

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

CRIMINAL APPLICATION NO.1998 OF 2017

1. Vishal Philip Gaikwad,
Age 36 yrs. Occ. Service,
R/o.Nashik Road, Tq. and
Dist. Nashik.
2. Kunda Danial Shinde
Age 46 yrs. Occ. Nil
R/o. Ashvini Society,
Samangaon Road, Sinnar Phata,
Nashik.
3. Sarika Sandeep Rathod,
Age 33 yrs. Occ. Nil,
R/o. Ashvini Society,
Samangaon Road, Sinnar Phata
Nashik.
4. Lukas Philip Gaikwad,
Age 47 yrs. Occ. Service,
R/o. Haregaon, Tq. Shrirampur
Dist. Ahmednagar.
5. Teresa Dagadu Gaikwad
Age 65 yrs. Occ. Nil
R/o. Ward No.6, Shrirampur
Tq. Shrirampur, Dist. Ahmednagar.

APPLICANTS

VERSUS

1. The State of Maharashtra
Through the Police Inspector
Pathardi Police Station,
Tq. Pathardi, Dist. Ahmednagar.
2. Priyanka Vishal Gaikwad,
Age 26 yrs. Occ. Service,

R/o. Shankar Nagar, Pathardi,
Tq. Pathardi, Dist. Ahmednagar

RESPONDENTS

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Mr.S.B.Kadu, Advocate for the applicants
Mr.V.M.Kagne, APP for the respondent-State
Mr.Sandip R.Andhale, Advocate for respondent
no.2.

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**CORAM: S.S.SHINDE &
A.M.DHAVALA, JJ.**

Reserved on : 19.09.2017
Pronounced on : 26.09.2017

JUDGMENT: [Per S.S.Shinde, J.]:

1. Heard.

2. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

3. The Application is filed with
following prayer:

B] To quash and set aside the F.I.R.
and proceeding bearing Crime No.
0123/2016 registered at Pathardi
Police Station Tq. Pathardi, Dist.
Ahmednagar for the offences
punishable U/sec. 498-A, 323, 504,

506 r/w.34 of I.P.C. and chargesheet RCC no. 159 of 2016 pending before Ld. J.M.F.C. Pathardi, Dist. Ahmednagar and for that purpose issue necessary order.

4. Respondent no.2 herein alleged in the First Information Report [for short 'FIR'] that her marriage was solemnized with applicant no.1-Vishal Philip Gaikwad on 29th December, 2013, as per Christian Rites and Rituals. Thereafter, she went for co-habitation at Haregaon i.e. matrimonial house. It is further alleged that for 8 days after she went to Haregaon she was properly treated by the members of the matrimonial house. Thereafter, applicants told the informant that since she has completed the course of Nursing, she will have to join employment somewhere, and they are not prepared to maintain her without doing any work. It is further alleged that they told her that if the informant is not inclined to

work, in that case she should bring Rs.3 lacs from her parents. The applicants used to ill-treat and beat her. They used to insult her. She was carrying pregnancy of 9 months, and at that time when she left the matrimonial home so as to go to the parents place; her ATM card was taken from her, and she was driven out of the matrimonial home on 17th December, 2014. At the place of parents, she delivered a baby. Thereafter, on 27th May, 2015, she along with her father, maternal uncle and other relatives went to Nashik at husband's place, at that time also the members of matrimonial home came there and asked for Rs.3 lacs from her so as to purchase a flat. It was stated by them that unless the amount of Rs.3 lacs is given by the parents of the informant, they will not allow the informant to co-habit with applicant no.1. Then at Pathardi a meeting was arranged on 01.06.2015 where her in-laws

came and reiterated demand of Rs.3 lacs. On 08.06.2015, she filed application to counselling centre but the husband and in-laws did not come for mediation and then lodged the FIR at Pathardi Police Station, Pathardi, District Ahmednagar on 05.04.2016.

5. Learned counsel appearing for the applicants, on instructions, submits that applicant no.1 is the husband and is not claiming any relief in the present Criminal Application. Therefore, application of applicant no.1 stands rejected as not pressed.

