

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

CRIMINAL WRIT PETITION NO. 895 OF 2021

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| 1] | Vijay s/o Arun Atole
Age : 38 years, Occu. Business | (Husband) |
| 2] | Arun s/o Sampatrao Atole,
Age : 63 years, Occu. Retired | (Father-in-law) |
| 3] | Chitra w/o Arun Atole,
Age : 58 years, Occu. Household | (Mother-in-law) |
| 4] | Pravin s/o Arun Atole,
Age : 35 years, Occu. Business | (Brother-in-law) |
| 5] | Sarala w/o Pravin Atole,
Age : 34 years, Occu. Household | (Sister-in-law) |

All R/o. Trimbak Nagar, Mahabal Area,
Tq. & Dist. Jalgaon.

...Petitioners

Versus

1. The State of Maharashtra
2. Mrs. Sonali w/o Vijay Atole,
Age : 35 years, Occu. Household,
C/o. Shantaram Satyanarayan Pingale,
R/o. 91, Baliram Peth, Jalgaon,
Tq. Dist. Jalgaon.

...Respondents

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Mr. V. P. Latange, Advocate for the Petitioners
Mr. S. D. Ghayal, APP for respondent/State

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AND

CRIMINAL WRIT PETITION NO. 907 OF 2021

Surekha d/o Baburao Nazarkar
Age : 27 years, Occu. Household,
R/o. Dhakalgaon, Tq. Ambad,
Dist. Jalna.

...Petitioner

Versus

- 1] The State of Maharashtra
2. Mrs. Sonali w/o Vijay Atole,
Age : 35 years, Occu. Household,
C/o. Shantaram Satyanarayan Pingale,
R/o. 91, Baliram Peth, Jalgaon,
Tq. Dist. Jalgaon.

...Respondents

.....

Mr. Pushpak U. Gujrathi, Advocate for the Petitioner
Mr. S. D. Ghayal, APP for respondent/State

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

DATE : AUGUST 19, 2022

ORAL JUDGMENT [PER RAJESH S. PATIL, J.] :-

1] Both these Criminal Writ Petitions have been filed under Section 482 of Cr.P.C. and under Article 226 & 227 of the Constitution of India for quashing the Charge-sheet bearing No. 47/2020 dated 06.07.2020 pursuant to the Crime bearing F.I.R. No. 041/2020 registered with the City Police Station, Jalgaon, Dist. Jalgaon, for the offences punishable under Sections 498A, 494, 323, 504, 506 r/w 34 of the Indian Penal Code.

1.1] Criminal Writ Petition No. 895 of 2021, for quashing is filed by Husband of Respondent No. 2 and by relatives of husband of Respondent No. 2. Criminal Writ Petition No. 907 of 2021, for quashing is filed by Surekha Baburao Nazarkar, who according to Respondent No. 2, is the second wife of Husband of Respondent No.2.

FACTS :-

2. The marriage of respondent no. 2 with the petitioner no. 1 was solemnized on 27.02.2003 at Jalgaon as per customary rites and rituals. The informant has begotten a female child from the wedlock namely, Sneha.

3.1] It is alleged in the complaint by respondent no. 2 that she has been ill-treated by present petitioners since marriage of her brother-in-law, namely, Pravin, performed in the year 2006. It is further alleged that, respondent no. 2 was ill-treated for demand of Rs. 2.00 lakhs to make up the losses incurred by her husband in running his grocery shop in the year 2007. It is further alleged that when she denied to fulfill the said monetary demand, she was abused, starved and beaten by her husband and the relatives of her husband instigated him for said ill-treatment. It is further alleged that due to non-fulfillment of said demand of money, respondent no. 2 and her daughter Sneha were driven out of the matrimonial house and since then she along with her daughter has been staying with her parents. Though respondent no. 2 was staying with her parents, her husband Vijay used to visit her and quarrel with her.

3.2] It is further alleged that, the husband of respondent no. 2 has served a notice dated 18.01.2008 on her for divorce through his Advocate, which was duly replied by respondent no. 2. It is further alleged that, due to harassment by the petitioners, respondent no. 2 registered an offence under Section 498A of the Indian Penal Code against the relatives of her husband at Jilha Peth Police Station, Jalgaon so also filed proceedings for maintenance being Misc. Criminal Application No. 540 of 2008. It is further alleged that the said proceedings were withdrawn at the request of in-laws of respondent no. 2, who were fearing of punishment and maintenance allowance. After 9 to 10 months of resumption of cohabitation, again demand of money was made by the petitioners. In June-2010, the petitioners again abused and beaten her and drove her out of the house and kept her daughter with them. It is further alleged that as the husband of respondent no. 2 performed second marriage, she has lost hope of resumption of marital relations. As the efforts of reconciliation yielded no fruits, she filed complaint against the petitioners, which was registered as FIR No. 41/2020, which culminated into Charge Sheet No. 47/2020.

