

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

CRIMINAL WRIT PETITION NO. 1362 OF 2019

- 1) Khushal s/o Nilesh Prajapati
Age; 30 years, Occ; Service,
R/o; X-67/2, Ground Floor,
Godrej Station Side Colony,
Firozshasha Nagar, Vikroli (East),
Mumbai- 400079.
- 2) Nilesh s/o Raghavji Prajapati,
Age; 55 years, Occ; Service,
R/o; X-67/2, Ground Floor,
Godrej Station Side Colony,
Firozshasha Nagar, Vikroli (East),
Mumbai- 400079.
- 3) Amruta w/o Nilesh Prajapati,
Age; 50 years, Occ; Household,
R/o; X-67/2, Ground Floor,
Godrej Station Side Colony,
Firozshasha Nagar, Vikroli (East),
Mumbai- 400079.
- 4) Dhaval s/o Nilesh Prajapati,
Age; 25 years, Occ; Service,
R/o; 702, side room Tower 'B',
C-Dot Apartment, Near Sushant
Towers, Sector 56, Gurgaon 122011,
Haryana.
- 5) Bhanamati Raghavji Prajapati,
Age; 83 years, Occ; Household,
R/o; 702, side room Tower 'B',
C-Dot Apartment, Near Sushant
Towers, Sector 56, Gurgaon 122011,
Haryana.

...Petitioners

V E R S U S

- 1) The State of Maharashtra,
Through Police Station, Deopur,
Dhule, Tq. & Dist. Dhule,
- 2) Surbhi w/o Khushal Prajapati,
Age; 27 years, Occ; Service,
R/o; Shantivan Society,
Building No. 409, Room No. 4789,
Tagore Nagar, Vikroli (East),
Vikroli, Dist. Thane.

**..Respondents
(Respondent No. 2
is Original
Complainant)**

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Shri Chandole S.V., Advocate for the Petitioners
Shri G.O. Wattamwar, learned A.P.P. for Respondent No. 1
Shri Savale Amit S., learned Advocate for Respondent No. 2
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**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

Date :- 02/02/2021

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 under Article 227 of the Constitution of India for quashing of the First Information Report (F.I.R.) dated 7.2.2019 bearing No.15 of 2019 under Sections 498-A, 406, 504, 506 read with Section 34 of the Indian Penal Code.
3. Facts giving rise to this petition are that respondent No. 2 (the

informant herein) married petitioner No. 1 on 9.5.2018. Petitioner No. 2 is the father, petitioner No 3 is the mother, petitioner No. 4 is the brother and petitioner No. 5 is the grand-mother of petitioner No. 1.

4. It is alleged in the petition by respondent No. 2 that after marriage all the petitioners were living together. She was maintained well for about 20 to 25 days after marriage. Thereafter, all the petitioners started saying that her parents should have paid more than Rs. 5,00,000/-. They used to harass her physically and mentally. She got job in Orchid International School. She was not provided with medical treatment whenever she fell ill. Therefore, her parents came to her matrimonial place to take her to the hospital. All the petitioners fought with them and did not allow them to provide medical treatment to her. Petitioner No. 3 had tried to strangulate her once. N.C. case was lodged by her on 26.7.2018 against all the petitioners. Petitioner No. 4 got the job at Delhi. He used to instigate petitioner Nos. 1 to 3 and 5, telephonically and all of them used to say that she should bring Rs. 10,00,000/- for purchasing a flat. Petitioner Nos. 3 to 5 had taken all her ornaments and drove her out of the house. She was staying at Vikroli in rented house. Her husband had come to stay with her on 30.10.2018. He stayed there for three days. From 02.01.2018 to 07.01.2018 respondent No. 2 and petitioner No. 1 lived together. On 07.01.2018 there was quarrel between the petitioner No. 1 and respondent No. 2 in which, petitioner No. 1 beat her by kick and fist blows. Petitioner No. 1 left house on 8.1.2019 and started staying with his

parents. On these allegations respondent No. 2 lodged report with police station, Devpur, District Dhule, on the basis of which offence punishable under Sections 498-A, 406, 504, 506 read with Section 34 of the IPC came to be registered against petitioners.

5. Heard Shri Chandole S.V., learned counsel for the petitioners Shri G.O. Wattamwar, learned A.P.P. for respondent No. 1 and Shri Savale Amit S., learned counsel for respondent No.2.

6. Shri Chandole, the learned counsel for the petitioners submitted that vague allegations are made against the petitioners. He submitted that prior to filing of the FIR, respondent No. 2 had filed N.C. cases, in which she did not mention the names of any of the petitioner Nos. 2 to 5. He submitted that this clearly indicates that the story against the petitioner Nos. 2 to 5 has been subsequently developed just to harass the petitioners. He submitted that no specific allegations are made against any of the petitioners.

7. Shri Wattamwar, learned APP for respondent No. 1 and Shri Savale, learned counsel for respondent No. 2 submitted that specific allegations are made against the petitioners. It is specifically alleged in the FIR that petitioner No. 3 has tried to throttle respondent No. 2. It is specifically alleged against petitioner No. 4 that though he got job at Delhi, he used to instigate petitioner Nos. 1 to 3 and 5 telephonically against

respondent No. 2. They submitted that this clearly shows that a cognizable offence is made out against the petitioners.

8. When this Court made it clear that this Court is not inclined to grant any relief to the petitioner Nos. 1 to 3, Shri Chandole, learned counsel for petitioner Nos. 1 to 3, on instructions submitted that he wants to withdraw the proceeding against petitioner Nos. 1 to 3. Accordingly, permission is accorded to withdraw the petition to the extent of petitioner Nos. 1 to 3.

9. So far as, allegations against petitioner Nos. 4 and 5 are concerned, no specific act is attributed to any of them. Only allegation made against petitioner No. 4 is that though he was transferred to Delhi, he used to instigate petitioner Nos. 1 to 3 and 5 against respondent No. 2 telephonically. This allegation is very vague. Admittedly, petitioner No. 4 was living at Delhi at the time when the FIR was lodged. Therefore, on the basis of such vague allegations it cannot be said that any cognizable offence is made out against petitioner Nos. 4 and 5.

10. So far as petitioner No. 5 is concerned her age is shown as 83 years. FIR does not show that any specific act is attributed to the petitioner No. 5. It is vaguely alleged that petitioner No. 5 along with other petitioners used to harass respondent No. 2. On the basis of such vague allegations, it cannot be said that any cognizable offence is made

out against petitioner Nos. 4 and 5. In this view of the matter, continuation of prosecution against petitioner Nos. 4 and 5 would be an abuse of process of law in terms of parameters 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 against applicant Nos. 4 and 5 it would be nothing but an exercise in futility.'

11. In view of this, we are inclined to quash the FIR to the extent of petitioner Nos. 4 and 5. Hence the following order is passed :

ORDER

- 1) Petition of petitioner Nos. 1, 2 and 3 is disposed of as withdrawn.
- 2) Petition of petitioner Nos. 4 and 5 is allowed.
- 3) Relief is granted in terms of prayer clause-B.
- 4) Rule is made absolute in those terms.

**(M.G. SEWLIKAR)
JUDGE**

**(T.V. NALAWADE)
JUDGE**