

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

Criminal Application (APL) No. 1117/2021

1. Samir s/o Salim Garve,
Aged about 30 years, Occ.-Service,
R/o. Gawalipura, Karanja Lad,
Tq. Karanja Lad, Dist. Washim.
2. Hasina w/o Salim Garve,
Aged about 55 years, Occ.-Household,
R/o. Gawalipura, Karanja Lad,
Tq. Karanja Lad, Dist. Washim.
3. Yasin s/o Rajjak Mirwale,
Aged about 17 years, Occ.-Student,
through her Guardian Mother
Rukhsana Rajjak Mirawale R/o. Anai,
Tq. Karanja Lad, Dist. Washim.
4. Afreen d/o Alim Beniware,
Aged about 14 years, occ.-Student,
through her Guardian Mother Shabana Alim Beniware,
R/o.-Shirkundi, Tq. and Dist. Washim.
5. Hasnu s/o Pappu Pappuwale,
aged about 51 years, occ.-Labourer,
R/o.- Gawalipura, Karanja Lad,
Tq. Karanja Lad, Dist. Washim.
6. Shabana w/o Alim Beniware,
Aged about 31 years, occ.-Student,
R/o.- Shirkundi Tq. and Dist. Washim.
7. Nasim d/o Jumma Pappuwale,
Aged about 35 years, Occ.-Household,

R/o.- Gawalipura, Karanja Lad,
Tq. Karanja Lad, Dist.Washim.

8. Rukhsana w/o Rajjak Mirawale,
Aged about 35 years, occ.- Household,
R/o. Anai, Tq. Karanja Lad, Dist.Washim.

9. Rayana w/o Salim Beniwale,
Aged about 34 years, occ.-Household,
R/o.- Shirkundi Tq. and Dist. Washim.

... Applicants.

VERSUS

1. State of Maharashtra
through Police Station Officer,
Police Station, Mehkar, District Buldhana.

2. Rubina w/o Samir Garve,
Aged about 24 years, occ.-Labourer,
presently r/o near Peer Mohd. High School,
Gawalipura, Mehkar, Tq. Mehkar, Dist- Buldhana....Non-applicants.

Mr. J.B. Kasat, Adv for applicants.

Mr. T.A. Mirza, APP for State

CORAM : M.S. SONAK & PUSHPA V. GANEDIWALA, JJ.

Date : 13-12-2021.

JUDGMENT : (Per: Pushpa V. Ganediwala, J.)

Rule. Rule is made returnable forthwith. Heard finally
with the consent of learned Counsel appearing for both the sides.

2. The applicant no.1 is the husband of non-applicant no.2, applicant no.2 is the mother in law, applicant nos.3 and 4 are the son and daughter of the sister of applicant no.1, applicant no.5 is the maternal uncle of applicant no.1, applicant nos. 6, 8 and 9 are the sisters of applicant no.1 and applicant no.7 is the daughter of maternal uncle of applicant no.1, are seeking quashing of First Information Report No.394/2021, dated 19-08-2021 for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code (IPC) registered against them at the instance of non-applicant no.2, the wife of applicant no.1.

3. We have heard learned Counsel Mr. Kasat for the applicants and Mr. Mirza, learned APP for the State. None appeared for non-applicant no.2 despite service. We have also perused the FIR.

4. Mr. Kasat, learned Counsel for the applicants submits that even if the contents in the FIR are taken at their face value and accepted in its entirety, no case of cognizable offence is made out against the applicants. The learned counsel for the applicants urged to quash the FIR against the applicant nos. 2 to 9. Learned Counsel for

the applicants, on instructions, submits that he is not pressing the relief for quashing of the FIR *qua* applicant No. 1/husband.

5. Learned APP Mr. Mirza fairly concedes that the allegations in the FIR against the applicants No. 2 to 9 are in the nature of instigation to the husband/applicant no.1.

6. A perusal of FIR would indicate that non applicant no.2 wife has made the allegations of mental and physical harassment mainly against her husband/applicant No.1. With regard to allegations against the applicant nos. 2 to 9, there are general allegations in the nature of instigation to applicant no.1. There is no specific role attributed to each of these applicants by the non-applicant no.2/wife to make out a case of cruelty as contemplated under Section 498-A of the IPC. The complainant states that for two years all these persons behaved with her well. Thereafter her husband started drinking liquor and gradually she came to know that her husband had an extramarital affair. She states that he used to beat her under the influence of liquor. The contents in the FIR does not indicate any willful conduct on the part of the applicant nos. 2 to 9 which is of such a nature as is likely to drive the non-applicant no.2 to take any extreme step. So also there are no specific allegations in the FIR concerning the harassment to the

non-applicant no.2 at the hands of these applicants with a view to coerce her to meet any unlawful demand. The main allegations are against the applicant no.1 husband only. Against the applicant nos. 2 to 9 there are general and omnibus allegations.

7. In Preeti Gupta and another vs State of Jharkhand and another, reported in (2010) 3 SCC (Cri.) 473, the Hon'ble Apex Court has held in the absence of any specific allegations against an in-law, the propensity to rope in such a relation of the husband in a proceeding under Section 498-A of the IPC, is to be deprecated. Similar view has been expressed by the Hon'ble Apex Court in Geeta Mehrotra and another vs State of Uttar Pradesh and another reported in (2013) 1 SCC (Cri.) 120.

In view of the aforesaid ratios and considering the absence of any specific overt act attributable to the applicant nos. 2 to 9 with regard to torture, we are of the opinion that the continuation of the criminal action against these applicants is an abuse of process of Court. In this view of the matter we are of the considered opinion, that the FIR registered against the applicant nos. 2 to 9 needs to be quashed and the same is accordingly quashed and set aside.

8. For the reasons aforestated, we partly allow the application and pass the following order :

- (i) The Criminal Application (APL) Nos.1117/2021 is partly allowed.
- (ii) The First Information Report No.394/2021 registered on 19-08-2021 against the applicants with the non - applicant-Police Station Mehkar for the offences publishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code is quashed and set aside *qua* applicant No. 2 to 9.

9. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)