4.1] The petitioners have stated in the Petition that the allegations made against them in the FIR are vague, baseless and the charge-sheet filed pursuant to that, does not *prima facie* disclose commission of any of the offences against the petitioners. They have further stated that the FIR is lodged on 07.03.2020 whereas the incidents as alleged are of the year 2010. It is further stated in the petition that, earlier also the respondent no. 2 had filed complaint against the petitioners for the same set of facts under Section 498A, sgp

406, 201, 323, 504, 506 r/w 34 of the Indian Penal Code and in pursuance of the said FIR, charge-sheet was also filed and the petitioners were prosecuted in case bearing R.C.C. No. 556/2008 before learned JMFC, Jalgaon and the said matter was compromised and the petitioners were acquitted vide judgment dated 27.08.2009.

4.2] It is further stated in the petition that the present case is not maintainable in view of bar under Article 20(2) of the Constitution of India which clearly lays down that 'No person shall be prosecuted and punished for the same offence more than once.' Thus, present charge-sheet has to be quashed on the sole ground of being hit by provision against 'double jeopardy'. It is further stated in the petition that, in earlier matter i.e. in R.C.C. No. 556/2008, the petitioners were acquitted, though technically, vide judgment dated 27.08.2009 and therefore the present case is not at all maintainable in view of bar under Section 300 of the Cr.P.C., which clearly lays down that 'a person is not liable to be tried again for the same offence'. Thus, present charge-sheet has to be quashed on the ground of being hit by provision under Section 300 of the Cr.P.C.

4.3] It is further stated in the petition that, none of the alleged offences are substantiated against the petitioners in the charge-sheet and only verbatim cut-paste statements of all interested witnesses i.e. near family members of respondent no. 2 are recorded. There is no iota of evidence against the petitioners. The statement of minor daughter of respondent no. 2 makes it clear that during these long years of desertion the respondent no. 2 has not even bothered about future or upbringing of her own daughter. The respondent no. 2 has made
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vague allegations and interested witnesses have been put up for substantiating the false case against the petitioners. It is further stated in the petition that there are no substantiated allegations against the petitioners and, therefore, the impugned charge-sheet to be quashed.

4.4] It is further stated in the petition that the respondent no. 2 has unnecessarily levelled allegation of second marriage of her husband i.e. accused no. 1 - Vijay with accused no. 4 – Surekha. The accused no. 4, who is petitioner in Criminal Writ Petition No. 907 of 2021 is a distant relative and is being falsely posed as second wife of accused no. 1. The allegations itself goes to show that the respondent no. 2 is intending to harass the petitioners by hook or crook. There is no iota of evidence in respect of alleged second marriage of accused no. 1 – Vijay with accused no. 4 – Surekha. The allegations are baseless, false and *mala fide*. The respondent no. 2 intends to harass the petitioners and only out of said *mala fide* intent the complaint is lodged. Hence, it is prayed that the charge-sheet be quashed against all the petitioners.

SUBMISSIONS: -

5] Heard learned advocates for the petitioners and learned APP for the State.

6] Learned counsel for the petitioners submitted that the allegations levelled against the petitioners are false and baseless. The respondent no. 2 only with a view to wreak vengeance on the petitioners have arrayed them in the offence in question. He further submits that though the incidents as alleged in the complaint are of the
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year 2010 or prior to that, the FIR in question has been lodged on 07.03.2020. The delay in filing the FIR is unexplained. He further submitted that the respondent no. 2 had earlier also filed the complaint on the basis of substantially same set of facts against the petitioners and in pursuance of the said FIR, charge-sheet was also filed and petitioners were prosecuted in R.C.C. No. 556/2008 before JMFC, Jalgaon. The matter was compromised and the petitioners though were acquitted technically, the present case is not maintainable in view of bar under Section 300 of Code of Criminal Procedure, which clearly lays down that a person is not liable to be tried again for the same offence. He further submitted that there is bar under Article 20(2) of the Constitution of India which lays down that no person shall be prosecuted and punished for the same offence more than once and, therefore, the Criminal Writ Petition be allowed.

7] After hearing the parties for sometime, when this Court showed disinclination to grant relief in favour of petitioner no. 1 (husband-Vijay) in Criminal Writ Petition No. 895 of 2021, the learned counsel for the petitioners, on instructions, sought to withdraw the said petition. Leave granted. The Criminal Writ Petition No. 895 of 2021 stands disposed of as withdrawn as far as Petitioner No. 1 is concerned. Now, therefore, the Criminal Writ Petition is considered only for the petitioners no. 2 to 5.

