

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

CRIMINAL APPLICATION NO.3271 OF 2019

Deepika Hanmant Zanjurne,
Aged 31 years, Occu. Service,
R/at Near HFCHS, Vidyanagar,
Taluka Karad, District Satara

..Applicant

Versus

1. The State of Maharashtra,
Through Police Inspector,
Tofkhana Police Station,
Ahmednagar
2. Sujata Shrikumar Ingale,
Aged 33 years, Occu. Nil,
R/at Telikhunt, Malhar Building,
M.G. Road, Taluka and Dist.
Ahmednagar

..Respondents

Mr Ashutosh S. Kulkarni, Advocate for applicant
Mr R.D. Sanap, A.P.P. for respondent no.1/State
Mr A.D. Aghav, Advocate for respondent no.2

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 27th September 2021

PER COURT :

1. Heard finally with consent at admission stage.
2. The applicant is an accused in connection with F.I.R. No.32/2019, registered with Tophkhana Police Station, Ahmednagar on 8.1.2019, for the offences punishable under Sections 498-A, 323, 504, 506 of Indian Penal Code. The aforesaid crime came to be registered on the basis of the complaint lodged by respondent no.2.
3. During the pendency of this Criminal Application, the charge-sheet came to be submitted. The applicant has thus under the leave of this Court, carried out the amendment and prayed for quashing of criminal proceedings.

4. The learned Counsel for the applicant submits that the complaint came to be registered on 8.1.2019, for the ill-treatment being extended to respondent no.2/informant during the period from 8.3.2015 to 29.11.2018. There is no explanation for such an inordinate delay in lodging the complaint. The learned Counsel submits that the applicant is admittedly a third person and she is not a relative of the co-accused. It has been alleged in the complaint that the co-accused Shrikumar, who happened to be the husband of respondent no.2, has developed illicit sexual relations with the applicant and due to the said relations, there used to be quarrel between the co-accused Shrikumar and respondent no.2/informant. It has been alleged in the complaint that the present applicant is a cause for the said quarrel between the husband and wife. The learned Counsel submits that it has been alleged in the complaint that the co-accused/husband Shrikumar used to beat and ill-treat respondent no.2/informant. It has been vaguely alleged in the complaint that on one occasion, the applicant Deepika has made a phone call to respondent no.2/informant and abused her. The learned Counsel submits that in the F.I.R., there are no allegations that present applicant Deepika has extended beatings to respondent no.2 at any point of time. The learned Counsel submits that however, during the course of investigation, in a supplementary statement recorded on 10.1.2019, respondent no.2/informant has alleged that in the month of January 2017, the present applicant had been to her matrimonial home, and along with other co-accused persons also extended beatings to her for the reason that respondent no.2/informant did not bring the amount of Rs.10 lakhs.

5. The learned Counsel submits that in the F.I.R., the allegations have been restricted as against the applicant that due to her illicit sexual relations with co-accused Shrikumar, there used to be quarrel between co-accused Shrikumar and respondent no.2/informant and same was the reason that respondent no.2/informant was being ill-treated in her matrimonial home. The learned Counsel submits that the applicant, as per the allegations made in the complaint has nothing to do with the said demand allegedly made by the other co-accused persons, for which respondent no.2/informant was subjected to ill-treatment.

6. The learned Counsel submits that with mala fide intention and to wreak vengeance against the applicant, the allegations have been made deliberately in the supplementary statement.

7. The learned Counsel for the applicant, in order to substantiate his contentions has placed his reliance in a case of **U. Suvetha Vs. State by Inspector of Police and Anr.**, reported in **2009 AIR (SC) (Supp) 1451**.

8. The learned Counsel for respondent no.2/informant submits that the applicant herein is the cause for the entire complications. The applicant has instigated the co-accused Shrikumar and further, on one occasion, the applicant had also joined the other co-accused persons precisely in the month of January 2017 and extended the beatings to respondent no.2/informant. The learned Counsel submits that in the supplementary statement, respondent no.2/informant has made the specific allegations against the applicant herein. Those allegations are to be taken as it is and there is no reason to marshal the evidence. The learned Counsel for respondent no.2 / informant

in the alternate submits that at the most, since the applicant herein is not the relative of the co-accused, the charge under Section 498-A of the Indian Penal Code can be quashed, however, there are allegations against the applicant so far as Sections 323, 504 and 506 of the Indian Penal Code.

9. We have also heard the learned A.P.P. for respondent no.1/State.

10. We have carefully gone through the charge-sheet, particularly the F.I.R. It has been alleged in the complaint that after co-accused Shrikumar (husband of respondent no.2) returned from Ireland and when the respondent no.2/informant while checking his bag, she found one packet on which the present applicant's name alleged to have been written along with her address. Thereafter, respondent no.2 has questioned about the same to her husband – co-accused Shrikumar, however, the co-accused Shrikumar has given some evasive answers. Thereafter again, co-accused Shrikumar went to Ireland and returned to India in the month of September 2016, however, respondent no.2 has noted the substantial change in his behaviour. It has been further alleged that for no reason, the applicant Deepika has made a phone call to her and abused her. The co-accused Shrikumar on questioning, explained to respondent no.2 that he has given the status of wife to the applicant. By saying so, he extended the beatings to respondent no.2/informant.

