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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1748 OF 2023

1. Ashish Ankush Kanke PETITIONERS
Age - 36 years, Occ - Service
R/o Plot No. 2, Narhar Apartment,
Behind Tirumala Mangal Karyalaya,
Pundlik Nagar Road,
Aurantabad, Taluka & District - Aurangabad
2. Archana Ankush Kanke
Age - 60 years, Occ - Household
R/o Plot No.2, Narhar Apartment,
Behind Tirumala Mangal Karyalaya,
Pundlik Nagar Road,
Aurantabad, Taluka & District - Aurangabad
3. Ankush Devrao Kanke
Age - 68 years, Occ - Agriculture
R/o Plot No.2, Narhar Apartment,
Behind Tirumala Mangal Karyalaya,
Pundlik Nagar Road,
Aurantabad, Taluka & District - Aurangabad
4. Gayatri Umesh Mote
Age - 40 years, Occ - Household
R/o Plot No.121, Tirupati Park
Gurusahani Nagar, N-4, CIDCO
Aurantabad, Taluka & District - Aurangabad
5. Umesh Shrihari Mote
Age - 43 years, Occ - Advocate
R/o Plot No.121, Tirupati Park
Gurusahani Nagar, N-4, CIDCO
Aurantabad, Taluka & District - Aurangabad
6. Priyanka Ajay Pisute
Age - 40 years, Occ - Household
R/o Adarsha Colony,
Burudgaon Road, Manik Nagar
Ahmednagar, Taluka & District - Ahmednagar
7. Ajay Arunrao Pisute
Age - 43 years, Occ - Business

R/o Adarsha Colony,
Burudgaon Road, Manik Nagar
Ahmednagar, Taluka & District - Ahmednagar

VERSUS

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|----|---|-------------|
| 1. | The State of Maharashtra
Through the Police Inspector,
Pundalik Nagar Police Station
(Aurangabad City)
Taluka & District - Aurangabad | RESPONDENTS |
| 2. | Nikita Ashish Kanke
Age - 27 years, Occ - Business
R/o Meharnagar, Behind of K. Point Hospital
Garkheda, Aurangabad | |

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Mr. K. N. Shermale, Advocate for the Petitioners
Mr. S. N. Deshmukh, APP for Respondent - State
Ms. J.S. Aute h/f Mr. K. D. Bhande, Advocate for Respondent No.2
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**[CORAM : NITIN B. SURYAWANSHI, &
SANDIPKUMAR C. MORE, J. J.]**

RESERVED ON : 22nd JULY, 2025
PRONOUNCED ON : 30th JULY, 2025

JUDGMENT (PER NITIN B. SURYAWANSHI, J.):

1. This petition, filed under Articles 226 and 227 of the Constitution of India read with section 482 of the Criminal Procedure Code, challenges First Information Report bearing No. 0308 of 2023 registered with Pundalik Nagar Police Station, Aurangabad for offence punishable under sections 323, 406, 498A, 504, 506 read with 34 of the Indian Penal Code and under sections 3 and 4 of the Dowry Prohibition Act.

2. The second Respondent (wife) lodged the FIR in question, in short alleging that, her marriage with Petitioner No.1 (husband) was solemnized on 7th May, 2017 as per Hindu rites and customs. At that time, husband was doing private job at Mumbai. However, he did not take her to Mumbai for one and half year after the marriage. During this period, she resided with her in laws, at Ulkanagari, Aurangabad. During the said period, the husband used to visit Aurangabad once in a month and was not talking with her and because of the same, she used to feel upset. Petitioner Nos. 2 to 4 used to taunt her and used to mentally harass her. Petitioner Nos. 4 and 5 used to frequently visit house of her in laws and used to taunt her on the count of burnt food and used to harass her mentally by uttering bad words. They used to say that she did not know how to cook. She was sent to Mumbai with her husband. At Mumbai also, her husband used to consume excessive liquor and used to abuse her and slap her and used to physically and mentally harass her. Petitioner No. 4 used to instigate her husband and on her instigation, her husband used to abuse her. Husband used to come in drunken condition and used to abuse her in filthy language and beat her.

