

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

CRIMINAL APPLICATION NO. 773 OF 2021

1. Suresh s/o Fakirrao Salve (step-brother)
Age : 60 years, Occ: Pensioner,
2. Kirti w/o Suresh Salve (wife of step-brother)
Age 58 years, Occ: Household,

Both R/o: Jai Bhavani Nagar, N-2, CIDCO,
Aurangabad.
3. Vijayshree w/o Bhagwan Borade (step-sister)
Age 50 years, Occ: Household,
R/o: Bhoiwada, Mill Corner, Aurangabad.
4. Raju s/o Fakirrao Salve (step-brother)
Age : 52 years, Occ: Labour,
5. Savita w/o Raju Salve (wife of step-brother)
Age : 40 years, Occ: Advocate,
6. Mirabai wd/o Fakirrao Salve (mother)
Age: 73 years, Occ: Household,
7. Nitin s/o Fakirrao Salve (brother)
Age : 40 years, Occ: Advocate,
8. Ranjana w/o Nitin Salve (wife of brother)
Age : 35 years, Occ: Household,

All R/o: Plot No. 11 Ekata Nagar,
Jatwada Road, Harsool, Aurangabad.

... Applicants.

Versus

1. The State of Maharashtra
Through Police Inspector,
Sillod City Police Station,
District Aurangabad
in Crime No.I-13/2021.

2. Dhanashree w/o Amol Salve
Age : 32 years, Occ: Household,
R/o: C/o: Gautam Totaram Wagh,
New Mhasoba Nagar, Sillod,
Tq. Sillod, Dist. Aurangabad.
Mob. No.7775840255.

...Respondents.

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Mr. Sachin S. Panale, Advocate for Applicants.
Mr. S. P Tiwari, APP for Respondent No.1-State.
Mr. Sunil B. Surse, Advocate for Respondent No.2.

...

**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

DATE : 17 NOVEMBER 2022

JUDGMENT (ABHAY S. WAGHWASE, J.) :

1. Applicant nos. 1 to 8, who are related to the non-applicant Amol Salve (husband of respondent no.2) i.e. who are his step brother, step brother's wife, step sister, another step brother and his wife, mother, brother and brother's wife respectively, are seeking relief of quashing FIR No. 13 of 2021 registered against them at Sillod City Police Station, District Aurangabad for the offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of IPC and the consequential charge sheet/R.C.C.

Brief background of the case

2. Present respondent no.2 i.e. wife of non applicant Amol Salve set the law in motion alleging that after marriage, the applicants who are her in-laws put up a demand of Rs.10,00,0000/- for purchase of plot and on non fulfillment of said demand, she was subjected to mental and physical cruelty. She attributed allegations of abuse and forceful abortion against her husband. She has alleged that he also physically abused her and therefore, getting fed up of said ill treatment, she approached police and filed above complaint against all applicants herein on 27.01.2021. It is in such background the FIR was registered bearing no. 13 of 2021 for above offences.

3. It is the above FIR, the charge sheet upon investigation and the proceedings bearing R.C.C. No. 87 of 2021 arising out of it, which are sought to be quashed and set aside by invoking provisions under Section 482 of Cr.P.C.

4. Learned counsel for the applicants invited attention to the FIR at the instance of respondent no.2 and would submit that this is clear abuse of process of law as, along with the parents-in-law, present applicants who are distant relatives are falsely implicated with the sole intention of harassing and involving entire family of husband. He emphasized that in the FIR all false, afterthought, vague and omnibus allegations are levelled. No specific role whatsoever is attributed to the present applicants. According to him, such an

attempt on behalf of respondent no.2 is sheer abuse of process of law. He pointed out that after marriage with non applicant Amol, they both resided at Mumbai or Thane. They already had a residential flat which was purchased by raising loan and moreover, the said flat is in their joint name. In spite of so, apparently false allegations of demand to that extent are raised in the complaint. He would strenuously submit that applicants herein would rarely come to meet the non-applicant husband and respondent no.2 and therefore, there was no question of ill-treating her. He brought to our notice that marriage is of 01.06.2014 whereas present complaint, which is sheer out of annoyance and as a revenge, is filed in the year 2021 and as such, according to him, with the nature of allegations raised particularly with regard to the present applicants, the complainant herein is misusing law and so he prays that applicants, who have no concern whatsoever, should not be made to face trial as it would amount to harassment and injustice.

5. Learned APP, while opposing the application, pointed out that respondent no.2 has specifically named the applicants herein who have participated in subjecting her to maltreatment. They have all consistently raised illegal demands. She was mentally and physically harassed. He pointed out that from the charge sheet, it is clear that prosecution has sufficient material regarding involvement of applicants and therefore it is imperative for them to face prosecution. He therefore prayed to dismiss the application.

6. Learned counsel for respondent no.2 too opposed the application on above grounds. He pointed out that merely after six months of marriage demand was raised by the husband and all in-laws. That is why they are named. They have all jointly ill treated respondent no.2 and hence she has named them. Therefore, for the act committed by them, they deserve to face prosecution. He too prayed to dismiss the application.

