

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

Criminal Application (APL) No.379/2019

(Mainabai Mhaiskar and others V State of Maharashtra 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. Y.S. Gorle, Adv for applicants.

Mr. M.J. Khan, APP for non-applicant no.1.

CORAM : M.S. SONAK & PUSHPA V. GANEDIWALA, JJ.
DATE : 17-11-2021.

Heard Mr. Y.S. Gorle, learned Counsel for the applicants
and Mr. Khan, learned APP for the non-applicant-State.

2. This is an application for quashing of chargesheet in RCC No.794/2007 alleging commission of offence under Section 498-A of the Indian Penal Code (for Short, 'IPC') by the applicants herein. The chargesheet *inter alia* based on the FIR No.22/2007 dated 11-01-2007 at Police Station Civil Lines, Akola.

3. Mr. Gorle, learned Counsel for the applicants submits that even if the allegations in the complaint/FIR are taken at their face value, no offence under Section 498-A of the IPC is made out. He submits that in any case the allegations are quite vague and contain no particulars. He submits that most of the applicants do not even reside with the matrimonial home where the complainant is

alleged to have been harassed. He submits that the allegations are mainly against the husband of the complainant and the applicants, who are the relatives, have been unnecessarily roped in. Therefore, he submits that this is a fit case that FIR should be quashed on the consequent chargesheet and also be quashed for the same reason. He pointed out that after the lodging of the FIR statement of the complainant was recorded with which the allegations are restricted against her husband and not against the present applicants.

4. The learned APP submits that there are clear and cogent allegations in the FIR as well as statement recorded in the course of investigation. The allegations, indeed spell out the ingredients of Section 498-A of the IPC and therefore, this is not a fit case for exercising extraordinary jurisdiction or invoking inherent powers to quash the proceeding. He points out that the trial in this case commenced in the year 2007 itself, and this petition was instituted in the year 2019 to avoid facing such trial. He therefore submits that this application may be dismissed.

5. We have heard rival contentions of the parties and perused the record.

6. At the outset, the learned Counsel for the applicants referred to us the complaint dated 11-01-2007, based on which the FIR came to be registered. Though he tried to urge the allegations for demand of Rs. 20,000/- from the complainant or her father was made only by the complainant's husband, from the perusal of the complaint we find that specific allegations have been also made against the present applicants. The allegations against the present applicants are that they were involved in the harassment of the complainant and in any case, for inciting the complainant's husband to harass her. There are specific allegations that in February, 2006, the present applicants increased the demand from Rs.20,000/- to Rs.2 lakh for the reason that the complainant's father had now retired and therefore could possibly afford to make such payment. The issue at this stage is not whether such allegations are true or not. But on reading the complaint/FIR, does not possible to see that the allegations in the FIR, if taken at their face value do not spell out the ingredients of Section 498-A of the IPC.

7. The investigation, also has not restricted the alleged role of the present applicants as was contended by the learned Counsel

for the applicants. In any case, all these are the matters that can be determined in the course of the trial. This is not a case where parameters set out by the Hon'ble Supreme Court in the case of **State of Haryana and others vs Ch. Bhajanlal and others**, reported in **AIR 1992 SC 604** can be said to be attracted for the exercise of our extraordinary jurisdiction or for invoking inherent powers to quash the FIR and the subsequent chargesheet at this stage.

8. Section 498-A of the IPC *inter alia* provides that “whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”

9. For the purpose of this Section an *Explanation* has been inserted to define “cruelty”. Section (b) of this *Explanation* provides that “cruelty means harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”.

10. In this case, the complaint/FIR has made clear and cogent allegation about the harassment meted out to the complainant not only by her husband but also by the present applicants. Further, in this case, the complaint/FIR has made clear and cogent allegations about such harassment being with a view to coercing her and her father to meet out the unlawful demand of Rs.20,000/- thereafter enhanced to Rs. 2 lakh. Such demands, in the present case, are alleged to have been made not only by the complainant's husband but also by the present applicants who are admittedly, relatives of her husband. Therefore, it is not correct to urge that the allegations in the FIR, if taken at their face value do not spell out the ingredients of Section 498-A of the IPC.

11. For the aforesaid reasons, we are satisfied that this is not a fit case for exercise of our extraordinary jurisdiction under Article 226 of the Constitution or for invoking our inherent powers under Section 482 of the Code of Criminal Procedure for quashing the chargesheet or the FIR. This application is therefore liable to be dismissed and is hereby dismissed.

12. The interim order made by us on 10-04-2019 is hereby vacated and the learned Trial Court is directed to expedite the trial

and to dispose of the same within one year from the date of receipt of writ of this Court.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)