

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

CRIMINAL WRIT PETITION NO.1079 OF 2019

- 1) Nadim Popat Sayyed,
Age-30 years, Occu:Labourer,
- 2) Munir Popat Sayyed,
Age-34 years, Occu:Labourer,
- 3) Alim Popat Sayyed,
Age-27 years, Occu:Labourer,
- 4) Ashrabee Popat Sayyed,
Age-46 years, Occu:Household,

All above R/o-Ashok Nagar Phata,
Lathevasti, Tal-Shrirampur,
Dist-Ahmednagar.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Shrirampur Police Station,
Tal-Shrirampur, Dist-Ahmednagar,
- 2) Aasma Nadim Sayyed,
Age-26 years, Occu:Household,
R/o-Gulaj, Tal-Georai, Dist-Beed,
At present R/o-Bharat Bhushan
Nagar, Balepir, Tal. & Dist-Beed.

...RESPONDENTS

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Mr.Z.H. Farooqui Advocate h/f. Mr. N.V. Gaware Advocate
for Petitioners.
Mr.R.B. Bagul, A.P.P. for Respondent No.1 - State.

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CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 20th JUNE, 2022

ORDER :

1. By this Petition the petitioners are invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India read with inherent powers under Section 482 of the Code of Criminal Procedure for quashing Criminal Misc. Application No.1182 of 2015 pending before the learned Judicial Magistrate First Class, Beed.

2. Present respondent No.2 has filed Criminal Misc. Application No.1182 of 2015 alleging that the present petitioners along with one more accused have committed offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code. It is to be noted that since the accused persons were residing beyond the territorial jurisdiction of the Magistrate, inquiry under Section 202 of the Code of Criminal Procedure was conducted. Thereafter, after hearing the learned Advocate for the complainant - present respondent No.2, considering the statement on oath of the complainant and other documents placed by her, the learned Magistrate has issued

process against accused Nos.1 to 4 i.e. present petitioners for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

3. Heard learned Advocate appearing for the petitioners and learned APP appearing for the respondent No.1 – State.

4. It has been vehemently submitted on behalf of the petitioners that the petitioners were tried for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code on the basis of First Information Report lodged by present respondent No.2 on 2nd February 2012. That case, which was a State case, after investigation was registered as R.T.C. No.17 of 2013 and it was before the learned Judicial Magistrate First Class, Court No.1, Shrirampur, District-Ahmednagar. After the prosecution had led evidence, by Judgment and order dated 24th November 2014, the concerned Court had acquitted all the accused persons. It is further submitted that respondent No.2 is in habit of lodging reports / complaints one after another under various provisions. She had filed complaint under the provisions of the Protection of Women from Domestic Violence Act (for short "D.V. Act") bearing

Misc. Criminal Application No.1178 of 2013. But in view of pursis Exhibit-19 therein, the said application was disposed of as withdrawn on 7th October 2014 by the concerned Magistrate. Thereafter, once again Application No.803 of 2015 was filed under Section 12 of the D.V. Act and Misc. Criminal Application No.1101 of 2015 was filed under Section 125 of the Code of Criminal Procedure for getting maintenance, before the learned Judicial Magistrate First Class, Beed. Thus, it can be seen that respondent No.2 is harassing the petitioners by filing different proceedings. When already the petitioners were acquitted of the offence under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code, learned Magistrate ought not to have issued process against them. The said complaint is barred in view of Section 300 of the Code of Criminal Procedure and therefore the impugned order deserves to be set aside.

5. It will not be out of place to mention here that when the matter was before this Court on 8th January 2020, notice was issued to respondent No.2 and it was duly served. But on 11th February 2020 when the matter was on Board, learned Advocate for the petitioners submitted that respondent No.2 is residing with petitioner No.1 and therefore, the talks were going on in

respect of pending proceeding with her and then the matter was adjourned. Again on 7th June 2022 matter was adjourned for taking instructions by the petitioners. Today, statement has been made on behalf of the petitioners that though respondent No.2 is residing with petitioner No.1, she is not ready to come before the Court and withdraw the petition. This Court cannot compel anybody that she should come before this Court and therefore the case was taken up for disposal on merits. It is now required to be considered, as to whether the impugned order of issuing process against the petitioners passed in Criminal Misc. Application No.1182 of 2015, which is now directed to be registered as Regular Criminal Case, is hit by the doctrine of double jeopardy.

6. Perusal of the entire complaint would show that though respondent No.2 has stated earlier incidents, yet she has stated about the incidents those had taken place on 2nd June 2015 and 17th August 2015 which amounted to cruelty to her. At the cost of repetition, it is to be noted that acquittal of the petitioners from the earlier case under Section 498-A of the Indian Penal Code was on 24th November 2014. Respondent No.2 accepts that she had compromised the matter and went to reside with

petitioner No.1, but then she states that thereafter also the cruelty to her persisted and on 2nd June 2015 she was driven out of the house by accused No.1 after all the accused persons had assaulted her. Then she states that in the meantime petitioner No.1 – accused No.1 got married with accused No.5. Then respondent No.2 states that after she was driven out of the house, she went to reside with her maternal uncle at Balepir, Beed. She further states that on 17th August 2015 all the accused persons came to her uncle's place and tried to forcibly take her with them by giving threats that she should take back all the cases she has instituted against them. Specific role has been attributed to each of the accused persons and then according to respondent No.2, it amounts to cruelty and therefore, she says that the present petitioners have committed offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

7. In a nutshell, the present complaint, which is before the learned Magistrate, is in respect of the incident dated 17th August 2015, which was certainly not in question in R.T.C. No.17 of 2013 decided on 24th November 2014. Therefore, there is no scope for invoking the doctrine of double jeopardy as

contemplated under Section 300 of the Code of Criminal Procedure. The procedure has been properly followed by the learned Magistrate before issuing process and therefore, no case is made out to exercise the writ jurisdiction of this Court.

8. The Writ Petition stands rejected.

[SMT. VIBHA KANKANWADI , J.]

asb/JULY22