3. In the year 2018, her husband abused and beat her at the

instance of Petitioner No.4. Thereafter, he was called at Aurangabad. He left her alone at Mumbai. Her parents brought her at Aurangabad. Thereafter, she stayed at her maternal home for about one year in 2019. Thereafter, there was meeting between her maternal relatives and in laws and her husband took her back for cohabitation. Again her father in law beat her because of breaking of cupboard. She was confined in a room and kept starved. Since there were constant quarrels between her and her in laws, her husband, along with her, started residing separately from his parents. Her sisters in law used to abuse and used to give threat to beat her. On 24th March, 2020, she delivered a girl child. Expenses of the delivery were borne by her father. Thereafter, her husband told her to bring remaining amount of dowry of Rs.50 lakhs for purchasing new house. When she refused, her husband slapped her and abused her and he told her that he does not like her and she should leave him. On 1st April, 2023, he drove her out of the house. She came to her parents and informed them about the ill-treatment. Thereafter, again, her father convinced her and brought her back on 15th May, 2023 at her husband's house. Her parents were trying to convince her husband and in laws, at that time, they all quarreled with her and her parents and abused them. At that time, she told her parents that her husband has illicit relations

with one girl and since last one and half year there are no physical relations between them. Because of this, her husband got angry. Thereafter, on 4th June, 2023, her husband left her. Though she repeatedly tried to call him, he did not pick up her call. Since daughter was crying to meet him, she, along with her daughter, went to Collector Office, where her husband was serving. There also her husband abused her and threatened to beat her if she again comes to meet him. He also lodged a false complaint against her that she beats him.

6. After filing of this FIR, investigation was conducted. During the pendnecy of the present Petition, charge sheet came to be filed and the case is numbered as RCC No. 679 of 2024 and is pending before learned Judicial Magistrate, First Class, Chhatrapati Sambhaji Nagar.

5. The petition, to the extent of Petitioner No.1 - Ashish Ankush Kanke (husband) is disposed of as not pressed, vide order dated 6th January, 2025.

6. Petitioner No.2 is mother in law, petitioner No.3 is father in law and Petitioner Nos.4 and 6 are sisters in law of the second Respondent. Petitioner No.5 is husband of Petitioner No.4, and Petitioner No. 7 is husband of Petitioner No.6.

7. Heard learned Advocate for the Petitioners, learned APP for the State and learned Advocate for Respondent No.2. With their assistance, we have perused the petition memo, documents annexed along with it and the charge sheet.

8. Learned Advocate for the Petitioners submitted that husband and wife both are making allegations of extra marital affair against each other. Before Bharosa Cell, both of them have levelled allegations of adultery against each other. Vague and general allegations are levelled against Petitioner Nos. 2 to 7 and they are implicated in the present crime only with an ulterior motive of wrecking vengeance. In the FIR itself, it is stated by the second Respondent that, she and her husband were residing separately from her in laws. Afterthought allegations are levelled against the Petitioners with a view to pressurize the husband, who has lodged complaint against the second Respondent on 5th June, 2023. It is further submitted that the husband has filed Hindu Marriage Petition for divorce on 18th June, 2023 and the FIR in question is lodged on 17th August, 2023, with a view to give counter blast to the Hindu Marriage Petition filed by the husband for divorce, making afterthought allegations. By relying on ***“Achin Gupta V/s State of Haryana and Another¹”*** and

¹ AIR 2024 SC 2548

“Abhishek V/s State of Madhya Pradesh²” he seeks quashing of the FIR and proceedings of RCC No. 679 of 2024 against the Petitioners.

9. Per contra, learned Advocate for the second Respondent strenuously opposed the petition. She, by relying on the affidavit in reply filed by her, submitted that, all the Petitioners have ill-treated the second Respondent. Her parents have spent Rs.70 lakhs for her marriage and have given 51 tola gold in the marriage. The gold is still in the custody of the Petitioners. She, therefore, submits that in view of specific allegations against the Petitioners, the FIR and the proceedings are not liable to be quashed.

10. Learned APP adopted the arguments of the second Respondent. She submitted that in view of the specific allegations of ill-treatment against the Petitioners, no case is made out by the Petitioners for quashing of the FIR.

11. Perusal of the record reveals that both, the husband and the wife, have made allegations of adultery against each other, which is clear from their statements recorded before Bharosa Cell on 5th August, 2023. On 5th June, 2023, the husband has lodged complaint with the Police Commissioner, Aurangabad

² AIR 2023 SC 4209

complaining about physical and mental torture by his wife. He has alleged that, the wife had an affair with another boy and she was not willing to marry with him. Her parents deceived him and performed their marriage, still he had forgiven her and accepted her. During the six years of their married life, she ill-treated him physically and mentally. She compelled him to live separately from his parents. Even while residing separately, she used to harass him. She used to say that he should only listen to her otherwise, she will file various cases against him and his family members. His father in law and mother in law had arrived at his home on the previous day and on 4th June, 2023 at 11.30 a.m. when he was at home, they started quarreling with him and abused him in filthy language and his wife slapped him and pushed him by catching his collar. They asked him to give divorce to his wife and they do not need him. They pushed him out of the house and closed door.

12. Thereafter, on 18th June, 2023, husband filed proceedings bearing No. A-393 of 2023, under section 13 (1) (i) (I a) of the Hindu Marriage Act for divorce, in the family Court at Aurangabad. In the said petition, he has alleged that wife was indulging in adultery.

