

Order below Exh.34 in Sessions Case No.214/2018

1] This is an application under section 227 of Code of Criminal Procedure by original accused nos.4 and 5 for discharging them from the alleged offences.

2] In this matter, informant is wife of accused no.1 Prateek Waghlikar. Her name is Prinyanka Prateek Waghlikar. She alleged that accused no.2 Ashok is her father in law, accused no.4 Nirmala is her mother in law. She married with accused no.1 Prateek on 23.12.2012. In the marriage five tolas gold was gifted and marriage expenses were incurred of Rs.10/- lakhs. After the marriage, she used to reside alongwith her husband Prateek and in laws at Dhankawadi, Pune. After marriage, for some period, she was treated well. But thereafter, her husband and in laws used to abuse and beat her on the issue that her father had not felicitated them properly in the marriage.

3] On 24.03.2013, there was an accident of her husband and her husband was admitted in the hospital. Informant was also present in the hospital. That time, she asked her in laws to bring tiffin in the hospital. That time, present applicants Harshada who is sister in law and Prasad who is brother in law and father in law Ashok abused her and had given fist blows. That time, also she approached to police and

reported the same. But to avoid further dispute, she returned to her parental house and then again resumed cohabitation by coming to matrimonial house.

4] Informant also alleged that in the year 2015, she was pregnant. But her in laws - accused did not take proper care. She was pressurized that if she delivers a girl child, she should not return to matrimonial house. Then on 08.12.2015, she delivered a boy at her parental house. Though accused visited her parental house at Aurangabad, they did not pay attention to her newly born son and they returned to Pune. Then again informant resumed cohabitation.

5] On 10.05.2017, her husband again had beaten her on the issue of disconnecting wi-fi. That time her husband Prateek put a pillow on her mouth. When she tried to escape, her husband pressed her throat. Her mother in law pressed pillow on her mouth. That time, her father in law caught hold her both legs. She tried to escape. Somehow, she escaped. That time, her husband Prateek had hit earthen pot on her head. Then people gathered there. Then she called No.100 and police arrived at the spot and referred her for medical examination. That time, her in laws, her husband as well as present applicant Prasad threatened her that if she complained against them, they would kill her. Thereafter on 11.05.2017, she approached to police and lodged the report against all accused.

6] Applicants submit that no specific role of present applicants have been narrated by informant in the incident dated 10.05.2017. Therefore, offence under section 307 of IPC does not attract against them. Further informant alleged about illtreatment and cruelty of the year 2013. But the limitation to take cognizance of such offence is for three years and informant has alleged the report in the year 2017. Therefore, offence of cruelty is also not attracted against present applicants. It is contention of applicants that they are residing separately since their marriage. They never interfered in the domestic issues of informant and her husband and in laws. Therefore, present applicants submit that no prima facie material is available against them to proceed with the trial. As such, they pray for discharge.

7] It is contention of applicants that on the date of incident, applicant - accused no.4 Prasad was working in a company and applicant - accused no.5 was in Nashik. Therefore, they were not present at the scene of offence on 10.05.2017. On these grounds also, they are praying for discharge.

8] Adv. Mr. Shinde for applicants has relied following citation in support of their contention.

Union of India (UOI) Vs Prafulla Kumar Samal and Another
[AIR 1979 SC 366].

In this case, Honourable Supreme Court has held that

while considering a question of framing of charge under section 227 of Code of Criminal Procedure, the Court has to look prima facie case, but should not become mouth piece of prosecution. It has to be considered in broad probability of case and total effect of evidence.

9] The learned APP Mr. Hande appeared for respondent/ State and filed his say below Ech.38. He submits that sufficient prima facie material is available against applicants also. Therefore, there is no ground to discharge applicants. The grounds taken by applicants can be considered at the time of trial. Hence, he prays for rejection of application.

10] Informant appeared through Adv. Salve and assisted to learned APP and filed her written say at Exh.37. She submits that her in laws including present applicants subjected her to cruelty. Though she alleged one of incident of 2013, the cruelty was going on till filing of FIR. It was continuous offence. There is no substance in contention of applicants that limitation period is over for attracting the offence of cruelty. She further alleged that on the date of incident i.e. 10.05.2017 applicant - Prasad was also threatened her for not to complain against them. Therefore, informant submits that this application may be rejected.

11] Heard the learned Adv Mr. Shinde for applicants and the learned APP Mr. Hande for respondent/State. Perused the record.

12] For assessing, first contention of applicants that on 10.05.2017, they were not present at the scene of offence. I verified the documents. But applicants have not produced any document to show prima facie that applicant no.1 was working in a company or applicant no.2 was at Nashik. Therefore, prima facie, there is no material to show that applicants were not present in the house on 10.05.2017. Further applicants have not produced any other document to show that they are residing separately from the rest of accused. Therefore, it has remained mere contention of applicants that they are residing separately. There is no prima facie support to their contention.

13] So far as role of applicant no.1 Prasad is concern, informant alleged that he abused and had beaten her on 24.03.2013 on the issue of bringing of tiffin. Further it is alleged that applicant no.1 Prasad also threatened her on 10.05.2017 for not to complain against them to police. The role of applicant no.2 Harshada has been shown as she also abused and beaten informant on 24.03.2013. Subsequently, also alongwith in laws illtreated informant and subjected her to cruelty. I perused medical certificate of informant dated 10.05.2017; which shows abrasion and contusions on her person. Therefore, possibility of incident is shown. Prima facie informant has pointed out involvement of present applicants in the crime. The contentions of applicants would be subject matter of trial.

At this stage, these contentions cannot be considered. Hence, I prefer to pass following order:

ORDER

Application is rejected.

Pune.

Dt.10.09.2018.

Sd/-

(Smt. A. V. Rotte)

Additional Sessions Judge, Pune.

I affirm that the contents of this P.D.F. file judgment are same word for word as per original judgment.

Name of steno	: B.G. Shaikh, Grade - I Stenographer.
Court name	: Smt. A. V. Rotte, Addl. Sessions Judge, Pune.
Date	: 10.09.2018
Judgment signed by Presiding Officer	: 10.09.2018
Judgment uploaded on	: 11.09.2018