7. We have heard respective sides at length. We have carefully gone through the complaint at the instance of respondent no.2 who admittedly married non applicant Amol on 01.06.2014. It is alleged that all in-laws told her that her father had promised a plot but he did not keep his promise and therefore, demand of Rs.10,00,000/- was raised. She has alleged that time to time she was subjected to physical and mental cruelty. She was beaten with slaps and fist blows and abused by her husband. She has also alleged that against her will and wish husband got her pregnancy terminated and continued the demand of Rs.10,00,000/- and even threatened that if said demand is not met, he would leave her.

8. Here, applicants who are seeking quashment, as is seen from the application, are step brother, his wife, step sister, another step brother and his wife, mother, brother and wife of brother of the non applicant Amol Salve

(husband of respondent no.2). They are seeking above relief by exercise of powers under Section 482 of Cr.P.C.

9. Section 482 Cr.P.C. empowers High Court to invoke said powers in exceptional circumstances. On this point, law is squarely established. It would be appropriate to give a brief account of the scope and object of Section 482 and as to when High Court should be obliged to exercise the said powers.

10. In the landmark case of *Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.*, reported in *(2007) 12 SCC 1*, it was observed as under:

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under section 482 of Cr.P.C. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court.”

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of the court, and*
- (iii) to otherwise secure the ends of justice.*

24. Inherent powers under section 482 of Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”

The Hon'ble Apex Court in the case of ***Priya Vrat Singh Vs. Shyam Singh Sahai; (2009) SCC Suppl. 709***, while dealing with the powers of the High Courts under Section 482 Cr.P.C., has held as under :

"6. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse

that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

7. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: Janata Dal v. H. S. Chowdhary ((1992) 4 SCC 305); Raghubir Saran (Dr.) v. State of Bihar (AIR 1964 SC 1) and Minu Kumari v. State of Bihar ((2006) 4 SCC 359).”

Similarly, in ***Vineet Kumar v. State of U.P.*** ; (2017) 13 SCC 369, after referring to several other cases, including ***State of Haryana and others v. Ch. Bhajan Lal*** ; AIR 1992 SC 604, the Hon’ble Apex Court concluded and made following observations in Paragraph No. 41 :

*“41. Inherent power given to the High Court under Section 482 Cr.PC is with the purpose and object of advancement of justice. In case solemn process of court is sought to be abused by a person with some oblique motive, the court has to thwart the attempt at the very threshold. The court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in **State of Haryana v. Bhajan Lal** ; 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr PC to quash the proceeding under Category (7) as enumerated in State of Haryana v. Bhajan Lal (supra), which is to the following effect:*

“102. ... (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal, but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 Cr PC and quashed the criminal proceedings.”

11. In the light of above legal requirements if the complaint in hand is carefully gone through, it is clearly emerging that allegation of demand of Rs.10,00,000/- is attributed to all in-laws. Complainant has stated that time and again she was subjected to physical and mental cruelty. In our considered view, this is a sort of general and omnibus allegation. She has not narrated

specific instances as to when said demand was raised. Even mode and nature of ill treatment is not elaborated in the complaint. There seems to be allegation of being abused and beaten attributed to only non applicant husband. Even allegations of forceful abortion are apparently against husband. The contention in the application raised by the applicants in para no. 2 regarding complainant and her husband residing at Thane/Mumbai has also not been controverted by learned APP or learned counsel representing respondent no. 2. Consequently, in absence of clarification, it is doubtful as to when and where present applicants had occasion to be with the couple so as to indulge in maltreatment to respondent no.2. As pointed out by learned counsel for applicants, present applicants seem to be step brothers, their wives, brother and his wife, step sister and mother of husband of respondent no.2 and in spite of marriage being of 2014, the firsthand allegations of maltreatment are levelled in the year 2021.

12. Bearing the settled legal position regarding scope and object of Section 482 of Cr.P.C. and its exercise and taking into consideration the narrations at the instance of respondent no.2, we are convinced that the allegations are either general, non-specific or vague in nature. Therefore we are of further view that present applicants being distant relatives, and in absence of any specific role being attributed to them, making them face prosecution would definitely amount to abuse of process of law.

13. According to us, this case is one amongst such cases which squarely attracts the guidelines laid down in the land mark case of ***State of Haryana v. Bhajan Lal*** ; 1992 Supp (1) SCC 335, more particularly clause (7).

14. Even the Hon'ble Apex Court in the very recent case of ***Kahkashan Kausar alias Sonam and others v. State of Bihar and others*** ; (2022) 6 SCC 599, after dealing with the observations in the cases of ***Geeta Mehrotra Vs. State of U.P.***; (2012) 10 SCC 741, ***Preeti Gupta v. State of Jharkhand*** ; AIR 2010 SC 3362 and ***K. Subba Rao v. The State of Telangana*** ; (2018) 14 SCC 452, has succinctly culled out proposition and the same is appearing in para no. 18 which reads as under :

“18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that “all accused harassed her mentally and threatened her of terminating her pregnancy”. Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as

husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.”

15. In our view, the facts in above referred case and the case in hand are almost identical and therefore there is no hesitation to exercise powers under Section 482 of Cr.P.C. here also.

16. Resultantly, in the light of above discussed facts and circumstances of the case, we are inclined to allow the application and pass the following order:

ORDER

I. The application is allowed.

II. FIR No. 13 of 2021 registered with Sillod City Police Station, District Aurangabad for the offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of IPC and the consequential charge sheet vide R.C.C. No. 87 of 2021 pending before the Judicial Magistrate, First Class, Sillod are quashed and set aside.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)