IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 966 OF 2016

1. Mrs. Khurshid Akbar Shaikh]
Aged 46 years, Occ : Service,]
R/o. 255/10115, Alankar CHS]
Kannanwar Nagar-1, Vikhroli,]
Mumbai – 400 083]

2. Mrs.Mehrun Bilal Shaikh]
Age : 48 years, Occ. : Household,]
R/o. Building No.6, Room No.]
311, Wing 'C', MHADA Colony,]
Shivaji Nagar, Chembur,]
Mumbai – 400 043.]

3. Mr.Akbar Hussain Hashim Shaikh]
Age : 55 years, Occ. : Service,]
R/o. 255/10115, Alankar CHS]
Kannanwar Nagar-1, Vikhroli,]
Mumbai – 400 083]

4. Mrs.Shahida Sajid Hussain]
Age : 41 years, Occ: Service,]
R/o. 32/539 Near Kinnari Hall,]
Kannanwar Nagar-1, Vikhroli,]
Mumbai-83.]

5. Mr. Sajid Suleman Hussain]
Age : 41 years, Occ : Mechanic]
R/o. 4 and 5, 32/539 Near Kinnari]
Hall, Kannanwar Nagar-1,]
Vikhroli, Mumbai.]

6. Mrs.Vahoda Zarar Khan]
Age : 39 years, Occ : Service,]
R/o. Building No. 63, 3rd Floor,]
Kannamwar Nagar-2, Vikroli,]
Mumbai-83.]

7. Mrs.Farida Sarfaraz Nakade]
Age: 30 years, Occ : Housewife,]
R/o. 63, Sharifa Building,]

1st Floor, Temkar Street,	]	
Mumbai – 400 008.	]..	Applicants

Versus

1. The State of Maharashtra	]	
(Through Senior P.I., Nyaya	]	
Nagar Police Station, Thane	]	
2. Miss. Shabnam Shahbuddin Khan	]	
Age : 29 years, Occ : Housewife,	]	
R/o. A/504, Ashmitaskawana	]	
CHS, Above Corporation Bank,	]	
Naya Nagar, Mira Road (E),	]	
District Thane	]..	Respondents

Mr. Shridhar A. Patil for applicants.

Mr.K.V. Saste, APP for State.

Mr.A.D. Joshi, respondent No.2.

CORAM : RANJIT MORE &
N.J. JAMADAR, JJ.

Date : 14th August 2019

JUDGMENT (PER N.J. JAMADAR) :

1 This is an application under section 482 of the Code of Criminal Procedure, 1973 for quashing the First Information Report bearing C.R.No. I-137 of 2016, registered with Naya Nagar Police Station, Thane for the offences punishable under sections 498-A, 406, 323, 504, 506 read with 34 of the Indian Penal Code, 1860 (IPC) qua the applicants.

2 The background facts can be stated, in brief, as under :-

a) The applicants, who are the relatives of the husband of Ms.Shabnam-the respondent No.2 (hereinafter referred to as, 'the first informant') have been arraigned for the offences punishable under sections 498-A, 406, 323, 504, 506 read with 34 of IPC along with the husband and father-in-law and mother-in-law of the first informant for having subjected the first informant to cruelty in order to coerce her to meet an unlawful demand of property, on the strength of FIR lodged by the first informant.

b) The marriage of the first informant was solemnized with Shahabuddin Khan, co-accused, brother of the applicant Nos.1, 2, 3, 6 and 7 and brother-in-law of the applicant No.3-Akbar (husband of the applicant No.1) and applicant No.5-Sajid (husband of applicant No.4) in accordance with the tenets of Islam. The first informant joined her matrimonial home at Vikroli, where the father-in-law and mother-in-law of the first informant were residing. After about 15 days of the marriage, Shahabuddin went abroad for work. The applicant Nos.1, 2, 3, 6 and 7 used to frequently visit the matrimonial home. The applicants including applicant Nos.3 and 5 harassed the first informant by passing taunts and insinuations. They used to abuse the first informant and subject her to mental harassment.

