

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

CRIMINAL APPLICATION NO. 51 OF 2021

01 Gitabai w/o Hiralal Rathod;

02 Hiralal s/o Dalsing Rathod;

03 Ajay s/o Hiralal Rathod;

04 Sumeet s/o Hiralal Rathod;

05 Digambar s/o Govind Chavan;

06 Sudam s/o Govind Chavan

Applicants

Versus

01 The State of Maharashtra

02 Nivedita w/o Santosh Chavan

Respondents

Mr. Sandip Rathod, advocate for applicants

Mr. A. S. Shinde, APP, for Respondent No.1-State

Mr. S. R. Bagal, advocate holding for Mr. B. N. Gadegaonkar,
advocate for Respondent No.2

**CORAM : SUNIL P. DESHMUKH &
NITIN B. SURYAWANSHI, JJ.**

DATE : 08th September, 2021.

PC :

1. The applicants, by this application, seek relief of quashing the First Information Report bearing CR. No.0112/2020, registered with Mantha Police Station, Tq. Hadgaon, District

Nanded, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code.

2. Respondent No.2 lodged impugned First Information Report alleging that her marriage was performed with Santosh Chavan on 20.06.2017 as per Hindu rites and a son is born out of the said wedlock. Since last year, her husband has started mentally harassing her as she was opposing to his illicit relationship with applicant no.1, who is maternal aunt of her husband. The applicant no.1, her husband – applicant no.2, their sons – applicants no.3 and 4 used to harass her and insist that she should not stay with her husband. Her husband used to ask her to bring an amount of Rs. One lakh from her father. Applicants no.5 and 6, Police Constables, who are related to applicant no.1, also abused and threatened the Informant. With these allegations, the First Information Report came to be registered against the applicants and Santosh - husband of the Informant/Respondent No.2.

3. The learned advocate for the applicants sought quashing of the First Information Report on the ground that the applicants are not related to Santosh or the Informant/Respondent

No.2 and they have been falsely implicated in the alleged crime. Applicants no. 3 and 4 are students and they are taking education. Applicants no.5 and 6 are in Government service and they are falsely roped in the alleged crime with a view to harass them. By placing reliance on the decision of the Hon'ble Apex Court in **U. Suvetha Vs. State by Inspector of Police & another**, (2009) 6 SCC 757, the learned advocate for the applicants submitted that only relatives of the husband can be booked under Section 498-A of the Indian Penal Code. He, therefore, submitted that since the applicants are not related to Santosh – husband of Informant/Respondent No.2, in any manner, continuation of the proceedings against the applicants is an abuse of process of law.

4. The learned A.P.P. has opposed the application submitting that the First Information Report reveals that the applicants have harassed the Informant/Respondent No.2 mentally and physically and, therefore, they are liable to be charged for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code.

5. The learned advocate for Respondent No.2, by pointing out the reply affidavit filed by her, contended that the First

Information Report makes out all the ingredients of Sections 498A, 323, 504 and 506 read with Section 34 of the Indian Penal Code. According to him, all the applicants have played active role in the ill-treatment meted out to Respondent No.2. He, therefore, submitted that the application is without merit and the same deserves to be dismissed.

6. On perusal of the record, it reveals that there is nothing on record except vague allegations of Respondent No.2 that the applicant no.1 is 'मावस आई' (cousin mother) of her husband – Santosh and there are illicit relations between them. *Prima facie*, it is difficult to believe the said allegations because applicants no.1 and 2, who are wife and husband, have two grown up children staying together. There is absolutely no material on record to show that Santosh - husband of the Informant/Respondent No.2 and applicant no.1 are, in any manner, related with each other. Omnibus allegations are levelled against the applicants. Applicants no.5 and 6 are serving as Police Constables and they are also roped in the alleged offence by making vague and general allegations against them.

7. In U. Suvetha (*supra*), the Hon'ble Apex Court has held

that status of a relative is conferred only by blood or marriage or adoption. A “Girlfriend” or “concubine”, being not connected by blood or marriage, is not a relative of the husband as per Section 498-A of the Indian Penal Code. It is observed that:

“By no stretch of imagination, would a girlfriend or even a concubine in an etymological sense be a “relative”. The word “relative” brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise.”

8. In the light of aforesaid legal position, the applicants cannot be said to be related to Santosh – husband of Informant/Respondent No.2 and they cannot be made accountable to answer the charge for the offence punishable under Section 498-A of the Indian Penal Code. As the applicants are not related to the husband of Informant/Respondent No.2, they cannot be regarded as persons who fall within explanations (a) or (b) of Section 498-A of the Indian Penal Code. In this view of the matter, we are of the view that the applicants are not relatives of husband of Respondent No.2. Therefore, they cannot be made an accused in the present case. Hence, continuation of the proceedings of the

impugned First Information Report against the applicants is an abuse of process of law.

9. In the result, present application is allowed. The First Information Report bearing CR. No.0112/2020, registered with Mantha Police Station, Tq. Hadgaon, District Nanded, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code, is hereby quashed and set aside *qua* the applicants.

(NITIN B. SURYAWANSHI)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

adb