

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (APL) No.580 of 2017
(Harish s/o. Shravan Nimbalkar and another .vs. State and another)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr.S.S.Dhengale, Advocate for the Applicants.
Ms Tajwar Khan, A.P.P. for the Respondent No.1/State.

CORAM : SMT VASANTI A NAIK &
M. G. GIRATKAR, JJ.

DATE : 18.9.2017.

The Criminal Application is admitted and heard finally at the stage of admission with the consent of the parties.

By this Criminal Application, the applicants seek the quashing and setting aside of the First Information Report registered against the applicants for the offences punishable under Sections 498-A, 504, 506 r/w. Section 34 of the Penal Code.

The non-applicant no.2 was married to Mahendra Chaudhari on 26.3.2016. The applicant no.1 is the husband of the sister of Mahendra Chaudhari and applicant no.2 Nilima is the sister of Mahendra Chaudhari. On 3.4.2017 a report was lodged by the non-applicant no.2 against Mahendra Chaudhari and the applicants for the offence punishable under Section 498-A of the Penal Code. It is alleged in the F.I.R. that Mahendra Chaudhari used to return to the matrimonial house at night in an intoxicated state and used to tell the non-applicant no.2 that he had an

affair with another girl. It is alleged by the non-applicant no.2 that Mahendra Chaudhari used to give fist and kick blows on the stomach of the non-applicant no.2 when she was pregnant. Certain other allegations are also made in the report against Mahendra Chaudhari.

Against the applicants, who is sister of Mahendra Chaudhary and her husband, it is alleged that after fifteen days from the marriage they had visited the matrimonial home and instigated Mahendra Chaudhari to behave badly with the non-applicant no.2 as her parents had not given good presents to Mahendra Chaudhari and his family members at the time of marriage. It is alleged against the applicants that they had been to the matrimonial home after a few days from the marriage and had instigated Mahendra Chaudhari to behave badly with the non-applicant no.2.

Mahendra Chaudhari has not filed this Criminal Application and the Criminal Application is filed only by the sister of Mahendra Chaudhari and her husband for the quashing and setting aside the F.I.R. as according to them, the allegations levelled against them would not tantamount to "cruelty" as is defined under Section 498-A of the Penal Code.

Mr.S.S.Dhengale, the learned Counsel for the applicants submitted that even if the allegations levelled against the applicants in the F.I.R. are accepted at their face value, it cannot be prima facie said that the applicants have inflicted cruelty on the non-applicant no.2, as is defined under Section 498-A of the Penal Code. It is stated that there is no allegation in the F.I.R. that the applicants used

to demand property or any other valuable security from the non-applicant no.2 or her parents and used to ill-treat the non-applicant no.2 due to non-fulfillment of the demand. It is stated that the applicants are residing in Amravati whereas the non-applicant no.2 and Mahendra Chaudhari were residing at Hiwarkhed. It is stated that since prima facie the offence under Section 498-A of the Penal Code cannot be made out against the applicants on the basis of complaint, the F.I.R. is liable to be quashed and set aside.

Ms Tajwar Khan, the learned Additional Public Prosecutor appearing for the non-applicant no.1 fairly admits that in the F.I.R., an allegation is not levelled against the applicants that the applicants used to ask the non-applicant no.2 to demand money from her parents and used to ill-treat the non-applicant no.2 due to non-fulfilment of the said demand. It is fairly admitted that it is only alleged in the report lodged by the non-applicant no.2 that the applicants had instigated Mahendra Chaudhari to behave badly with the non-applicant no.2 when they had visited the matrimonial home, 15 days after the date of marriage and had complained that good gifts were not given to Mahendra Chaudhari and the other family members during the marriage.

It is apparent on a reading of the F.I.R. that on the basis of the allegations made against the applicants in the same, an offence u/s.498-A of the Penal Code cannot be prima facie made out against the applicants. The applicants and the non-applicant no.2 were residing at different places. The non-applicant no.2 was residing at Hiwarkhed whereas the applicants were residing at Amravati. The

applicant no.2 was already married when the marriage of the non-applicant no.2 was solemnized with Mahendra Chaudhari. It is only alleged in the F.I.R. that the applicants had instigated Mahendra Chaudhari to behave badly with the non-applicant no.2 when they had come to the matrimonial home 15 days from the date of marriage of the non-applicant no.2. Even if the allegations in the F.I.R. are accepted at their face value, it cannot be said that the applicants have treated the non-applicant no.2 with “cruelty”, as defined under Section 498-A of the Penal Code. In our view, the non-applicant no.2 has unnecessarily roped the applicants in the F.I.R. while lodging the same against Mahendra Chaudhari.

Hence, for the reasons aforesaid, the Criminal Application is allowed. The First Information Report registered against the applicants is hereby quashed and set aside. Order accordingly.

JUDGE

JUDGE

**jaiswal*