c) After Shahabuddin returned to India, the first informant and Shahabuddin, fed up with the ill-treatment at the hands of the applicants, shifted to a rented premises, i.e., Flat No.306, Qamar Apartment, Naya Nagar, Mira Road, Thane. Sahabuddin went to Saudi Arabia in the month of August 2012. At that time, Shahabuddin had taken a sum of Rs.50,000/- from the father of the first informant. In the month of September 2015, Shahabuddin returned to India. Shahabuddin asked the first informant to bring an amount of Rs.3,50,000/- from her father to take a house on rent at Mumbra. As the demand was not met, Shahabuddin started to ill-treat the first informant. Ultimately, the first informant and Shahabuddin shifted to Mumbra. The father-in-law and mother-in-law of the first informant used to visit them at Mumbra and rake up quarrels on one or the other pretext.

d) In the meeting convened to resolve the differences, all the applicants made a demand of rupees one lakh if the first informant desired to continue to cohabit with Shahabuddin. The first informant was not allowed to rejoin her husband for failure to meet the demand. The accused took away all the articles including ornaments which were kept at the rented premises at

Mumbra. Hence, the first informant lodged the report leading to registration of C.R. No.I-137 of 2016.

3 The applicants assert that they have never resided together with the first informant. There was no occasion for the applicants to cause harassment to the first informant. The applicants have been roped in to wreak vengeance for the only reason that they are the relatives of the husband of the first informant. Thus, concocted and patently false allegations have been made against the applicants. From the bare perusal of the first information report, it becomes evident that no *prima-facie* case is made out against the applicants. Hence, the applicants prayed that the first information report, bearing No.I-137 of 2016, and the consequent prosecution initiated against them be quashed and set aside.

4 We have heard Shri Shridhar Patil, the learned counsel for the applicants, Shri A.D. Joshi, the learned counsel for the respondent No.2-the first informant and the learned APP for the respondent No.1-State.

5 The learned counsel for the applicants submitted that the instant case is a classic example of the abuse of the provisions contained in section 498-A of the IPC. From the own showing of the first informant, according to the learned counsel for the applicants, the applicants and the first

informant have never shared a household. In contrast, the averments in the first information report indicate that the first informant and her husband have been residing separately since August 2012. In this backdrop, imaginary and unsubstantiated allegations of harassment against the applicants would not justify the prosecution of the applicants for the offence punishable under section 498-A of the IPC. Continuing the prosecution, on the strength of such cooked up allegations, would perpetuate injustice, urged the learned counsel for the applicants.

6 In opposition to this, the learned counsel for the respondent No.2-the first informant endevoured to impress upon the Court that there are specific allegations of harassment and torture of the first informant attributable to the applicants. Though the applicants were residing separately from the first informant, her husband, father-in-law and mother-in-law, there are clear and explicit allegations in the FIR as to how the applicants used to visit the house of the first informant and harass her. The learned counsel for the respondent No.2, thus, submitted that the facts of the instant case do not warrant exercise of the extraordinary jurisdiction envisaged by section 482 of the Code, and it would be in the interest of justice to allow the prosecution of the applicants.

7 We have given anxious consideration to rival submissions. We have

carefully perused the material on record especially the first information report dated 10th May 2016 leading to the registration of C.R. No.I-137 of 2016. From a bare perusal of the FIR, the following position emerges :-

Within a fortnight of the marriage of the first informant with Shahabuddin, the later went to Qatar/Saudi Arabia for work. The first informant resided in the matrimonial home till August 2012. Thereafter, the first informant and Shahbuddin shifted to Mira Road and they resided at Naya Nagar, Mira Road till the time Shahabuddin again went abroad. Thereafter, the first informant resided with her parents. Shahabuddin returned in the month of September 2015. In the month of October 2015, the first informant and Shahabuddin shifted to Mumbra-Thane. The first informant returned to her parental home in the month of November 2015, as she was unwell, allegedly due to ill treatment at the hands of her husband-Sahabuddin and father-in-law and mother-in-law. It is alleged that all the accused including the applicants came to the house of the parents of the first informant, and at that time, during the course of conversation, all the accused asked the first informant to bring an amount of Rs.1 lakh for taking a room, if the first informant intended to cohabit with Shahabuddin. Due to poor financial position of the father of the first informant, he could not meet the demand and, therefore, the accused refused to take the first informant with him.

