

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

CRIMINAL APPLICATION NO. 1671 OF 2020

1. Dr. Satyajit Shantaram Nighute,
Age. 33 years, Occ. Medical Practitioner
2. Dr. Nilima Shantaram Nighute,
Age. 54 years, Occ. Medical Practitioner
3. Dr. Shantaram Sitaram Nighute,
Age. 65 years, Occ. Medical Practitioner
4. Dr. Saudamini Shantaram Nighute,
Age. 29 years, Occ. Medical Practitioner

All R/o. Indira Gandhi Marg,
PO – Sangamner, Dist. Ahmednagar.

....Applicants.

Versus

1. The State of Maharashtra
Through the Police Station,
Ahmedpur Police Station,
At PO – Ahmedpur, Dist. Latur.
2. Anuja Satyajit Nighute
@ Anuja Ramrao Beralkar
Age. 29 years, Occ. Medical Practitioner,
R/o. Ganeshkrupa Hospital, Phule Nagar,
At PO – Ahmedpur, Dist. Latur.

....Respondents

Advocate for Applicants : Mr. V.Y Bhide
APP for Respondent No. 1 – State : Mr. A.M. Phule
Advocate for Respondent No. 2 : Ms. P.V. Bodke-Patil

**CORAM : SMT. VIBHA KANKANWADI &
RAJESH S. PATIL, JJ.**

DATE : 05th AUGUST, 2022.

JUDGMENT [PER : SMT. VIBHA KANKANWADI, J.] :-

1. By invoking the inherent powers of this Court under Section

482 of Cr.p.c. the applicants have prayed for quashment of the FIR vide C.R. No. 223/20 dated 08.07.2020 registered with Ahmedpur police Station, Ahmedpur, Dist. Latur and the charge-sheet filed against them vide RCC No. 198/2020 pending before Judicial Magistrate First Class, Ahmedpur, Dist. Latur for the offence punishable under Sections 498-A, 323, 406, 504, 506 read with 34 of the Indian Penal Code.

2. At the outset, it is required to be noted that in the beginning itself the learned Advocate for the applicants submits that, on instructions, he seeks withdrawal of the application for applicant Nos. 1 to 3 and he may be allowed to proceed with the prayers in respect of applicant No. 4 who is the sister-in-law of the respondent No. 2.

3. Learned Advocate appearing for the applicant No. 4 against whom the matter would proceed has submitted that as against the applicant No. 4 there is nothing either in the FIR or in the charge sheet which could show her active participation either subjecting the respondent No. 2 to cruelty, assault, misappropriation, intentional insult or criminal intimidation. It cannot be stated that merely because she is staying with other accused she had common intention against the respondent No. 2 to do all these things. Only omnibus statement has been made by the respondent No. 2 just to rope her in the case in view of the fact that she is the sister of the husband.

4. Heard the learned APP as well as the learned Advocate appearing for the respondent No. 2 who have strongly opposed the application, even for applicant No. 4 stating that there is evidence against her. She is residing with applicant Nos. 1 to 3 and the cruelty was done on account of non-fulfillment of amount. An amount of Rs. 1 Crore was demanded for the construction of the Bungalow and renovation of the hospital. Respondent No. 2 was subjected to cruelty in the nature of driving her out of the house. Applicant No. 4 is also a medical

practitioner and practicing along with her parents as well as brother. She would have been the ultimate beneficiary of the bungalow as well as the renovation of the hospital.

5. Under such circumstance, she can be said to be having a common intention subjecting the informant to cruelty. The statement of witnesses support the FIR. It was also submitted that the allegations which are specific against husband and parents-in-laws are also required to be considered when Section 34 of the Indian Penal Code has been invoked. This is not a stage when the charge-sheet is filed and the evidence has been collected to quash the FIR as well as the entire proceedings on the say of applicant No. 4.

6. At the outset, it will have to be observed that allegations against each and every accused are required to be considered first. It is then required to be considered as to whether those allegations are sufficient to give *prima facie* indication about attracting ingredients of the offences and then we can go to the allegation that all that has been done is the result of common intention.

