

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

CRIMINAL APPLICATION NO. 2689 OF 2022

1. Dattatraya s/o Venkatrao Totawar
Age: 37 years, Occ. Service,
R/o Vithoba Seth Surve Nagar,
Karvanchiwadi, Tq. & Dist. Ratnagiri.
2. Rajanibai Venkatrao Totawar
Age: 53 years, Occ. Household,
R/o As above.
3. Laxmibai Shankarrao Medhewad
Age: 43 years, Occ. Household,
R/o Flat No.1, Yash Plaza,
Bhagya Nagar Road, Kishor Nagar,
(Taroda (Bk)), Tq. & Dist. Nanded.
4. Sarita ShivraJ Kalewad,
Age: 42 years, Occ. Household,
R/o SRPF Quarter, Mantha Chaufuli,
Jalna.
5. Sunita Sanjay Annear,
Age: 40 years, Occ. Household,
R/o Bhagya Nagar, Malegaon Road,
Krushi Kranti Niwas, Bhavitavya Nagar,
Taroda (Bk), Nanded.
6. Manoj Arunrao Totawar,
Age: 50 years, Occ.
R/o Rampur Road, Degloor,
Tq. Degloor, Dist. Nanded.
7. Venkatrao Laxman Dugamwar,
Age: 40 years, Occ. Agri.,
R/o Shivneri Nagar, Near Walmiki,
Temple, Degloor, Tq. Degloor,
Dist. Nanded.

... Applicants
(Orig. Accused)

Versus

1. The State of Maharashtra
Through Police Inspector,
Degloor Police Station,
Tq. Degloor & Dist. Nanded.
2. Sapna w/o Dattatraya Totawar,
Age: 33 years, Occ. Household,
R/o Tukaram Nagari, Hotel Base
Galli, Degloor, Tq. Degloor,
Dist. Nanded
At Present C/o Narsappa Narayan Rahulwal,
Peth Amrapur Galli, At Post Degloor,
Tq. Degloor, Dist. Nanded. ... Respondents.

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Mr. Shailendra S. Gangakhedkar, Advocate for the Applicants.

Mr. G. O. Wattamwar, APP for Respondent No.1-State.

Mr. B. R. Kedar, Advocate for Respondent No.2.

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**WITH
CRIMINAL APPLICATION NO. 2741 OF 2022**

Anita Gajanan Sanap-Mogre,
Age: 36 years, Occ. Service,
R/o Flat No. 406, Adinath Nagar,
TRP, Ratnagiri.

... Applicant
(Orig. Accused)

Versus

1. The State of Maharashtra
Through Police Inspector,
Degloor Police Station,
Tq. Degloor & Dist. Nanded.
2. Sapna w/o Dattatraya Totawar,
Age: 33 years, Occ. Household,
R/o Tukaram Nagari, Hotel Base
Galli, Degloor, Tq. Degloor,
Dist. Nanded
At Present C/o Narsappa Narayan Rahulwal,
Peth Amrapur Galli, At Post Degloor,
Tq. Degloor, Dist. Nanded. ... Respondents.

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Mr. Vivek V. Kabade, Advocate for the Applicant.
Mr. G. O. Wattamwar, APP for Respondent No.1-State.
Mr. B. R. Kedar, Advocate for Respondent No.2.

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

**RESERVED ON : 5 APRIL 2023
PRONOUNCED ON : 18 APRIL 2023**

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. The applicants in both these applications are seeking quashment of FIR No. 153 of 2022 registered with Degloor Police Station, District Nanded for the offences punishable under Sections 498-A, 323, 294, 504, 506 r/w 34 of the Indian Penal Code (IPC) and the consequential charge sheet vide RCC No. 115 of 2022 pending on the file of Judicial Magistrate First Class, Degloor.

2. Respondent no.2 informant was married to applicant no.1 Dattatraya on 27.05.2013. According to her, applicant no.1 was working as Assistant Teacher in Chindrevali Lokhandewadi Zilla Parishad Primary School at Ratnagiri. After marriage, she came to reside at her matrimonial house. Applicant husband used to stay at his work place and used to twice visit the native. According to informant, the mother-in-law, sisters-in-law, maternal uncle of her

husband and cousin brother of her husband taunted her saying that she was unable to cook food properly, less dowry was given and she was insulted. Whenever her husband came from Ratnagiri, at the instigation of above persons, husband quarreled and beat her. After she delivered a girl child, all above persons taunted her and even instigated husband to leave her for delivering girl child. Then she stated that she went to reside with her husband at Ratnagiri, but there was no change in his behaviour. According to her, the in-laws used to instigate her husband on phone to leave her and perform second marriage and thereafter, he used to get drunk and beat her. She also alleged that husband asked her to arrange for Rs.5,00,000/- for purchase of a car. She has stated that her father gave Rs.1,50,000/- and against her wish, her husband sold her ornaments and raised Rs.3,00,000/- and thereby purchased a Baleno car. She further alleged that her husband-applicant no.1 developed extramarital relations with the applicant in Criminal Application No. 2741 of 2022. She has alleged that at her instance also, husband used to get drunk and beat her and threatened to leave her. When she complained about such relations to the in-laws, they abused herself. Finally, on 05.01.2022, she was driven out of the house and so, she has lodged the above report on 25.03.2022.