8] Learned counsel for the petitioners further submitted that the vague and general allegations have been levelled against the petitioners. The delay caused in registering the complaint is unexplained which washes out its credibility. Respondent no. 2

intends to harass the petitioners by hook or crook. It is further submitted that the petitioner in Criminal Writ Petition No. 907 of 2021 resides at different place i.e. Jalna, which is far away from the place where the incident in question has happened. The Respondent No. 2 has alleged, she is second wife of her husband i.e. Petitioner No. 1 in Criminal Writ Petition No. 895/2021, and, therefore, she has nothing to do with marital life of respondent no. 2.

9] Learned APP – Mr. S. D. Ghayal, learned APP for the State submitted that specific allegations have been made against all the petitioners, hence there is no question of quashing of Charge-sheet against the petitioners.

ANALYSIS : -

10] For quashing the criminal proceedings under Section 482 of the Cr.P.C. we have to see, whether the allegations in the complaint and F.I.R. *prima facie* establish the ingredients of the offence alleged. We are of the view that under Section 482 of the Cr.P.C., we have inherent powers to make such orders as may be necessary to prevent abuse of the process of any law to secure the ends of justice.

11] Perusal of the charge-sheet shows that the allegations levelled against the petitioners no. 2 to 5 in Criminal Writ Petition No. 895 of 2021 are general in nature. The Respondent No. 2 had earlier lodged in the year 2008, complaint under Section 498A of IPC, against the petitioners. The petitioners were prosecuted in case bearing R.C.C. No. 556/2008 before JMFC, Jalgaon. The matter was compromised

and Petitioners were acquitted vide judgment dated 27.08.2009. The Respondent No. 2, has now filed fresh complaint against her husband and his relatives, which came to be lodged as FIR No. 41 of 2020, on 07.03.2020, for offences punishable under Section 498A, 494, 323, 504, 506 r/w 34 of the Indian Penal Code. The Charge-sheet filed therein also has a statement dated 09.03.2020 of minor daughter 'Sneha', which states she has been looked after by the petitioners and further her mother has not even bothered to enquire about her well-being. On the basis of the allegations made in the complaint, no cognizable offence can be said to have been made out against Petitioner Nos. 2 to 5. Further, the petitioner in Criminal Writ Petition No. 907 of 2021 is a distant relative and resides at a different place and, therefore, she had no connection whatsoever with the family of the respondent no. 2 or the relatives of her husband. The Respondent No.2 has alleged that Petitioner is second wife of her husband. Even if it is assumed that Petitioner in Criminal Writ Petition No. 907 of 2021 is the second wife of husband of Respondent No. 2, Section 498A of IPC would not be attracted to her.

12] We have in our recently decided Criminal Application No.2230/2020 [**Narayan s/o Eknath Devkar and others Vs. State of Maharashtra and others**, decided on 25.07.2022], after considering the various judgments in paragraph nos. 22 to 27, held that continuation of prosecution against far off relatives would amount to abuse of process of law.

13] The Apex Court in **Geeta Mehrotra Vs. State of U.P.**, reported in AIR 2013 SC 181 stated "It can thus be seen that mere
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reference to family members without any specific allegations against them would not justify taking cognizance against them. There is a tendency to involve the entire family members in a matrimonial dispute.

14] This Court in **Shaikh Mushrraf Pasha and others Vs. State of Maharashtra and another**, reported in 2021(2) AVR (Cri.) 343, has observed that continuance of prosecution against relative of husband is nothing but abuse of process of law.

15] Thus, we are of the considered view that the respondent No.2 only with an intention to harass the petitioners, has filed the complaint also against far off relative i.e. petitioners in Criminal Writ Petition No. 895 of 2021 and Criminal Writ Petition No. 907 of 2021. Continuation of prosecution against petitioner, who is far off relative of husband and who stay separately in her own house, in our opinion, would amount to abuse of process of law.

16] Taking into consideration the ratio laid down in the cases of **Geeta Mehrotra and Shaikh Pasha** (supra) and **Gian Singh Vs. State Punjab** reported in (2012) 10 SCC 303, we are of the considered view that so far as petitioners no. 2 to 5 in Criminal Writ Petition No. 895 of 2021 and sole petitioner in Criminal Writ Petition No. 907 of 2021 are concerned, there are no specific allegations against them and only with a view to harass them they have been arrayed as an accused in the offence in question. Therefore, in our view, this is a fit case wherein we should exercise our discretion under Section 482 of the Code of Criminal Procedure to quash the Charge-sheet and Criminal
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Proceedings against the petitioners.

ORDER

- I] Criminal Writ Petition No. 895 of 2021 stands disposed of as withdrawn as far as petitioner no. 1 is concerned.
- II] Insofar as petitioner nos. 2 to 5 are concerned, Criminal Writ Petition No. 895 of 2021 is allowed in terms of prayer clauses 'B' and 'C' of the petition.
- III] Criminal Writ Petition No. 907 of 2021 stands allowed in terms of prayer clauses 'B' and 'C' of the petition.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE