

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

CRIMINAL APPLICATION (APL) NO.879 OF 2017

- APPLICANTS:**
1. Gajanan s/o Shankarrao Mate,
Aged about : 53 years,
Occ. : Private Job.
 2. Shakuntala w/o Shankar Mate,
Aged about : 83 years, Occ. : Nil.

V E R S U S

- NON-APPLICANTS :**
1. State of Maharashtra,
Through Police Station Officer,
Police Station, Rajapeth,
Amravati, Tq. & Dist. Amravati.
 2. Vandana w/o Gajanan Mate,
Aged about : 48 years,
R/o C/o Shankarrao Ghatol,
Mohan Colony, Camp, Amravati,
Tq. & Dist. Amravati.

Ms. G. R. Diwe, Advocate h/f Shri P. R. Agrawal, Advocate for applicants.

Shri S. D. Sirpurkar, Additional Public Prosecutor for Non-applicant No.1-State.

None for non-applicant No.2.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 11/01/2021.

ORAL JUDGMENT : (PER AMIT B. BORKAR, J.)

1. Heard Ms. G. R. Diwe, Advocate h/f Shri P. R. Agrawal, Advocate for the applicants and Shri S.D. Sirpurkar, APP for non-applicant No.1-State.

2. **Rule.** Rule made returnable forthwith.

3. By this application under Section 482 of the Code of Criminal Procedure, the applicants have challenged the charge-sheet arising out of FIR No.879/2016 dated 10th November, 2016 registered with the non-applicant No.1 – Police Station for the offences punishable under Section 498-A read with Section 34 of the Indian Penal Code.

4. The First Information Report came to be registered against the applicants with the accusations that the applicant No.1 demanded amount of Rs.1,00,000/- as dowry and was insisting for payment of said amount. It is also alleged that the applicants mentally and physically harassed the non-applicant No.2 by confining her in one room.

5. The charge-sheet came to be filed in the Court of Judicial Magistrate First Class, Court No.1, Amravati on 10/11/2016. The allegations in the final report are similar to the accusations which were made in the First Information Report.

6. Ms. G. R. Diwe, Advocate for the applicant submitted that the non-applicant No.2 had filed complaint under the provisions of the Protection of Women From Domestic Violence Act, 2005 (for short "The Act of 2005") bearing DV Case No.245/2016. It is also pointed out that there was specific issue framed as regards the mental and physical harassment allegedly caused by the applicants. The Judicial Magistrate First Class, Court No. No.8, Amravati by the judgment and order dated 9th October, 2017 considered the allegations and material which was produced before it by the non-applicant No.2 and recorded finding that the non-applicant No.2 failed to prove physical or mental harassment allegedly caused by the applicants. She submitted that the allegations in the complaint filed under the provisions of the Act of 2005 are similar to allegations which are made in the charge-sheet. She relied upon the judgment of the Hon'ble Supreme Court in the case of Geeta Mehrotra and another Vrs. State of Uttar Pradesh and another, reported in (2012) 10 SCC 741 and in the case of Preeti Gupta and another Vrs. State of Jharkhand and another, reported in (2010) 7 SCC 667. She, therefore, submitted that the charge sheet filed against the applicants, be quashed and set aside.

7. The non-applicant No.2 is served with the notice of this application and she has filed reply disputing the contents of the application. In the reply, the non-applicant No.2 reiterated her allegation that the applicants have caused physical and mental cruelty to the non-applicant No.2.

8. We have scrutinized the contents of the First Information Report and the charge sheet which is produced on record by the applicants. We have also gone through the judgment of the Judicial Magistrate First Class, Court No.8, Amravati constituted under the provisions of the Act of 2005. Having gone through the contents of the First Information Report and the judgment of the Judicial Magistrate First Class, Court No.8, Amravati, we are satisfied that the allegations made against the applicants are similar in nature to the allegations made in the complaint filed under the provisions of the Act of 2005. The Judicial Magistrate First Class, Court No.8, Amravati in the judgment dated 09/10/2017 in para Nos.16 and 17 has categorically recorded the finding that the non-applicant No.2 has failed to produce in the evidence to substantiate the allegations made against the applicants. Since the allegations made under the

Act of 2005 against the applicant are similar with the allegations in the present proceedings, we are satisfied that continuance of the present proceedings would amount to abuse of process of law.

9. The Hon'ble Supreme Court in the case of Geeta Mehrotra and another (supra) has held that the allegations in the First Information Report must be specific and casual reference to both the applicants or the husband would not make liable for continuation of prosecution. In the facts of the present case, we find that the allegations which are made against the present applicants are vague in nature. The non-applicant No.2 has not given the details as regards the physical and mental violence caused by the applicants.

10. We are, therefore, satisfied that the First Information Report and the charge sheet filed against the applicants, need to be quashed and set aside.

11. We, therefore, pass the following order :-

ORDER

I] The charge sheet arising out of the
First Information Report No.879/2016 dated

10/11/2016 registered with the non-applicant No.1
- Police Station under Section 498-A r/w Section 34
of the Indian Penal Code is quashed and set aside.

II] The criminal application is allowed
in the above terms.

JUDGE

JUDGE

Choulwar