

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.127 OF 2020

1. Laxmi w/o Mohan Chavan
2. Saraswati w/o Tushar Patil
3. Tushar s/o Suresh Patil

.. Applicants

Versus

1. The State of Maharashtra
2. In-charge Police Inspector,
Police Station Murum,
Tq. Omerga, Dist. Osmanabad.
3. Pallavi Dhawal Mane

.. Respondents

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Mr. S. R. Sapkal, Advocate for applicants.

Mr. R. D. Sanap, APP for respondent Nos.1 and 2.

Mr. R. N. Chavan, Advocate for respondent No.3 (Appointed).

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**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 24-11-2022

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Present application has been filed by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashing the First Information Report (for short "FIR") bearing Crime No.165 of 2019 registered with Murum Police Station, Tq. Omerga, Dist. Osmanabad for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of Indian Penal Code (for short "IPC") as well as the further proceedings in

pursuance to the Charge-sheet No.11 of 2020 pending before the learned Judicial Magistrate First Class, Lohara.

2. Applicant No.1 is the mother-in-law of respondent No.3. Applicant No.2 is the sister-in-law of respondent No.3 and applicant No.3 is the brother-in-law of respondent No.3.

3. The informant - respondent No.3 lodged report with Murum Police Station, Dist. Osmanabad on 08.11.2019 against the applicants. It is stated that the marriage of the informant was performed with one Dhawal Bhausahab Mane on 04.05.2002. Out of the said wedlock, they are having son, namely, Arnav and daughter, namely, Arya. It is further stated that the father of the informant had given some gold ornaments at the time of marriage. After marriage, they went to Mumbai on 07.07.2002 and resided there in rented house. Her husband started quarrel with neighbor and with her. It is further stated that her husband demanded amount of Rs.10,00,000/- for business of construction and drove her out of the house. Thereafter, in 2016 the informant made complaint to Women Dispute Redressal Centre, Omerga. The said dispute was resolved through conciliator Sunita Renake. The said conciliator gave phone call to the husband of the informant and the husband gave guarantee that he would cohabit with the informant. It is further stated that believing upon the word of her husband,

she went along with her husband. However, within two days her husband started ill treatment and obtained undertaking from her that she will not contact with maternal relatives. She will not make any phone call to the maternal relatives. She will not watch TV. She will not use gas, fridge and washing machine. She will use grocery items for one month properly. It is further stated that her husband used to beat son Arnav and daughter Arya. He was not providing tuition fees to them. He was not providing anything to the children. Further, it is stated that the informant was detained in room and she was not provided food for four days. The applicants have tortured her and they instigated her husband to ill-treat her. Thereafter, it is stated that on 06.09.2019 at about 2.00 p.m. her husband had assaulted her and tried to kill her and, therefore, she had registered complaint with Sagari Police Station, New Mumbai. It is further stated that the informant attempted to commit suicide two-three times at Mumbai. On 10.09.2019 at about 6.00 p.m. all the accused came at Ashta-Kasar at the place of her maternal house and asked her about Rs.10,00,000/-. They told that if the amount is ready then only she is allowed to cohabit. It is further stated that they have beaten her. The father-in-law and mother-in-law has given threat to her. Her sister-in-law pulled her. The husband and brother-in-law abused her and given kicks and fist blows, at that time, her father and mother was present on the spot.

Therefore, she along with her father went to Murum Police Station, but the police did not lodge the complaint. Thereafter, the complaint was sent by way of R.P.A.D. to the authorities but no cognizance was taken by the authorities. Thereafter, the informant filed a private complaint before the Judicial Magistrate First Class No.1, Lohara. Then, the learned Judicial Magistrate First Class, Lohara issued direction under Section 156(3) of the Code of Criminal Procedure to lodge the report. Thereafter, the FIR came to be registered against the present applicants.

4. Heard learned Advocate Mr. S. R. Sapkal for the applicant, learned APP Mr. R. D. Sanap for respondent Nos.1 and 2 and learned Advocate Mr. R. N. Chavan for respondent No.3 (Appointed).

5. Perusal of the FIR would show that it is the outcome of order passed by learned Judicial Magistrate First Class under Section 156(3) of the Code of Criminal Procedure. Original accused No.1 husband got married to present respondent No.3 on 04.05.2002. They have two children i.e. son and daughter. Perusal of the FIR as well as the entire charge-sheet would show that applicant Nos.1 and 2, who are the married sisters-in-law, were residing at their matrimonial home. Applicant No.3, who is the husband of applicant No.2, is a government servant. Therefore, as regards the alleged

acts of cruelty/harassment at the matrimonial home at the most would have been attributed to the other accused i.e. husband and in-laws, who were residing together. Another fact which can be seen from the charge-sheet that the son of respondent No.3 was aged 13 and daughter was aged 10 when the FIR was lodged. Their statements have been recorded under Section 161 of the Code of Criminal Procedure, however, it is to be noted that they both have stated that they are residing with their father and their statements are so vague that they were not even knowing as to why their parents used to quarrel. Domestic quarrels are not new to the married couples, but to stretch it to the extent of harassment or cruelty, it has to be shown that it fulfills the ingredients of offence punishable under Section 498-A of IPC. The statements of witnesses in respect of incident dated 10.09.2019 stands supported, however, it is to be noted that all of them including the informant state that in 2015 itself the informant was driven out of the house on the ground that she should bring amount of Rs.10,00,000/-. Then she had lodged report with Women Disputes Redressal Centre at Omerga. Again, she was taken for cohabitation by the husband and then it is stated that again the husband had abused and assaulted her. Therefore, with such a gap why the married sisters-in-law would get themselves involve is a question. Definitely, in order to bring everything within the reach of

compromise or statement, those allegations could have been made. The daughter and the son of the informant are not saying anything about the said incident dated 10.09.2019. It would be a futile exercise to ask the applicants to face the trial.

6. Reliance can be placed on the decision in ***Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors., Criminal Appeal No.195 of 2022*** decided by the Hon'ble Supreme Court on 08.02.2022, wherein the decisions in ***Rajesh Sharma and Ors. Vs. State of U.P. and Anr., [(2018) 10 SCC 472]***, ***Arnesh Kumar Vs. State of Bihar and Anr., [(2014) 8 SCC 273]***, ***Preeti Gupta and Anr. Vs. State of Jharkhand and Anr., [(2010) 7 SCC 667]***, ***Geeta Mehrotra and Anr. Vs. State of UP and Anr., [(2012) 10 SCC 741]*** and ***K. Subba Rao Vs. The State of Telangana, [(2018) 14 SCC 452]*** have been considered and it has been observed thus :-

"18. The above-mentioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general

omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no *prima facie* case is made out against them."

7. Taking into consideration the above noted decisions, we are of the opinion that the ingredients of offence punishable under Section 498-A of IPC are not attracted as against the applicants. Therefore, in our view, this is a fit case wherein we should exercise our discretion under Section 482 of the Code of Criminal Procedure to quash and set aside the the FIR and the proceedings arising therefrom, as against the present applicants. Hence, the following order :-

ORDER

I) The application stands allowed.

II) The FIR bearing Crime No.165 of 2019 dated 08.11.2019 registered with Murum Police Station, Tq. Omerga, Dist. Osmanabad for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of IPC as well as the further proceedings in pursuance to the Charge-sheet No.11 of 2020 pending before the learned Judicial Magistrate First Class, Lohara, stand

quashed and set aside, as against the present applicants.

III) Fees of learned Advocate, who is appointed to represent the cause of respondent No.3, is quantified at Rs.5,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm