

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4161 OF 2013

1) Imtiaz Abdul Kadir Chougale]
 Aged 47 yrs, Occupation : Service]
 Residing at : A-8, 501 Lok Upvan,]
 Phase – I, Thane (W) 400601]

2) Anisa Mohammed Iqbal Kapadi]
 Aged 41 yrs, Occupation House wife]
 Residing at : E-1802, Amey Chs.]
 Plot No.24, 29, Sector No.4, Nerul (West)]
 Navi Mumbai – 400 706] ... Petitioners
 (Orig. Accused Nos. 3 & 4)

V/s.

1) The State of Maharashtra]
 Through Oshiwara Police Station, Mumbai]

2) Simeen Munir Pathan]
 @ Simeen Chougale]
 Residing at 101, Sun Moon – II, CHS,]
 Agarwal Estate, Capt. Samant Marg,]
 Jogeshwari (W), Mumbai-400 102] ...Respondents
 (Orig. Complainant)

Mr. Mubin Solkar a/w. Mr. Tahir Hussain, Mr. Anas Shaikh, Mr. Hemal Shah,
 Ms. Tahera Qureshi for Petitioners.

Mr. Ajay S. Patil, A.P.P. for Respondent No. 1 – State.

Mr. Vivek Sharma a/w. Adv. Charmaine Bocarro for Respondent No.2.

CORAM : A. S. GADKARI AND
RAJESH S. PATIL, JJ.

RESERVED ON : 26th August, 2025

PRONOUNCED ON : 4th November, 2025

JUDGMENT (Per : Rajesh S. Patil, J.) :-

1) The Petitioners (Original Accused Nos.3 and 4) have filed this Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, to quash and set aside the Chargesheet being C.C.No. 2737/PW/2022, filed before the learned Railway Mobile Court, Andheri and after committal being Sessions Case No. 247 of 2023, arising out of C.R. No. 83 of 2013, registered with Oshiwara Police Station, Mumbai dated 2nd March, 2013, for the offences punishable under Sections 498-A, 406, 506 and 313 read with 34 of the Indian Penal Code, qua the Petitioners.

2) The Co-ordinate Bench had passed an *ad-interim* Order dated 6th December, 2013, whereby notice was issued to the Respondents and in the meantime, the Investigating Officer was directed to proceed with the investigation but not to file the final report without the leave of the Court. Subsequently, by an Order dated 19th January, 2018, "Rule" was issued and interim relief was granted in terms of the ad-interim relief granted earlier, save and except, the last line i.e. 'without the leave of the Court'. Thereafter, by an Order dated 13th September, 2022, the Court recorded the

demise of original Petitioner No.1 and the Petition qua original Petitioner No.1 stood abated. Since the investigation was completed and the final report was ready, the police were permitted to file the final report before the Court of competent jurisdiction.

2.1) Hence, this petition was taken up for final hearing only with regard to Petitioner No.2 (Original Accused No. 3) and Petitioner No.3 (Original Accused No.4). Since Petitioner No.1 had died, the Petition was amended and Petitioner No.2 was transposed as Petitioner No.1, and Petitioner No.3 was transposed as Petitioner No.2.

3) We have heard learned Counsel for both the sides and with their assistance, perused the documents on record.

4) FIR was filed in the year 2013 by the Respondent No.2 (wife of accused Dr.Naeem Chougale), for offences punishable under Sections 498-A, 406, 506 and 313 read with 34 of the Indian Penal Code against her husband (the accused in the supplementary charge-sheet); her mother-in-law (now deceased); her brother-in-law (Petitioner No.1) and her sister-in-law (Petitioner No.2).

4.1) The Respondent Nos.2's case in the FIR is that, she married with Dr.Naeem Chougale, the brother of Petitioners, on 2nd January, 2008. In the year 2012, out of the said wedlock, a daughter was born in Saudi Arabia as the couple was then residing in Saudi Arabia. Over a period of time, due to strained relationship, Dr.Naeem and Respondent No.2 started

living separately. Dr. Naeem subsequently pronounced Talaq to the Respondent No.2 and thereafter, Respondent No.2 lodged FIR against the accused persons with the Oshiwara Police Station, on 2nd March, 2013.

4.2) The allegations in the FIR are mainly against the husband. As regards the Petitioners are concerned, the only allegation is that, as the husband demanded the laptop and mobile phone from the Respondent No.2 and if the same is not provided to the husband as demanded and due to this, if he commits any harm to himself, then the Petitioners would make sure that the Respondent No.2 goes to jail. It is also alleged that when daughter was born to the Respondent No.2, her husband and the her in-laws, Petitioners were upset. Apart from these two sentences, the only other allegation is that on 1st November, 2011, the Petitioner No.2 after hearing to the allegation made by Respondent No.2, the Petitioner No.2 stated that, the husband of the Respondent No.2 is right and not the Respondent No.2. Similarly, on 13th March, 2012, when the Respondent No.2 telephonically called up Petitioner No.2 to explain her the problems faced, instead of helping her, Petitioner No.2 told her not to call back again. Apart from these allegations, there are no specific allegations against the Petitioners.

5) The Petitioners are the siblings of the husband of Respondent No.2, who married Respondent No.2 on 2nd January, 2008 and within 10 days of the marriage, the husband of Respondent No.2 left for Singapore

where he was then employed. After one month of the marriage, the Respondent No.2 also joined her husband in Singapore. After a while, the couple shifted from Singapore to Saudi Arabia, where the parents of the Respondent No.2 were already residing.

