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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 663 OF 2020

Shri. M. Ganapathy & Ors.

...Petitioners

Versus

Mrs. M. Madhavi Latha & Ors.

...Respondents

...

Mr. Doramaan Dalal a/w. Ms. Shaswati Diksha for petitioners.

Mr. Saikumar P.M. for Respondent No. 1.

Smt. S.D. Shinde, APP for State.

...

**CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.**

DATE : 27th JULY, 2021.

P.C.

1. This petition under article 226 of the Constitution of India and Section 482 of Code of Criminal Procedure, 1973, is filed to quash and set aside the R.C.C. No. 773/2020 arising out of FIR No. 0751/2019, pending on the file of learned JMFC, Court No. 6, Pune, for the offences punishable under Section 498-A, 506, 506 read with 34 of the Indian Penal Code ('the penal code').

2. The substance of the petition is that the marriage of Ms. Madhavalatha, Respondent No. 1- the first informant was solemnized with Mr. Sathyanarayanan, the son of Petitioner No. 1 and 2 and brother of Petitioner No. 3 on 12th February, 2015. There

was matrimonial discord between the Respondent No. 1 and Mr. Sathyanarayanan. The matrimonial discord resulted in filing of number of proceedings. The Respondent No. 1 lodged multiple complaints with various authorities against the Petitioners and Mr. Sathyanarayanan. Eventually, husband of Respondent No. 1 filed the petition for divorce bearing H.M.O.P. No. 246/2017 in the Family Court at Chennai. The Respondent No. 1 also instituted a petition for restitution of conjugal rights bearing H.M.O.P. No. 2645 of 2018. The jurisdiction of the Family Court to entertain the matrimonial dispute was also challenged. The Respondent No. 1 also filed a complaint bearing No. 4247/2017 before the learned Magistrate under the provisions of Protection of Women From Domestic Violence Act. The Petitioner No. 1 and 2 were impleaded as party respondents therein. Eventually, the Petitioner No. 3-Mrs. Hemalatha was discharged by the learned Magistrate by an order dated 1st February, 2019.

3. In the backdrop of aforesaid matrimonial disputes, the petitioners claimed that the Respondent No. 1 lodged the FIR on 21st June, 2019 to wreak vengeance after a delay of about two years of alleged occurrence. The FIR was lodged with a view to give a counter blast to the proceedings, especially the petition for divorce instituted by the husband of Respondent No. 1. The FIR and the consequent

prosecution is an abuse of the process of the Court. No case to prosecute the petitioner is *prima faice* made out. Hence, this petition to quash the FIR and consequent case bearing R.C.C. No. 773/2020.

4. The Respondent No. 1 has appeared and resisted the prayer for quashing of the FIR and consequent prosecution by filing affidavit in reply.

5. We have heard Mr. Dalal, the learned counsel for the petitioners, Smt. Shinde the learned APP for the State and Mr. Saikumar, the learned counsel for Respondent No. 1. With the assistance of the learned counsel for the parties we have perused the report under Section 173 of the Code of Criminal Procedure, 1973 ('the Code'), and the documents annexed with it.

6. Mr. Dalal strenuously urged that the allegations in the FIR are vague and baseless and have been made only on account of matrimonial discord between the Respondent No. 1 and Mr. Sathyanarayanan, the son of Petitioner No. 1 and 2. It was urged that the allegations in the FIR, even if taken at their face value and in their entirety, do not make out an offence, for which the petitioners have been arraigned.

7. We find it rather difficult to accede to the aforesaid submission. From the perusal of the allegations in the FIR, it becomes clear that the first informant has made allegations against the petitioners of cruelty in two stages. First, while she was residing at her matrimonial home at Chennai, in the year 2015. The Petitioner No. 2 allegedly caused mental cruelty to her. She instigated her son to harass the petitioner. The Petitioner No. 1 allegedly harrassed by restraining her from going out of the home and using smart phones. The Petitioner No. 1 allegedly abused and instigated her. The Petitioner No. 3 allegedly made an unlawful demand of property and obtained cash amount and valuables of Rs. 3 lakhs. At the second stage, the Respondent No. 1 alleged that when she and her husband shifted to Pune, in the year 2017, the petitioners had came to her matrimonial home and at that time she was subjected to cruelty. The Petitioner No. 1 and 2 abused her and instigated her husband to rake quarrels with her. The Petitioner No. 3 instigated her husband to snap the marital bond with Respondent No. 1. Eventually, her husband left for Chennai, with all her ornaments, locking her out of their home. When she went to Chennai, the Petitioner No. 1 and 2 did not allow her to enter their home.

8. In the backdrop of these aforesaid allegations, we are not persuaded to accede to the submissions made on behalf of the petitioners that the allegations in the FIR, as they stand, do not make out the offences alleged against the petitioners. The allegations are such that they fall within the ambit of clause (a) of the explanation to Section 498-A of the Penal Code.

9. A useful reference, in this context, can be made to the judgment of Hon'ble Supreme Court in the case of ***Rupali Devi Vs. State of Uttar Pradesh & Ors. (2019 (6) Scale 96)***, wherein concept of 'cruelty' especially 'mental cruelty' was expounded as under:-

“14. “Cruelty” which is the crux of the offence under Section 498A IPC is defined in Black’s Law Dictionary to mean “The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)”. Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being illtreated are aspects that cannot be ignored while understanding the meaning of the expression “cruelty” appearing in Section 198A of the Indian Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to

traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress cause by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.”

10. Undoubtedly, the aforesaid observations were made in the backdrop of the controversy as regards the jurisdiction of the Courts to try a prosecution for the offence punishable under Section 498-A of the Penal Code, where the woman is forced to leave her matrimonial home and take shelter at her parental home. However, enunciation as regards the mental cruelty is in general terms. This also answers the challenge raised on behalf of the petitioners on the count of delay in lodging the report.

11. It is trite that at the stage of the consideration of prayer for quashment of FIR/prosecution, the High Court cannot delve deep into the correctness or otherwise of allegations in the FIR.

What is to be appraised is whether the uncontraverted allegations in the FIR make out a *prima facie* offence or not.

12. In the instant case, in the intervening period, the charge sheet has also been lodged. The said development also bears upon the prayer for quashment, as during the course of investigation, statements have been recorded and transcripts of conversation have been collected which *prima facie* substantiate the allegations of the first informant. Thus, at this stage, we are not persuaded to entertain the prayer for quashing the prosecution. Hence, the following order:-

ORDER

- 1) The writ petition stands dismissed.
- 2) By way of abundant caution we clarify that the aforesaid observations have been made for the limited purpose of consideration of prayer for quashment of proceedings and they shall not be construed as an expression of opinion on merits of the matter.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)