7. If we consider the contents of the FIR, it can be seen that the marriage had taken place on 10.09.2019 and it is alleged that about Rs. 1 Crore was spent by the parents of respondent No. 2 on the marriage. According to her, after the marriage itself the husband started harassing her by saying that she is of dark complexion. He used to raise frequent quarrels with her and used to say that he has affair with another girl with whom he intends to marry and, therefore, she should give him divorce. He used to beat her and even mentally harass her. She also states that the applicant Nos. 2 and 3 had given a phone call to the parents of the respondent No. 2 and told that since applicant No.1 and respondent No. 2 are fighting frequently, they should take help of some psychiatrist. She then says that there was discussion with psychiatrist. Thereafter, she says

that all the accused persons started saying that she should bring amount of Rs. 1 Crore for the construction of bungalow and renovation of hospital, otherwise the dark girl should be taken to the house of her parents and to be left at the matrimonial home only after arrangements of money are made. Then her gold ornaments weighing 31 tolas were taken away by her husband and mother-in-law and she was driven out of the house along with her parents.

8. The supplementary statement of the informant appears to have been taken on 09.07.2020 and she has further stated that she used to be teased by husband, mother-in-law and sister-in-law on account of her spectacles stating that she looks old and blind and they had forced her to undergo operation for the eyes to reduce the number on 03.01.2020. The statement of her parents who are also medical practitioners stated on the same line. The statement of other witnesses on the same point appears to be hearsay because they were never present when the alleged incident had taken place.

9. Thus, it is to be noted that prosecution intends to paint a picture that such demand was alleged to have been made by the applicants to the respondent No.2 in presence of her parents, however, they have not given the date on which such incident had taken place. Further, so far as the applicant No. 4 is concerned, those statements are omnibus and tried to be said that she along with the parents had made that demand. Even for the sake of argument, if we accept that the parents would have demanded such amount then why the daughter would say the same thing. It can be seen that all the earlier allegations are only against the husband. How was the relationship prior to that alleged date between the respondent No. 2 and applicant No. 4 have not been stated in the FIR by the respondent No. 2 herself. The theory that applicant No. 4 would be the beneficiary of the hospital after its

renovation cannot be so accepted to continue the prosecution of applicant No. 4. Further, as regards the taunting on the basis of spectacles is concerned, it appears that she has undergone the operation on 03.01.2020, definitely she as well as other would have sought the medical advice and since it was beneficial to her, she would have voluntarily given consent for the operation. Now she wants to tag it with the alleged act of cruelty.

10. If we consider the provisions of Section 498-A, then the word “cruelty” has been defined in the explanation. According to the said explanation, explanation (a) will not be attracted here since nobody had driven her to commit suicide on account of cruelty and such facts have not been stated. Further, in order to cover the alleged acts of cruelty in clause (b) of the explanation to Section 498-A of India Penal Code, it will have to be proved by the prosecution that there was illegal demand and harassment either mental or physical for the non-fulfillment of such demand. Under such circumstance, if we consider the facts together with the definition of cruelty given in explanation (b) to section 498-A of Indian Penal Code, then the omnibus acts are not covered. At the cost of repetition, we would like to say that when the parents are there, then the daughter/younger sister will not indulge herself in the alleged acts of demand and asking the sister-in-law to leave the house. It appears that the respondent No. 2 had intention to make allegations against applicant No. 4 also and, therefore, she has been made as an accused. We would also like to rely upon *Geeta Mehrotra Vs. State of Uttar Pradesh*, reported in **AIR 2013 SC 181**, wherein Hon’ble Supreme Court has deprecated the act of roping all the relatives of husband.

11. The above said allegations do not constitute offence under Section 504 or 506 independently as against applicant No. 4. As regards the misappropriation of the gold ornaments are concerned, the First

Information Report and the material that has been collected in the charge-sheet would show that they are against the husband and mother-in-law. Therefore, those ingredients do not attract offence under Section 406 of IPC against the applicant No. 4.

12. Therefore, taking into consideration the material on record it would be a futile exercise to ask applicant No. 4 to face trial and, therefore, this would be a fit case where the powers of this Court under Section 482 of Cr.P.C. should be exercised as it is within the parameters those have been laid down in *State of Haryana and others Vs. Bhajan Lal and others*, [1992 Supp (1) SCC 335]. Therefore, we proceed to pass the following order:

ORDER

- i) The application stands partly allowed.
- ii) Application stands withdrawn as against applicant Nos. 1 to 3.
- iii) Application stands allowed in respect of applicant No. 4.
- iv) The FIR vide CR No. 223/2020 dated 08.07.2020 registered with Ahmedpur Police Station, Ahmedpur, District Latur, for the offence punishable under Section 498-A, 323, 406, 504, 506 read with 34 of Indian Penal Code and the proceedings in RCC No. 198/2020 pending before Judicial Magistrate First Class, Ahmedpur, District Latur, stands quashed and set aside as against the applicant No. 4.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)