5.1) It is pertinent to note that, Petitioner No.1, the brother-in-law of the Respondent No.2, was married on 14th February, 1998 and was residing separately with his wife at Thane. Similarly, the Petitioner No.2, the sister-in-law of Respondent No.2 was married in the year 1997 and after her marriage, she started residing separately with her husband at Mazgaon and in the year 2005, she shifted to Nerul, Navi Mumbai. Therefore, both the Petitioners were already married to their respective spouses and staying separately with their respective families, prior to the marriage of Respondent No.2 with the brother of Petitioners.

5.2) As there was marital discord between Respondent No.2 and her husband, they started living separately, and on 2nd July, 2012, upon their joint application, divorce was granted in Saudi Arabia. A copy of the same has been enclosed to the present petition. It is pertinent to note that, the present FIR has been lodged on 2nd March, 2013, which is about eight months after the divorce was granted in Saudi Arabia.

6) It is relevant to note that, while granting the ad-interim relief, which was subsequently confirmed by way of interim Order on 19th January, 2018, this Court recorded a finding that “after perusing the FIR and after

the Court going through the allegations, the Court did not find any material so as to constitute the ingredients for the offence punishable under Section 498A of the Indian Penal Code in so far as the present Petitioners are concerned”.

7) Mr. Solkar, learned Counsel appearing on behalf of the Petitioners, referred to two judgments. Firstly, Judgment passed by the Supreme Court in the case of *Achin Gupta vs. State of Haryana & Anr. in Criminal Appeal No. 2379 of 2024* dated 3rd May 2024. In paragraph 18 of the said judgment, the Court observed that, the FIR was nothing but a counterblast to the Divorce Petition, given that the allegations were vague, general and sweeping, specifying no instances of the criminal conduct. Paragraph Nos.18 and 19 of the said judgment read as under:-

“18. The plain reading of the FIR and the chargesheet papers indicate that the allegations levelled by the First Informant are quite vague, general and sweeping, specifying no instances of criminal conduct. It is also pertinent to note that in the FIR no specific date or time of the alleged offence/offences has been disclosed. Even the police thought fit to drop the proceedings against the other members of the Appellant’s family. Thus, we are of the view that the FIR lodged by the Respondent No.2 was nothing but a counterblast to the divorce petition & also the domestic violence case.

19. It is also pertinent to note that the Respondent No.2 lodged the FIR on 09.04.2021, i.e., nearly 2 years after the

filing of the divorce petition by the Appellant and 6 months after the filing of the domestic violence case by her mother-in-law. Thus, the First Informant remained silent for nearly 2 years after the divorce petition was filed. With such an unexplained delay in filing the FIR, we find that the same was filed only to harass the Appellant and his family members.”

7.1) The facts in the said case bear resemblance to the present matter, as the FIR herein was also lodged by Respondent No.2 subsequent to the grant of the divorce decree in Saudi Arabia.

7.2) Secondly, reliance was placed on the judgment of the Supreme Court in case of *Kailashben Mahendrabhai Patel & Ors. vs. State of Maharashtra & Anr. in Criminal Appeal No. 4003 of 2024* dated 25th September, 2024. The Supreme Court concluded that none of the ingredients for the charged offences were made out and that allowing the continuation of the criminal proceedings would be an abuse of the process of law and travesty of justice.

7.3) The ratio laid down in both the above judgments are squarely applicable to the present proceedings.

8) Mr.Sharma, learned Counsel appearing for the Respondent No.2, referred to the judgment of the Supreme Court in the case of *The State of Madhya Pradesh vs. Laxmi Narayan and others in Criminal Appeal No. 349 of 2019* dated 5th March, 2019 and the judgment of this Court in

case of Ajaysing Krushnapalsingh Chauhan & Ors. vs. The State of Maharashtra & Anr., passed in Criminal Writ Petition No. 39 of 2021 dated 8th July, 2021. However, these judgments deal with different factual scenarios and involve consideration of legal provisions that are dissimilar to the offences primarily alleged against the Petitioners in the present Petition.

8.1) Considering the facts of these two judgments, we find that both the judgments would have no material bearing in the present proceedings.

8.2) Mr.Sharma also relied upon the judgment of *Criminal Writ Petition No. 1399 of 2021 in case of ABC vs. The State of Maharashtra & Anr. dated 5th April, 2021* passed by the Division Bench of this Court. In that case, the Court was considering a dispute that has been amicably settled between the first informant and the accused. The said proceedings were related to the offence under Section 376 and 313 of the Indian Penal Code. The Division Bench of this Court after considering the judgment of the Supreme Court and considering seriousness of the offence committed, including that of termination of pregnancy on two occasions, held that the offence was serious and heinous in nature, and hence, the FIR was not quashed. The facts in the present proceedings are quite different and offences punishable under Section 498A and Section 406 of the Indian Penal Code, are involved.

9) Going through the entire allegations as narrated in the FIR, we are of the considered view that, the offences punishable under Sections

498-A, 406, 506 read with 34 of the IPC are not made out, qua the Petitioners.

10) The Supreme Court in the case of *State of Haryana and Others Vs. Bhajan Lal and Others, 1992 Supp (1) SCC 335*, has laid down certain tests to verify as to whether accused persons needs to be made to face a trial or the FIR can be quashed. After bare perusal of the FIR and charge-sheet in the present proceeding, we are of the opinion that, no case is made out against the Petitioners about the alleged offences, even if the FIR and other material on record is accepted as it is.

11) In our view, the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* disclose the commission of any offence by the present Petitioners and there is no material to substantiate the allegations made therein.

12) We are therefore, satisfied that C.C.No. 2737/PW/2022 and after committal, being Sessions Case No. 247 of 2023 arising out of FIR No.83 of 2013 registered with Oshiwara Police Station, Mumbai, needs to be quashed and set aside.

13) Accordingly, the Petition is allowed in terms of amended prayer clause (a) and Rule is made absolute.

(RAJESH S. PATIL, J.)

(A.S. GADKARI, J.)