6. So far as applicant nos.2 to 5 are concerned, it is submitted that, applicant no.2—Kunda Danial Shinde is an elder sister of applicant no.1 and got married on 05.05.1993 and resides at Ashvini Society, Samangaon Road, Sinnar Phata, Nashik, which is 15 kilo meters away from the matrimonial

house. Applicant no.3 – Sarika Sandeep Rathod is the sister of applicant no.1 and married on 28th December, 2011, and also resides at Ashvini Society, Samangaon Road, Sinnar Phata, Nashik. Applicant no.4 – Lukas Philip Gaikwad is the elder brother of applicant no.1 and resides at Haregaon, Taluka Shrirampur, District Ahmednagar, which is 150 kilo meters away from the Nashik City. Applicant no.5 is the paternal aunt, who is senior citizen and also resides at Ward No.6, Shrirampur, Taluka Shrirampur, District Ahmednagar. It is submitted that the applicants are residing separately and they have no concern with the alleged matrimonial dispute of applicant no.1 and respondent no.2. Respondent no.2 with an *ulterior motive* tried to rope in the relatives of applicant no.1. It is submitted that though it is alleged in the FIR that respondent no.2 left the matrimonial home on 27.05.2015, the FIR

is registered belatedly on 5th April, 2016. There is delay of 10 months in lodging the FIR. The allegations in the FIR and also the statements of the witnesses are general in nature without mentioning any specific incident as such. Learned counsel pressed into service exposition of law by the Supreme Court in the case of *Geeta Mehrotra and another Vs. State of Uttar Pradesh and another*¹ and submits that, if the allegations in the FIR do not disclose specific incident or overt act qua each accused more-so against relatives, who are not residing in matrimonial home, in that case so as to avoid abuse of process of law, the FIR deserves to be quashed. Learned counsel also placed reliance on the ratio laid down by the Supreme Court in the case of *Rajesh Sharma & Ors. Vs. State of U.P. & Anr. in Criminal Appeal No.1265 of 2017, decided on 27th July,*

1 [2012] 10 SCC 741

2017, and submits that it has been observed in the said judgment that in many cases the complaints under Section 498-A are not *bona fide* and such complaints lead to uncalled for harassment not only to accused but also to the complainant. Learned counsel invites our attention to the proof of residence of applicant nos.2 to 5 in the nature of their addresses mentioned on the Aadhar Card. Learned counsel further submits that no cause of action has arisen at Pathardi, and therefore, the Court of Judicial Magistrate First Class at Pathardi has no jurisdiction to try the case. Learned counsel appearing for the applicants has also placed reliance on the case of *Rajesh Sharma [supra]* and in particular para 18 thereof wherein the Supreme Court has given various directions to be followed while dealing with the complaints arising out of matrimonial discord.

7. On the other hand, learned APP appearing for the respondent-State, and learned counsel appearing for respondent no.2 relying upon the allegations in the FIR, and the statements of the witnesses, and also other material collected during the course of investigation, submit that, the alleged offences are disclosed, and therefore, the Investigating Officer reached to the conclusion to file the charge-sheet, and accordingly charge-sheet has been filed. It is further submitted that the allegations in the FIR and the statements of the witnesses will have to be read as it is, and while exercising jurisdiction under Section 482 of the Criminal Procedure Code, it is not desirable to undertake exercise of adjudication of the disputed questions of facts and appreciation of the defence taken by applicant nos.2 to 5 that, they are residing at different places and not at

matrimonial home. Therefore, it is submitted that the application deserves to be rejected.

8. We have given careful consideration to the rival submissions of the learned counsel appearing for the parties. With their able assistance, we have perused the allegations in the FIR, charge-sheet and it's accompaniments, and also other documents placed on record. Upon careful perusal of the statements of the witnesses, who are the relatives of respondent no.2 and are residing at Pathardi; their statements are also in tune with the contents of the FIR. It is alleged in the FIR that on 1st June, 2015 at Pathardi there was endeavour to settle the dispute with the help of mediator, and on that day the members of the matrimonial home came at Pathardi. According to the learned counsel appearing for the applicants, applicant no.1 issued two notices through Advocates on 16th May, 2015, and also on 1st

June, 2015, and therefore, assertion of the informant that the members of the matrimonial home came at Pathardi on 1st June, 2015, is ruled out. We have carefully perused the entire material placed on record, and we find that, no cause of action arose within the jurisdiction of Pathardi Police Station and also Judicial Magistrate First Class, Pathardi, so as to entertain the FIR and further proceedings arising out of the said FIR.

