

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

CRIMINAL APPLICATION NO. 1523 OF 2021

1. Avinash S/o. Satish Swami [Husband]
Age 33 years, Occu. Private Service,
R/o. Plot No. B-3, 704, Ekdanta Building,
Gauri Estate Complex Near Deepali Park,
Badlapur West, Tq. Thane District Thane.
 2. Satish S/o. Baburao Swami [Father-in-law]
Age 62 years, Occu. Pensioner,
R/o. Plot No. B-3, 704, Ekdanta Building,
Gauri Estate Complex Near Deepali Park,
Badlapur West, Tq. Thane District Thane.
 3. Sau. Jayashree W/o. Satish Swami [Mother-in-law]
Age 52 years, Occu. Household,
R/o. Plot No. B-3, 704, Ekdanta Building,
Gauri Estate Complex Near Deepali Park,
Badlapur West, Tq. Thane District Thane.
- [Application of applicant nos. 1 to 3 is
dismissed as withdrawn vide Court's
order dated 23.07.2021]
4. Ashwini D/o. Satish Swami [Sister-in-law]
Age 27 years, Occu. Private Service,
R/o. Dighi, Pune, Tq. Dist. Pune.
 5. Surekha W/o. Manoj Gajbharkar (Swami) [Cousin Mother-in-law]
Age 35 years, Occu. Service,
R/o. Dighi, Pune, Tq. Dist. Pune.
 6. Suresh S/o. Baburao Swami [Cousin Father-in-law]
Age 55 years, Occu. Private Service,
R/o. Indira Nagar, Latur, Tq. Dist. Latur.
 7. Anjali W/o. Sagar Swami, [Cousin Sister-in-law]
Age 44 years, Occu. Household,
R/o. Dighi, Pune, Tq. Dist. Pune.

... Applicants.

Versus

1. The State of Maharashtra
Through Basmat (City) Police Station,
Taluka Basmat and District Hingoli.
2. Komal W/o. Avinash Swami [Informant]
Aged about 26 years, Occu. Household,
C/o. Maheshwar S/o. Ramling Swami,
R/o. Basweshwar Nagar,
Opp. Reliance Petrol Pump,
Basmath Nagar, Tq. Basmath Nagar,
Dist. Hingoli. ... Respondents.

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Mr. Dhananjay M. Shinde, Advocate for Applicants.
Mr. G. O. Wattamwar, APP for Respondent No.1 – State.
Ms. Priyanka Shinde, Advocate for Respondent No.2 (appointed).

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

DATE : 16 NOVEMBER 2022

JUDGEMENT (ABHAY S. WAGHWASE, J.) :

1. Present criminal application is at the instance of husband and in-laws of respondent no.2 herein for quashing crime no. 184 of 2021 registered at Basmath (City) Police Station, District Hingoli for 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 2022 pending on the file of Judicial Magistrate, First Class, Basmatnagar, District Hingoli.

Factual Matrix

2. Respondent no.2 was married to applicant no.1 on 8.12.2019 and after marriage, she went to reside with her husband and in-laws. It is her claim that she had been to her matrimonial home on 24.12.2019 to appear for B.Ed. Examination. She returned back on 05.01.2020. At that time her husband and parents-in-law, in presence of her father and mother, said that household articles were not given in the marriage. So immediately her father purchased articles and furniture from Ulhas Nagar. According to her, shortly thereafter her husband and in-laws put up a demand of Rs.10,00,000/- for purchasing car and on such count, there was abuse and beating to her. According to her, on 03.06.2020, her husband and parents-in-law, sister-in law and cousin mother- in-law took out her ornaments (*stree dhan*) and drove her out of the house. It is her complaint that she was abused for said demand of Rs.10,00,000/- and in-laws and others named in the complaint also commented that she is not good looking. On 12.01.2021, her husband also took away her gold ear tops and necklace. Husband and in-laws threatened her that if the demand of Rs.10,00,000/- is not fulfilled they would not allow her to enter the house and even threatened to kill her. With such allegations Basmath (City) Police Station noted the complaint and registered the above crime.

It is the above complaint and the consequential charge sheet and criminal case arising out of it, which are sought to be quashed and nullified by the applicants herein by invoking section 482 of Cr.P.C.

3. As Section 482 of Cr.P.C. is invoked, it would be profitable to give a brief account of the settled legal position regarding exercise of said provision by High Court.

4. In catena of judgments the Hon'ble Apex Court has time and again reiterated that inherent powers under section 482 of Cr.P.C. can be exercised by the High Court; *firstly*, to give effect to an order under Cr.P.C., *secondly*, to prevent abuse of process of court and *thirdly*, to secure ends of justice.

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 CrPC 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 CrPC 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 CrPC and quashed the criminal proceedings.”

5. Bearing in mind the above legal provision, its scope and object, we propose to examine the complaint to ascertain whether it is an abuse of process of law at the hands of respondent no.2 or not and whether applicants herein are entitled for the relief sought by them.

