

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

CRIMINAL WRIT PETITION NO. 1764 OF 2018

1. Shaikh Imran Shaikh Akbar,
Age : 31 years, Occu. : Labour,
R/o. : Shahu Nagar,
Tal. & Dist. Jalgaon.
 2. Hamidabi W/o Bhikan Bagwan,
Age : 48 years, Occu. : Household,
R/o. : Tambapura,
Tal. & Dist. Jalgaon.
 3. Rukhsanabi W/o Sahebji,
Age : 46 years, Occu. : Household,
R/o. : Songadh,
Tal. & Dist. Songadh.
(Gujrat State).
- .. Petitioners

Versus

1. The State of Maharashtra,
Through City Police Station,
Jalgaon.
 2. Bushrabi Mohammad Imran,
Age : 27 years, Occu. : Household,
R/o. : Behind Makra Apartment,
Near K H Apartments,
Shivajinagar, Jalgaon,
Tal. & Dist. Jalgaon.
- .. Respondents

Mr. N. E. Deshmukh, Advocate for the Petitioners.

Smt. D. S. Jape, APP for Respondent No. 1.

Mr. Bhausahab S. Deshmukh, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 07th JANUARY, 2023.

ORAL JUDGMENT :-

. Rule. Rule made returnable forthwith. By consent of the parties taken up for final hearing.

2. The petitioners are original accused against whom process is issued by the learned J.M.F.C., Jalgaon dated 26.12.2016 in Criminal Misc. Application No. 426/2013 for the offences punishable under Section 313 r/w Section 34 of the Indian Penal Code (for short "I.P.C."). The allegations in the application are that, the complainant-wife was harassed and ill treated at the hands of the petitioners who are husband and in laws. In the said complaint itself she has stated about the earlier complaints that she had filed with the police station on the basis of which the crime was registered bearing Crime No. 29/2012 for the offences punishable under Sections 498-A, 504 and 506 of the I.P.C. On the basis of the crime, a case was registered. The accused were found guilty of the offences punishable under Sections 498-A, 504 and 506 of the I.P.C. in R.C.C. No. 304/2012 by the learned J.M.F.C., Jalgaon against which it is reported that an appeal is pending. In the said case, on the same set of facts and allegations, the present petitioners are tried.

3. On going through the allegations in the earlier complaint in which the petitioners are already convicted, it is seen that the main allegations and the instances were interalia that these petitioners made wife/informant to terminate the pregnancy. Looking to the present complaint again on the basis of the same facts the application was filed

under Section 156 (3) of the Code of Criminal Procedure (for short “Cr.P.C.”) of the offence punishable under Section 313 of the I.P.C. alongwith Sections 323, 504, 506 r/w Section 34 of the I.P.C. The application under Section 156 (3) of the Cr.P.C. was filed on 03.09.2013. The learned Magistrate on recording the verification was pleased to direct the complainant to examine her witnesses under Section 202 sub section (2) of the Cr.P.C. by order dated 04.12.2015. After holding enquiry under Section 202 of the Cr.P.C., the learned Magistrate issued process for the offence punishable under Section 313 r/w Section 34 of the I.P.C. against the present petitioners by order dated 26.12.2016.

4. The petitioners therefore filed Criminal Revision Application No. 31/2018 before the learned Sessions Court at Jalgaon specifically pointing out that on the same set of facts and allegations they were already tried and there is conviction recorded against them. The main ground is of double jeopardy. The said revision application came to be rejected by order and judgment dated 31.10.2018 by the learned Additional Sessions Judge, Jalgaon. It is this order which is under challenge in the present petition.

5. Learned advocate for the petitioners vehemently argued that, under Section 300 of the Cr.P.C. and under Article 20 sub clause 2 of

the Constitution of India, the second complaint is not maintainable and the petitioners cannot be made to face the another complaint on the basis of the same set of facts. It is pointed out that, even the Doctor who terminated the pregnancy of respondent No. 2 is also examined in the earlier case. The Court while recording findings about Section 498-A has taken into consideration the evidence of Doctor and that is specifically taken as evidence under Section 498-A of the I.P.C. This is, in fact, against the principle of double jeopardy.