9. It is not in dispute that applicant nos.2 and 3 are married sisters of applicant no.1. Their marriages were performed even prior to the date of solemnization of the marriage of respondent no.2 with applicant no.1. Upon careful perusal of the copies of Aadhar Cards, which are placed on record, applicant nos.2 and 3 are residing separately at different places at Nashik. Applicant no.4, who is elder brother of applicant no.1,

resides at Haregaon, Taluka Shrirampur, District Ahmednagar, which is 150 kilo meters away from Nashik City. Applicant no.5 is the senior citizen and paternal aunt of applicant no.1, who resides at Shrirampur. All applicants are residing separately.

10. Upon careful perusal of the allegations in the FIR, and the statements of the witnesses, there are omnibus allegations without attributing any specific overt acts qua each of the applicants, without mentioning any specific incident/incidents. Upon careful perusal of the allegations in the FIR, it appears that, initially for few days after the marriage, respondent no.2 stayed at Haregaon, and then she shifted at Nashik wherein applicant no.1 was working. The allegations that the applicants came at Nashik and demanded Rs.3 lacs for purchase of a flat, are inherently improbable, inasmuch as those are general in nature, and the

applicants are residing at different places. Upon careful perusal of the allegations in the FIR, and the statements of the witnesses, an alleged offence punishable under Section 498-A of the IP Code has not been disclosed qua applicant nos.2 to 5. The basic ingredients of Section 498-A are not attracted. There is growing tendency of making omnibus allegations against all relatives of the husband, which cannot be taken at face value when in normal course it may only be the husband or at best his parents who may be accused of demanding dowry or causing cruelty. The Supreme Court in the case of *Geeta Mehrotra and another [supra]*, in the facts of that case held that casual reference to a large number of members of the husband's family without any allegation of active involvement would not justify taking cognizance against them and subjecting them to trial. In the said judgment, there is also

reference of the judgment of the Supreme Court in the case of **G.V.Rao Vs.L.H.V. Prasad**² wherein in para 12 it is observed thus:

"12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement

2 (2000) 3 SCC 693

instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts."

11. In the light of discussion in the foregoing paragraphs, the further proceedings/investigation based upon the FIR bearing Crime No.0123/2016 registered at Pathardi Police Station, Taluka Pathardi, District Ahmednagar, for the offences punishable under Sections 498-A, 323, 504, 506 r/w.34 of the IP Code and the charge-sheet bearing RCC No.159 of 2016, pending before the Judicial Magistrate First Class, Pathardi, would be exercise in futility so far applicant nos.2 to 5 are concerned. Therefore, the application to the extent of applicant nos.2 to 5 is allowed in terms of prayer clause-B, and the FIR bearing Crime No.0123/2016, registered at Pathardi Police

Station, Pathardi, for the offences punishable under Sections 498-A, 323, 504, 506 r/w.34 of the IP Code, and the charge-sheet bearing RCC No.159 of 2016, to the extent of applicant nos.2 to 5, stands quashed and set aside.

12. So far applicant no.1-Vishal Philip Gaikwad [husband] is concerned, his application is not pressed by the learned counsel appearing for the applicants, nevertheless we find that the cause of action for filing the FIR mainly arose at Nashik, and therefore, in the peculiar facts and circumstances of this case, the proceedings of RCC No.159 of 2016, pending on the file of Judicial Magistrate First Class, Pathardi, District Ahmednagar, shall stand transferred to the Competent Court of the Judicial Magistrate First Class at Nashik Road. The registry of the Judicial Magistrate First Class at Pathardi and the Principal District

Judge, Ahmednagar, shall take immediate steps to transfer the proceedings of RCC No.159 of 2016 to the registry of the Principal District Judge at Nashik. In turn, the Principal District Judge, Nashik, to assign the said proceedings to the concerned Judicial Magistrate First Class in whose jurisdiction the cause of action arose leading for filing the FIR.

13. The Application is partly allowed. Rule is made absolute on above terms. Accordingly, application stands disposed of.

[A.M.DHAVALA]
JUDGE

[S.S.SHINDE]
JUDGE

DDC