11. We have carefully gone through the entire charge-sheet. It appears that on the basis of these allegations, the applicant herein has arraigned as an accused in connection with the crime and further, charge-sheet has been submitted against her. Admittedly, the applicant is not the relative of co-

accused Shrikumar and others. Thus, the ingredients of Section 498-A of the Indian Penal Code are not attracted as against the present applicant.

12. In a case of **U. Suvetha Vs. State by Inspector of Police and Anr.** (supra), relied upon by the learned Counsel for the applicant, in paragraphs 11, 13, 18 and 21, in identical set of facts, the Supreme Court has made the following observations :

"11. The word `cruelty' having been defined in terms of the aforesaid explanation, no other meaning can be attributed thereto. Living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same, in our opinion, would not attract the wrath of Section 498A of the Indian Penal Code. An offence in terms of the said provision is committed by the persons specified therein. They have to be the `husband' or his `relative'. Either the husband of the woman or his relative must be subjected to her to cruelty within the aforementioned provision. If the appellant had not been instigating the husband of the first informant to torture her, as has been noticed by the High Court, the husband would be committing some offence punishable under the other provisions of the Indian Penal Code and appellant may be held guilty for abetment of commission of such an offence but not an offence under Section 498A of the Indian Penal Code.

13. Further more, the provision is a penal one. It, thus, deserves strict construction. Ordinarily, save and except where a contextual meaning is required to be given to a statute, a penal provision is required to be construed strictly. This Court in *T. Ashok Pai v. Commissioner of Income Tax, Bangalore*, [2007 (8) SCALE 354] held as under :-

"19. It is now a well-settled principle of law that the more is the stringent law, more strict construction thereof would be necessary. Even when the burden is required to be discharged by an assessee, it would not be as heavy as the prosecution. [See P.N. Krishna Lal and Ors. v. Govt. of Kerala and Anr. 1995 Supp (2) SCC 187]." [See also Noor Aga v. State of Punjab, [2008 (9) SCALE 681].

18. By no stretch of imagination a girl friend or even a concubine in an etymological sense would 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.

21. Applying the principles laid down in various decisions referred to above, we have no doubt, in our mind, that the appellant is not a relative of the husband of the first informant.

13. In a case of **State of Haryana and ors., Vs. Ch. Bhajan Lal and ors.**, reported in **AIR 1992 SC 604**, in para 105 of the judgment, the Supreme Court, by referring the various cases on this point has formulated the categories of cases by way of illustration, wherein such powers under Section 482 of the Cr.P.C. could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. Though the said categories are seven in number, however, categories no.1, 3 and 7 which are relevant for the present discussion are reproduced hereinbelow :

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(3) Where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

14. In the instant case, so far as allegations are made in the F.I.R., even as against the applicant, if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the applicant herein. So far as the charge under Section 498-A of Indian Penal Code is concerned, in the case of **U. Suvetha Vs. State by Inspector of Police and Anr.** (supra), relied upon by the learned Counsel for the applicant, the Supreme Court has dealt with a question as to whether the term "relative of husband of a woman" within the meaning of Section 498-A of the Indian Penal Code should be given an extended meaning. The Supreme Court, in para 13 of the judgment has dealt with the term, 'relative' under the various categories and further observed that the provision under Section 498-A of the Indian Penal Code is penal one and thus deserves strict construction. The Supreme Court has also observed that by no stretch of imagination, a girl friend or even a concubine in an etymological sense would be a 'relative'.

15. So far as the other charges i.e. Section 323, 504 and 506 of the Indian Penal Code are concerned, there are no allegations about the same in the F.I.R. There is mere reference in the F.I.R. that on one occasion, the applicant herein has abused respondent no.2/informant by making a phone call. However, there are no further details as to whether those abuses ultimately attracting the provisions of Section 504 of the Indian Penal Code. Similarly, there are absolutely no allegations to attract the penal provisions of Section 506 of the Indian Penal Code. At no point of time, the applicant herein allegedly intimidated respondent no.2/informant for any reason.

16. So far as the charge under Section 323 of the Indian Penal Code is concerned, in the supplementary statement, respondent no.2 has made certain allegations. It has been alleged that the applicant herein had been to her matrimonial home, joined the other co-accused persons and extended the beatings for the reason that she was not bringing the amount from her parents. It is pertinent that so far as the present applicant is concerned, the allegations have been made only to the extent that because of her relations with co-accused Shrikumar, respondent no.2 was subjected to ill-treatment and cruelty at the hands of co-accused Shrikumar. So far as allegations of demand and ill-treatment being extended to respondent no.2 on account of non-fulfillment of demand is concerned, the allegations are made exclusively against the other co-accused persons. It is thus clear that these allegations have been made with mala fide and ulterior motive for wreaking vengeance against the present applicant. The respondent no.2/informant has a grudge against the applicant. In consequence thereof, in order to attribute certain role to her, the allegations have been made with mala fides and for wreaking vengeance against her.

17. In view of the above discussion and in terms of the ratio laid down by the Supreme Court in the aforesaid two cases, we are inclined to quash the F.I.R. and the criminal proceedings as against the applicant herein. Hence, the following order :

ORDER

- (i) Criminal Application No.3271 of 2019 is allowed in terms of prayer clauses (A) and (A-1) to the extent of the present applicant.
- (ii) Criminal Application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

(V.K. JADHAV, J.)

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