8 In the light of the aforesaid sequences of events, taking the allegations in the FIR, at par, at best, there are two incidents which can be pressed into service as the allegations against the applicants :

The first is conduct attributable to the applicants during the period, the first informant stayed at her matrimonial home, i.e., 15 days post marriage to August 2012. The second incident is after the first informant returned to her parental home in the month of October 2015.

9 As regards the first incident, which allegedly occurred before August 2012, the allegations are general in nature. The first informant was allegedly harassed over not performing the household work to the satisfaction of the applicants. The alleged conduct does not fall within the mischief of cruelty defined in section 498-A.

10 As regards, the second incident, it is pertinent to note that the cause for leaving the matrimonial home at Mumbra, where the first informant and Shahabuddin only were residing, was stated to alleged ill-treatment at the hands of Shahabuddin for failure of the first informant to meet the demand of Rs.3,50,000/- for taking a house on rent. The primary allegations are against Shahabuddin. It is alleged that during the said period, the parents-in-law of the first informant visited the first informant and raked up quarrels on one or the other pretext.

11 Evidently, it is not the claim of the first informant that the applicants visited the first informant at Mumbra during the said period. Nor there are any allegations to the effect that the first informant and the applicant shared the household at any point of time after August 2012.

12 It is trite law that section 498-A of IPC has a definite connotation. It is not every harassment or any kind of ill-treatment, which falls within the dragnet of section 498-A of IPC. It has to be shown that the harassment was with a view to force a married woman to commit suicide or cause grave injury or danger to her life, limb or health or it was with a view to coerce the married woman to fulfill the illegal demand of property.

13 On the aforesaid touchstone, reverting to the allegations in the FIR, the assertions that all the applicants made a demand of Rs.1 lakh to take a room and refused to take back the first informant to cohabit with Shahbuddin, even if taken at par, do not fall within the tentacles of section 498-A for reasons more than one. The allegations are omnibus in nature. Secondly, there is no allegations that post the alleged demand, there was harassment at the hands of the applicants in order to coerce the first informant to meet the said demand. Thirdly, the allegations seem to have been made with the sole object of roping all the applicants for the reason that they were the relatives of Shahabuddin. The last inference is

inescapable if viewed in the backdrop of the fact that the first informant and Shahabuddin have been residing separately even from the parents of Shahabuddin since August 2012, leave apart the applicants. There was no occasion and, consequently, opportunity for the applicants to ill-treat the first informant.

14 It is judicially recognized that in the wake of marital discord, the allegations are made thick and fast. There is a tendency to rope in as many persons from the family of the husband as possible, irrespective of their involvement in the alleged crime. Allowing the prosecution of the immediate relations of the first informant, when the prosecution case does not indicate their involvement even remotely, would amount to grave injustice. In exercise of the powers of under section 482 of the Code, the Court would be justified to quash any proceedings if it's continuance amounts to abuse of the process and its' quashment serves the ends of justice.

15 A profitable reference, in this context, can be made to a judgment of the supreme court in the case of ***Priti Gupta Vs. State of Jharkhand*** [1]***,*** wherein, the following observations were made :-

> *"32 It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the*

1 (2010) 7 SCC 667

moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

…………….

35 The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. <u>The tendency of implicating husband and all his immediate relations is also not uncommon.</u> At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

(emphasis supplied)

16 In the backdrop of the exposition of the aforesaid position, we are of the considered view that the implication of the applicants herein for the offences punishable under section 498-A of IPC is actuated by a design to harass and humiliate the applicants for the reason that they happen to be the relations of Shahabuddin. The continuation of the prosecution, in the circumstances, would be an abuse of process of law. Compelling the applicants to undergo the trial would cause grave injustice. We, therefore, deem it appropriate to quash the FIR bearing No.I-137/2016 and the consequent proceedings qua the applicants.

17 For the foregoing reasons, the application stands allowed.

The FIR No. No.I-137/2016 registered with Naya Nagar Police Station, Thane for the offences punishable under sections 498-A, 406, 323, 504, 506 read with 34 of the IPC and the resultant proceedings stand quashed qua the applicants only.

The prosecution arising out of the aforesaid FIR may, however, proceed against the rest of the accused, in accordance with law.

[N.J. JAMADAR, J.] **[RANJIT MORE, J.]**