3. At the admission stage, applicant nos. 1 and 2 sought leave to withdraw Criminal Application No. 2689 of 2022 to their extent when this court expressed its disinclination to grant relief against them. Therefore, proceedings remain for consideration of applicant nos. 3 to 7 therein and the sole applicant in Criminal Application No. 2741 of 2022.

4. Learned counsel for the applicants in Criminal Application No. 2689 of 2022 took us through the FIR and pointed out that the allegations are false and afterthought. It is clear attempt to rope in entire family. Learned counsel pointed out that applicant nos. 3 to 7 are residents of distinct places and they had no occasion to share common household with respondent no.2. It is pointed out that even allegations are vague and omnibus because no dates and particulars are given in the FIR. Therefore, according to learned counsel, this is sheer abuse of process of law and so, relief as prayed deserves to be granted.

5. Learned counsel for the applicant in Criminal Application No. 2741 of 2022 would strenuously submit that implication of the applicant is apparently false and on suspicion. Moreover, when she is not a part of family of applicant husband and respondent no.2, she

cannot be dragged in the litigation alleging commission of offence under Section 498-A. That, even going by the entire charge sheet, there is no iota of evidence regarding allegations raised against the applicant. Therefore, it is his submission that under such circumstances, continuation of prosecution against the applicant would amount to abuse of process of law and hence, relief as prayed is required to be granted.

6. Learned APP for the State as well as learned counsel for respondent no.2 resisted the above applications and prayers pointing out that all applicants are named. Their roles are also clearly spelt out in the FIR. There are allegations of subjecting respondent no.2 to mental and physical cruelty. Though applicant nos. 3 to 7 are shown to be residents of different places, but whenever they visited, they instigated husband to ill-treat her. Applicant in Criminal Application No. 2741 of 2022 was also party to cruelty and she was maintaining extramarital affair with applicant no.1. Therefore, with such allegations, it is their submission that applicants deserve to face trial and hence, pray for dismissal of the applications.

7. Here, we are called upon to quash the complaint and the charge sheet by exercising power under Section 482 of the Code of

Criminal Procedure (Cr.P.C.). 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. Law with regard to above section is dealt in series of landmark judgments viz. ***Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors.***; (2007) 12 SCC 1 and ***Mahendra K.C. v. State of Karnataka and Another***; (2022) 2 Supreme Court Cases 129.

In the backdrop of above discussed legal position, now we advert to the facts of the case.

9. On going through the FIR, it is evident that applicant no.1 Dattatraya was married to respondent no.2 on 27.05.2013. He appears to be working as Assistant Teacher at Chindrevali Lokhandewadi Zilla Parishad Primary School, Ratnagiri, whereas respondent no.2 was initially kept at her matrimonial house at Karvanchiwadi, Taluka and District Ratnagiri. During initial years, it seems that husband used to visit the native only twice in a month. She has alleged that there was taunting by in-laws on the count of not preparing good food and bringing less dowry. She has not quoted or

given details about how much was the dowry demanded and when. General allegations are leveled against applicant nos. 3 to 7 in Criminal Application no. 2689 of 2022 for taunting and humiliating her and instigating husband on phone. Respondent no.2 has alleged that after delivering a girl child, applicants were upset and they used to criticise her, insult her and even instigated husband to give her divorce. Subsequently, there seems to be allegation of demand of Rs.5,00,000/- from her father and forcibly selling her ornaments for purchase of a car. However, apparently such allegations are attributed to the husband. Even allegations of extramarital affair are attributed to husband. Addresses of applicant nos. 3 to 7 show that they are residents of Nanded and Jalna respectively. Under such circumstances, when applicant nos. 3 to 7 came together and indulged in the alleged acts is not clarified in the FIR. Therefore, when there are no details and particulars and no specific role defined in the FIR, in our view, it is unjust to allow continuation of prosecution against them. Therefore, in our considered opinion applicant nos. 3 to 7 have made out a case for grant of relief. Similarly, in the light of above discussion, even applicant in Criminal Application No. 2741 of 2022 also deserves relief as prayed. Consequently, we proceed to pass the following order:

ORDER

- I. Criminal Application No. 2689 of 2022 is partly allowed.
- II. Criminal Application No. 2741 of 2022 is allowed
- III. Criminal Application No. 2689 of 2022, to the extent of applicant nos. 1 and 2, is disposed of as withdrawn.
- IV FIR No. 153 of 2022 registered with Degloor Police Station, District Nanded for the offences punishable under Sections 498-A, 323, 294, 504, 506 r/w 34 of IPC and the consequential charge sheet vide RCC No. 115 of 2022 pending on the file of Judicial Magistrate First Class, Degloor, are hereby quashed and set aside to the extent of applicant nos. 3 to 7 in Criminal Application No. 2689 of 2022 as well as the sole applicant in Criminal Application No. 2741 of 2022.

[ABHAY S. WAGHWASE, J.]

[MANGESH S. PATIL, J.]