent no.2 and their children in the year 2015 went to Bhimakoregaon for earning livelihood. After staying with applicant no.1 at Bhimakoregaon, Dist. Pune for some time, respondent no.2 on her own without any reason left the company of applicant no.1 and went to her parental house at Latur with children. In spite of applicant no.1's calling her back to Bhimakoregaon, respondent no.2 did not return. Since respondent no.2 was not joining his company though requested time and again, applicant no.1 left the job at Bhimakoregaon and returned back to his native place Ausa, Dist. Latur. Even after applicant no.1's coming back to native place at Ausa, respondent no.2 did not resume cohabitation with him. When applicant no.1 realized that respondent no.2 is not returning back to his house and resuming cohabitation though requested time and again, on 18-04-2017 he rushed to the Court of Civil Judge, Senior Division at Latur and filed application for restitution of conjugal rights against respondent no.2. None of the applicants harassed or maltreated respondent no.2 at any point of time for any reason and in any manner. On the contrary, after about one year of marriage, respondent no.2 started quarreling with

applicants for petty reasons. Upon applicant no.1's filing application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, referred above, as a counter blast respondent no.2 lodged false FIR and without conducting effective investigation, only after recording statements of some interested witnesses charge-sheeted the applicants for the aforesaid offences. The purpose of respondent no.2 behind the FIR and charge-sheet was to harass and trouble the applicants. Absolutely, there is no legal evidence to prove the allegations. As such, to prevent the abuse of process of law, FIR and charge-sheet both are liable to be quashed by invoking inherent powers under Section 482 of the CrPC. According to Mr M.L. Dharashive, Advocate neither dowry of Rs.60,000/- was agreed to be paid prior to marriage nor paid after marriage, the allegations in this respect are false and afterthought allegations. Likewise, allegations in respect of demand of Rs.Two Lakhs for opening hair salon for applicant no.1 and subjecting respondent no.2 to cruelty for fulfillment of the said demand are also false and afterthought.

7. Per contra, Mr M.S. Shaikh, Advocate, h/f. Mr Sachin S. Deshmukh, Advocate vehemently argued that, FIR and charge-sheet are based on true facts. After investigation, the four applicants found to have subjected respondent no.2 to cruelty as alleged, therefore,

they have been charge-sheeted for the offences under Sections 498-A, 323, 504 and 506 r.w. 34 of the IPC. FIR clearly speaks about demand of Rs.Two Lakhs made by the applicants and harassment of respondent no.2 by abusing and assaulting her to fulfill their illegal demand of money. Case made out in the FIR and charge-sheet gets support from the statements of the witnesses recorded during the course of investigation. Therefore, at this juncture, it cannot be said that, FIR and charge-sheet both are false and concocted. Therefore, the application for quashing the same by invoking inherent powers is liable to be rejected.

8. Mr A.V. Deshmukh, APP adopted the aforesaid arguments advanced by Mr M.S. Shaikh, Advocate, h/f. Mr Sachin S. Deshmukh, Advocate for Respondent No.2.

9. On concluding arguments of both sides, Mr M.L. Dharashive, learned Advocate, on instructions from the applicants, has withdrawn the application to the extent of applicant nos.1 to 3 and continued the same in respect of applicant no.4, who is grand mother of applicant no.1.

10. Since application to the extent of applicant nos.1 to 3 has been disposed of as withdrawn, it is necessary for the Court to see that, whether allegations made in FIR and charge-sheet are sufficient to make out *prima facie* case against applicant no.4? It is pertinent to note that, applicant no.4 is old aged grandmother of applicant no.1. The allegations of harassment and ill-treatment are made mainly against applicant nos.1 to 3, and no specific allegations have been made against applicant no.4. Looking to the age of applicant no.4, it is difficult to believe that, applicant no.4 has also harassed and ill-treated respondent no.2, who was wife of her grandson. Therefore, it would not be legal and proper to call upon applicant no.4 to face the trial along with applicant nos.1 to 3. We cannot forget that, respondent no.2 has filed the FIR after instituted the petition for restitution of conjugal rights by applicant no.1. Therefore, we inclined to grant relief in terms of prayer clause 'D' only in respect of applicant no.4 - Sudamati. With this, we pass the following order.

ORDER

1. Criminal application in respect of applicant No.1 – Bandu S/o Dinkar Kathare, applicant No.2 – Dinkar Karan Kathare and applicant No.3 – Jayshri W/o Dinkar Kathare is disposed of as withdrawn.

2. Criminal application in respect of applicant No.4 – Sudamati W/o Karan Kathare is allowed.
3. Relief is granted in terms of prayer clause “D”.
4. Rule is made absolute in those terms.

(B. U. DEBADWAR)
JUDGE

(T.V. NALAWADE)
JUDGE

Gajanan Punde , PA.