13. There appears substance in the contention of the learned

Advocate for the Petitioners that after the wife got knowledge of filing of the divorce proceedings by her husband – Petitioner No.1, the FIR in question is lodged, afterthought, making vague and general allegations against the Petitioners. Admittedly, as has been stated in the FIR, the husband and wife were residing separately from the Petitioners. Petitioner Nos. 4 and 6, sisters of husband, are married prior to the marriage of Petitioner No.1 with the second Respondent. Petitioner Nos. 4 and 5 are residing at N-4 CIDCO and Petitioner Nos. 6 and 7 are residing at Ahmednagar (Ahilyanagar). It is not disputed that both the sisters of Petitioner No.1 are residing with their husbands at their respective matrimonial houses.

14. In the FIR, vague and general allegations are levelled against the Petitioners. No specific instance, date and time of alleged offence committed by the Petitioners is disclosed. It is clear from the FIR and the record that, the Petitioners are implicated in the present crime afterthought, *mala fide*, with the ulterior motive of wrecking personal vengeance and to pressurize Petitioner No.1.

15. Law, on the point of quashing of complaint under section 498-A of the Indian Penal Code, against family members / relatives of wife is well settled. While laying down this law, the

Apex Court has made certain pertinent observations in **“Preeti Gupta V/s State of Jharkhand”**³. It is observed as follows :

“30. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this Court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

31. The courts are receiving a large number of cases emanating from Section 498-A of the Penal Code, 1860 which reads as under:

498-A. Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purposes of this section, 'cruelty' means:

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

³ (2010) 7 SCC 667

32. *It is a matter of common experience that most of these complaints Under Section 498-A Indian Penal Code are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.*

33. *The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint Under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.*

34. *Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, Accused and his close relations.*

35. *The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent To find out the truth is a herculean task in majority of these complaints. The tendency of*

implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. *Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful”.*

16. In **“Achin Gupta”** (*supra*), it is observed;

“32. Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be

inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage. In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned. The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. In all cases, where wife complains of harassment or ill-treatment, Section 498A of the IPC cannot be applied mechanically. No FIR is complete without Sections 506 (2) and 323 of the IPC. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty”.

17. In **“Abhishek”** (*supra*), it is observed:

“16. Of more recent origin is the decision of this Court in Mahmood Ali and Others V/s State of U.P and Others (Criminal Appeal No. 2341 of 2023 decided on 08.08.2023) on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care the circumspection, to try and read between the lines.”

18. Applying aforesaid ratio to the facts of the present case and taking into consideration the material collected during the investigation, in the form of charge sheet, which does not make out any case against Petitioner Nos. 2 to 7, continuation of prosecution against them will be an abuse of process of law. We find that, in the FIR, mainly allegations are levelled against the husband – Petitioner No.1 and vague and general allegations are levelled against Petitioner Nos. 2 to 7. Implication of the

Petitioners in the crime is clearly afterthought and appears to be with a view to give counter blast to the divorce proceedings filed by the husband. The allegations against Petitioner Nos. 2 to 7 are wholly insufficient and *prima facie* do not make out case against them. Allegations appear to be so farfetched and improbable that no prudent person can conclude that there are sufficient grounds to proceed against the Petitioners.

19. The case of the Petitioners is squarely covered by Category No.1, 3, 5 and 7 laid down by the Apex Court in ***“State of Haryana and Others V/s Bhajan Lal and Others,”***⁴ wherein extraordinary power under Article 226 of the Constitution or inherent powers under section 482 of the Criminal Procedure Code can be exercised either to prevent abuse of process of court or to secure ends of justice. Categories No.1, 3, 5 and 7 are as follows:

- “1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or made out a case against the accused.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused
5. Where the allegations made in the FIR or complaint are *absurd and inherently improbable* on the basis of which no prudent person can ever reach a just conclusion that there is

⁴ (1992) Supp (1) SCC 335

sufficient ground for proceeding against the accused.

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 person grudge.”*

21. In the backdrop of above, we are of the considered view that continuation of prosecution against Petitioner Nos. 2 to 7 will be an abuse of process of law. Hence, the Petition deserves to be allowed.

22. In the result, following order:

ORDER

- A. Criminal Writ Petition is allowed.
2. First Information Report in Crime No. 308 of 2023 registered with Pundalik Nagar Police Station (Aurangabad City) and proceedings of RCC No. 679 of 2024, pending before learned Judicial Magistrate, First Class, Chhatrapati Sambhaji Nagar are quashed and set aside, to the extent of Petitioner Nos. 2 to 7.

[SANDIPKUMAR C. MORE]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE