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criapln3595.24

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

CRIMINAL APPLICATION NO. 3595 OF 2024

1. Shilratna Murlidhar Kamble, ...**APPLICANTS**
Age-39 yrs, Occu-Retired Pensioner,
R/o. Bhimnagar, Tq. Tuljapur,
Dist. Osmanabad
(Husband of informant/org. Accused No.1)
2. Sumit Satish Gaikwad,
Age-25 yrs, Occu-Labourer,
R/o. As above,
(Son of sister in law/Org. Accused No.2)
3. Utkarsh Vidyadhar Waghmare
@ Utkarsh Sudhir Bhalerao
Age-27 yrs, Occu-Household,
R/o. As above,
(Daughter of Sister-in-law/Org. Accused No.3)
4. Ulfawati Vidyadhar Waghmare,
Age-50 yrs, Occu-Household,
R/o. As above,
(Sister-in-Law of informant/Org. Accused No.4)
5. Ashwini Uttam Gaikwad,
Age-34 years, Occu-Household,
R/o. Near Filter Tank, Naldurg Road,
Tq. Tuljapaur, Dist. Osmanabad
(Sister-in-law of informant/Org. Accused No.5)
6. Simran Rajaratna Kamble,
Age-24 yrs, Occu- Hosehold,
R/o. Bhimnagar, Osmanabad
(Sister-in-law/wife of brother-in-law Org. accused No.6)

7. Suhasini Satish Gaikwad,
Age-46 yrs, Occu- Household,
R/o. As above,
(Sister-in-law/Org. Accused No.7)

VERSUS

1. The State of Maharashtra, **...RESPONDENTS**
Through Police Station Incharge
Naldurg Police Station,
Tq. Tuljapur, Dist. Osmanabad
2. Pushpalata Shilratna Kamble
Age-38 yrs, Occu- Household,
R/o. House No. 412, 4th Floor,
Building NO. 3, Morya Houshing Society,
Pawannagar, Chichwad Village
Pune, Dist. Pune.

Mr. Abhijit S. More, Advocate for the applicants
Mr. A. D. Wange, APP for respondents/State
Mr. Sididharth Y. Shinde, Advocate for respondent No. 2

**CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.**

DATE : 03rd SEPTEMBER, 2025

JUDGMENT [PER: HITEN S. VENEGAVKAR, J.]

1. Rule. Rule made returnable forthwith.
2. With the consent of the parties, the criminal application is taken up for final disposal at the stage of

admission itself.

3. Heard all the parties.

4. This application is filed under Section 482 of the Code of Criminal Procedure seeking quashment of the FIR No. 177/2022 alongwith charge-sheet No. 123/2023 filed by the Naldurga Police Station, Dist. Osmanabad against the petitioners who are arrayed as accused for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the IPC.

5. The learned advocate for the applicants advanced his arguments by taking us through the contents of the FIR and the allegations made therein by the complainant. According to the learned advocate for the applicants the present FIR is filed with an ulterior motive of pressurizing the accused persons who have already been facing the trial under the Protection of Women from Domestic Violence Act. According to the said learned counsel the complainant wished to stay separately with her

husband and because, the husband was not ready separate from his other family members, only to pressurize and harass the husband, the present FIR has been lodged against the husband as well as other family members. According to him allegations made in the FIR are general without there being any substance in the same. The allegations are vague and without any specification pertaining to the date or time. It is the submission that the complainant had falsely implicated the entire family members in the present offence and because the allegations were found to be false, the Investigating Officer dropped the proceeding against the brother-in-law of the accused No. 1. This is sufficient to infer that allegations were made falsely implicate the entire family members. The FIR does not disclose any specific role of any of the accused and in absence of any specific allegations, continuing the criminal offence against them is abuse of process of law. In support of this the learned advocate for the applicants relied upon the judgment of the Hon'ble Apex Court in the case of Preeti Gupta Vs State of Jharkand¹. While concluding the arguments, the learned advocate for the

¹ (2010) 7 SCC 667

applicants submitted that abuse of process of law is apparent on the face of this criminal proceeding and therefore, this court should exercise its inherent powers under Sections 482 of the Code of Criminal Procedure and quash the entire criminal proceeding arising out of the FIR No. 177/2022 and subsequent proceeding of filing charge-sheet bearing No. 123/2023.

6. Countering the arguments of the learned advocate for the applicants, the learned APP and also the learned Advocate for the respondent-complainant submitted that there are specific allegations of cruelty made in the FIR. The learned APP referred to the statements recorded by the Investigating Officer under Sections 161 of the Cr. P. C. and submitted that all the statements corroborates the allegations made by the complainant in the FIR. Together they constitute sufficient material and therefore, it is not a fit case for quashing the FIR and charge-sheet.

7. With the assistance of the respective counsels, we

have perused the entire charge-sheet which has been placed on record. The contents of the FIR makes references to certain instances of physical and mental cruelty. The allegations are made against all the applicants. The gist of the allegations that can be noted from the FIR that the complainant was harassed by the applicants under the pretext that she will not be able to give birth to a normal child. There are also allegations that applicant Nos. 2 to 7 were instigating applicant No. 1 who is the husband to get separated from the complainant and perform second marriage. There are also allegations that all the petitioners from time to time have also physically assaulted the complainant.

8. Upon perusing the copy of the FIR & Charge-sheet though there are allegations made by the complainant, we find that all the allegations are vague in nature and none of them specified as to when and as to who have actually committed cruelty upon the complainant. The important fact cannot be overlooked that the marriage between applicant No. 1 and complainant was performed on 01-03-2009 and the alleged

complaint has been registered on 09-06-2022. Thus, the marriage between them subsisted almost for a period of 13 years and thereafter these allegations have been made. FIR itself mentions that during the marriage and thereafter till 2020, applicant No. 1 who is husband was in a Military Services and therefore, he used to visit his residence only during his holidays.

9. The learned advocate for the applicants during arguments has brought to our notice that the complainant has twin daughters and one son from applicant No. 1. This raises doubt about the complainant's allegations that she was being tortured by the family members that she will not be able to give birth to a normal child. Second important aspect is that the marriage between applicant No.1 and complainant subsisted for almost 13 years, during which there is no material placed on record by the prosecution to show that the complainant has ever filed any complaint or raised any grievance with any authorities about the cruelty that has been caused to her.

10. We have also perused the statements that has been recorded under section 161 of the Cr. P. C. by the Investigating Officer which are annexed to the charge-sheet. All the statements are not only stereo type but they are in verbatim same and in view of that, it can be said that the statements are copy pasted statements. All the witnesses whose statements recorded are close relatives of the complainant and therefore can be termed as interested witnesses. To be verify specific statements are of i] father, ii] mother, iii] aunt, iv] cousin brother and v] maternal uncle. There is no single statement of any independent witnesses nor any independent material is placed on record to corroborate version of the complainant. We are conscious of the fact that the statements of the victim is more than sufficient to draw an interference that she has been subjected to cruelty. However, it is necessary that those allegations have to be specific and not vague or generalized. At least from perusing the contents of the FIR and material placed on record by way of charge-sheet prosecution does not make out a case under Section 498-A.

11. Even in respect of allegations for constituting offences under sections 323, 504 and 506 of the IPC, the investigation material is insufficient. Once again we can mention that the allegations pertaining to the assault on the complainant are vague in nature and without any specific date or time and neither it is specifically mentioned as to who and when & where complainant was assaulted.

12. The learned advocate for the applicants has also brought to our notice that the proceeding pertaining to the D. V. Act filed by the complainant against applicant No. 1. On perusal of the said material, we have noted that the allegations made in the said proceeding are completely different from the allegations that are made in the present FIR. In the D. V. proceeding the allegations which are mentioned are as follows :

“तु काळी आहेस, तुझी लायकी नाही, आई वडिल घरी आले नाही पाहिजे संबंध संपला. आल्या वारल्यानंतर माझे वडिल अंतविधीला आले होते तेव्हा त्यांना जेवण दिले तो त्यावरून राग धरून गैरअर्जदार क्र. २,४,५,७ व १० यांनी मला शिविगाळ करून गरोदर अवस्थेत मारहाण केली. मला पहिला मुल नको हवा होता म्हणून मी गरोदर असताना माझा पोटात बुक्के मारून घेत होती.”

13. Having examined the matter in depth, we are compelled to observe that the allegations contained in FIR and charge-sheet, even if taken at their face value, do not disclose the commission of offences under section 498-A, 323, 504 and 506 of the IPC as against present applicants. What emerges clearly is matrimonial relationship which subsisted for more than thirteen long years, during which applicant no. 1 and respondent No. 2 begotten three children. No single complaint is filed with the police or any other authorities alleging cruelty or harassment until June, 2022 by respondent No. 2. Applicant No. 1 was serving in Military and was visiting home only during holidays. The sudden surfacing of allegations, after over a decade of marriage and after the initiation of proceeding under the Domestic Violence Act raise serious doubt about the bonafides of the prosecution.

14. It is also significant that the allegations are not particularised. Section 498-A of the IPC as explained by the apex court in the case of Girdhar Tawade Vs State Of

Maharashtra reported in (2002) 5 SCC 177 requires specific willful conduct that is so grave in nature that it endangers life, limb or health or constitutes harassment with unlawful demands. In the present case, the complainant has not attributed any particular incident, date or role to any individual applicant which contains aforesaid elements of Section 498-A. Instead, sweeping allegations and omnibus statements have been made against the entire family. Such generalized allegations without details, fails to satisfy the statutory ingredients of cruelty. As observed in the case of Kahkashan Kausar @ Sonam Vs State of Bihar reported in 2022 (6) SCC 599 it is held precisely such overboard complaints that amounts to abuse of penal provisions and must be nipped in the bud.

15. Turning to the allegations of the physical assault under section 323 IPC it is once again noted that there is no reference to any date, time or specific act. The complaint merely states that complainant was assaulted “from time to time”. This is too vague to amount to an accusation of voluntarily causing

hurt. At the very least the FIR should disclose the nature of the assault, when it occurred and who committed it. The absence of such particulars renders the allegations a bar incantation of section, not a factual foundation.

16. Likewise the offence under Section 504 of the IPC requires intentional insult of such a nature as is likely to provoke breach of peace. Here again the FIR simply states that abuses were hurtled without setting out the actual words or the context in which they were uttered. Without these elements, the court cannot infer, either to intention to insult or likelihood of provoking the breach of peace.

17. Section 506 IPC criminalizes threats intended to cause alarm. The allegations here amount only to vague references to threats, without describing the words used, the context, or the reaction of the complainant. In the case of *Manik Taneja Vs State of Karnataka reported in 2015 (7) SCC 423*, the Supreme Court held that mere expression of anger or

displeasure, absent the intent to cause alarm, is not criminal intimidation. On the facts before us, the essential element of alarm is entirely missing.

18. The court cannot ignore another aspect, the striking similarity of all witness statement recorded under section 161 of the Cr. P. C. They are verbatim reproduction of the complaint's version, all emanating from close relatives. No independent material is forth coming. This lends credence to the applicants' contention that the allegations are a product of tutoring and embellishment. In Preeti Gupta (supra) the Supreme Court observed that false implication of the relatives is a growing tendency and that court must scrutinies such complaints with great care. The present case squarely falls in that category.

19. The inconsistency between the allegations in the Domestic Violence Proceedings and those in the FIR further damages the prosecution case. In the DV proceeding the complaint was that the husband family denied her access to

household amenities and subjected her to neglect. In the present FIR the allegations has shifted to taunts about child birth and instigation to remarry. This shifting of stands demonstrates a lack of credibility and points towards after thought.

20. In the case of *State of Haryana Vs Bhajanlal reported in 1992 Supplementary 1 SCC 335*, the Supreme Court laid down illustrative categories of cases where quashing is warranted two of those categories squarely applied here. Firstly; where the allegations in the FIR, taken at face value, do not disclose commission of any offence. Secondly; where the proceedings are manifestly attended with malafieds and instituted with an ulterior motive. Permitting such prosecution to continue would expose the applicants to the rigorous of criminal trial without there being even a prima facie case.

21. Criminal law is a solemn instrument to deal with genuine wrongs . It cannot be permitted to degenerate into a weapon of harassment in matrimonial discord. The role of the

High Court under section 482 Cr. P. C. is precisely to prevent such misuse. On an overall conspectus of the facts the law laid down by the Supreme Court and the material in the Charge-sheet, we are satisfied that the case against the applicants is manifestly without substance, inherently improbable and an abuse of the process of law.

22. Consequently, we hold that no offence under Section 498-A, 323, 504 & 506 IPC are made out against the applicants. Continuation of the proceeding would amount to traversity of justice. This is therefore a fit case where the extra ordinary jurisdiction under section 482 Cr. P. C. must be excised to secure the ends of justice. Hence, the following order:

ORDER

- a] Rule made absolute.
- b] The criminal application stands allowed.
- c] The impugned charge-sheet bearing

No.123/2023 dated 14-06-2023 filed in pursuance of the FIR bearing Crime No. 177/2022 registered at Naldurg Police Station, Dist. Osmanabad for the offences punishable under Sections 498-A, 323, 504, 506 read with section 34 of the IPC stands quashed and set aside as against all the applicants namely; Shilratna Murlidhar Kamble, Sumit Satish Gaikwad, Utkarsh Vidyadhar Waghmare @ Utkarsh Sudhir Bhalerao, Ulfawati Vidyadhar Waghmare, Ashwini Uttam Gaikwad, Simran Rajaratna Kamble & Suhasini Satish Gaikwad.

[HITEN S. VENEGAVKAR, J.] [SMT. VIBHA KANKANWADI, J.]

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