6. Learned advocate for respondent No. 2 vehemently opposed the petition saying that in the earlier complaint where the petitioners are held guilty, there was no charge under Section 313 of the I.P.C. They have been charged and tried for different offences than one under which case is made out now is different. Now, the process is issued for the offence punishable under Section 313 r/w Section 34 of the I.P.C. and therefore, the second prosecution is not hit by the principle of double jeopardy.

7. Learned A.P.P fairly submits that looking to the contents of both the complaints, it does appear that, now the process is issued against the petitioners on the same set of facts. It is further submitted that, the second complaint is thus, hit by the principle of double jeopardy.

8. In support of the submission learned advocate for the petitioners

relies upon the latest judgment of the Hon'ble Apex Court in a case of **T. P. Gopalakrishnan Vs. State of Kerala** reported in **2022 DGLS (SC) 1641**. More particularly, he relies upon paragraph No. 19 which is reproduced as below :

“19. The word ‘jeopardy’ is used to designate the danger of conviction and punishment which an accused in a criminal action incurs. ‘Jeopardy’ implies an exposure to a lawful conviction for an offence for which a person has already been acquitted or convicted. The terms ‘double jeopardy’, ‘former jeopardy’, ‘jeopardy for life or limb’, ‘jeopardy for the same offence’, ‘twice put in jeopardy of punishment’ and other similar expressions used in various Constitutions and statutes are to be construed substantially, to the same effect. In other words, double jeopardy is used to denote the protection to an accused, that he has had a fair trial for the same offence, wherein fair trial means trial according to law and established legal procedure.”

9. Learned advocate for the petitioners further relies upon the judgment of the Hon'ble Apex Court in a case of **Samta Naidu and another Vs. State of Madhya Pradesh and another** reported in **2020 (5) SCC 378**. He specifically relies upon paragraph No. 20 which is reproduced as below :

“20. Following the aforesaid principles which are more or less settled and are holding the field since 1962 and have been repeatedly followed by this Court, we are of the view that the second complaint in this case was on almost identical facts which was raised in the first complaint and which was dismissed on merits. So the second complaint is not maintainable. This Court finds that the core of both the complaints is the same. Nothing has been disclosed in the second complaint which is substantially new and not disclosed

in first complaint. No case is made out that even after the exercise of due diligence the facts alleged in the second complaint were not within the of the first complainant. In fact, such a case could not be made out since the facts in both the complaints are almost identical. Therefore, the second complaint is not covered within exceptional circumstances explained in Pramatha Nath. In that view of the matter the second complaint in the facts of this case, cannot be entertained.”

10. Learned advocate for the petitioners further relies upon the judgment of the Hon’ble Apex Court in a case of **B.R.K. Aathithan Vs. Sun Group and another** reported in **2022 DGLS (SC) 1634**.

11. Learned advocate for respondent No. 2 relies upon paragraph No. 27 of the judgment in a case of **T.P. Gopalakrishnan** (supra) and submits that these petitioners have not been prosecuted for the offence punishable under Section 313 of the I.P.C. What is material is not the same set of facts for the allegations, but what is material is that the accused must have been prosecuted to invoke the principle of double jeopardy. However, considering the judgment as above, it is clear that the Court has held in paragraph No. 37 as below. The relevant portion from paragraph No. 37 is reproduced as below :

“The present two cases arise out of the same set of facts and the same transaction as that in the previous three cases wherein the appellant was tried and convicted/acquitted respectively. As already discussed above, for an offence to be considered as the ‘same offence’ as the last offence, it is necessary to show that the offences are not distinct and the ingredients of the offences are identical. The previous charge

as well as the present charge is for the same period of misappropriation. The matter of offences in all the previous three cases and the present case are the same and are said to be committed in the course of same transaction while holding the one and same post of Agricultural Officer by the appellant.

12. Paragraph No. 25 of the said judgment is also reproduced as under :

“25. Section 300 of the CrPC bars the trial of a person not only for the same offence but also for any other offence on the same facts, vide Thakur Ram vs. State of Bihar, AIR 1966 SC 911.”

13. Looking to the facts involved in this case, this Court finds that now the petitioners are being prosecuted for the same set of facts and therefore, they have rightly submitted that the second prosecution is hit by the principle of double jeopardy.

14. In view of the submissions and the judgments of the Hon'ble Apex Court as discussed above, this Court finds that the petition deserves to be allowed.

15. The rule is therefore made absolute in terms of prayer clauses (A) and (B).

(KISHORE C. SANT, J.)

PS.B.