6. Learned counsel for the applicants would strenuously submit that the instant complaint is false, afterthought and concocted. There was no dowry demand or demand for household articles or money for purchasing car. It is pointed out that complainant was not satisfied with the marriage and therefore, on the pretext of examination, she went and stayed at her parents' place and thereafter came and levelled false allegations. Learned counsel would submit that all the near and dear ones of the husband are roped in with an ulterior motive merely to harass them. He took us through the FIR and would submit that apparently allegations are afterthought, vague and omnibus. He further pointed out that applicant nos. 4 to 7 were residing separately and had no concern with the daily affairs of respondent no.2 and applicant no.1 but still, with an oblique motive, they too are implicated. He pointed out that applicant no.5 is working and residing at Pune, applicant

no.6, who is uncle of applicant-husband, is the resident of Latur, whereas applicant no.7 also resides at Pune and as such, when they had no concern at all, they too have been implicated. Therefore, it is a submission that the instant complaint by respondent no.2 is an abuse of process of law and as such, applicants deserve the relief prayed by them.

7. Learned APP for the State, while resisting the above application, submitted that all applicants are named. Who did what has also been stated in the complaint. Shortly after marriage, applicants ill-treated respondent no.2 for getting their illegal demands met. According to him, investigation is complete. Charge sheet is also filed. Therefore, prosecution deserves opportunity to prosecute the applicants for the offences committed by them.

8. Learned counsel for respondent no.2 also resisted the above application by pointing out the allegations levelled in the complaint. According to her, the husband and in-laws and all the relatives named in the complaint indulged in the act of harassing respondent no.2 and subjecting her to both, mental and physical cruelty with intention to get their demands fulfilled. According to her, there being sufficient material for trial, the application is liable to be dismissed.

9. It is necessary to note that at the initial stage of admission, finding this court not inclined to consider the relief as regards to applicant nos. 1 to 3 i.e. the husband and parents-in-law, learned counsel, on instructions, sought permission to withdraw the application to their extent. There is specific order of this court dated 23.07.2021 to that effect. Consequently, only application as regards to applicant nos. 4 to 7 remains for consideration.

10. After hearing submissions advanced by each side and on minutely going through the complaint, it is seen that the marriage between applicant no.1 and respondent no. 2 was solemnized on 08.12.2029. Allegations are that initially, husband and in-laws expressed their dissatisfaction for not getting household articles in the marriage. According to respondent no.2-complainant, even when such demand was met by her father, second demand of Rs.10,00,000/- was put up by them for purchasing car and on such count she was abused and beaten. She has stated that on 03.06.2020 her husband, parents-in-law, sister-in-law Ashwini and cousin mother-in-law Surekha (applicant nos. 1 to 5), all of them, striped her of her ornaments i.e. *stree dhan* and drove her out of the house. She has alleged that sister-in-law and cousin mother-in-law (applicant nos. 4 and 5) asked her to get divorce. She has further alleged that applicant No.7 Anjali also asked applicant no.1 to seek divorce from her. Husband allegedly took out her ear tops and necklace and went away to Pune.

11. After having examined the complaint carefully, we are convinced that roles of applicant no. 4 Ashwini [sister-in-law] and applicant no. 5 Surekha [cousin mother-in-law] are clearly spelt out. Allegations against them are that they, along with husband and parents-in-law, striped the complainant of her ornaments i.e. *stree dhan* and drove her out of the house. They had abused her both, mentally and physically on the count of non-fulfillment of demand of Rs.10,00,000/- and also asked her to get divorce from her husband since she is not good looking and had instigated her husband for the same cause. Therefore, it cannot be said that these two applicants are falsely implicated or that allegations against them are omnibus in nature.

12. However, so far as applicant nos. 6 and 7 are concerned, it is seen that no specific role is attributed to them and omnibus allegations are levelled against them, and they too are impleaded as accused. Considering the nature of allegations against these two applicants, it is explicit that the complainant has attempted to rope them too even when there are no serious allegations against them. Applicant no.6 seem to be resident of Latur, whereas R.7 is resident of Pune and they are cousin father-in-law and cousin sister-in-law of respondent No.2, respectively. Therefore, we are convinced that material appearing in the FIR against them being non specific and omnibus in nature, these two applicants deserve relief and they should be spared from facing prosecution with such allegations.

13. 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.”

14. In the light of nature of allegations levelled against applicant nos. 6 and 7, it is clear that these two applicants are unnecessarily roped in without specifying their role. It seems that they are named for namesake with an oblique motive to involve the entire family along with others. In the light of observations of the Hon’ble Apex Court in the above case and taking into consideration the principles and guidelines laid down in the case of ***State of Haryana v. Bhajan Lal* ; 1992 Supp (1) SCC 335**, permitting prosecution of applicant nos. 6 and 7 would definitely amount to abuse of process of law. Therefore, for meeting the ends of justice and to prevent the abuse of process of law as only against applicant nos. 6 and 7, we are inclined to exercise powers under section 482 of Cr.P.C. Resultantly, only these two applicants succeed. Hence, the following order.

ORDER

- I. The application is partly allowed.
- II. Application of applicant nos. 4 and 5 is dismissed.
- III. Application of applicant nos. 6 and 7 is allowed in terms of prayer clauses (B) and (D-1).

IV. Since learned advocate Ms. Priyanka Shinde was appointed to represent the cause of respondent no.2, we quantify her legal fees at Rs.5,000/- to be paid by the High Court Legal Services Sub Committee, Aurangabad.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)

VRE