

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 292 OF 2022

Sonia w/o Ashish Jaiswal,
(Sister-in-law of informant)
Age : 38 years, Occ : Housewife,
R/o. Bazar Chowk, at Post Patri, Tal. Saoli,
Dist. Chandrapur.

Applicant..

Versus

1. The State of Maharashtra
2. Sapna w/o Mayur Jaiswal (Informant),
Age : 34 years, Occu. Housewife and Advocate,
C/o. Chaganlal Chotulal Jaiswal,
Lilabai Chawl, Chitod Road,
Dhule.

Respondents...

.....

Mr. Rupesh A. Jaiswal, Advocate for the applicant
Mr. A. M. Phule, APP for respondent / State
Mr. A. P. Bhandari, Advocate for respondent No. 2

.....

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

DATE : AUGUST 29, 2022

ORAL JUDGMENT [PER RAJESH S. PATIL, J.] : -

1] By the present application filed under Section 482 of the Code of Criminal Procedure, the applicant is praying for quashing and setting aside of the R.C.C. No. 821/2019 pending before the learned Chief Judicial Magistrate, Dhule [hereinafter referred to as 'CJM, Dhule'], filed in FIR No. 344/2019, for the offences punishable under Sections 498A, 406, 323, 504, 506 r/w 34 of the Indian Penal Code.

1.1] The applicant herein is the sister-in-law of respondent no. 2-informant.

FACTS : -

2.1] It is the case of respondent no. 2 in the FIR that the marriage between respondent no. 2 and Mayur Surendra Jaiswal was solemnized on 02.03.2017 at Nagpur. They have a male child, namely, Chirag, from the said wedlock.

2.2] It is further stated in the FIR that after the marriage respondent no. 2 was treated well for four days. She was living with her husband, maternal grand mother-in-law, maternal grand father-in-law, two maternal uncles and their wives and the children of maternal uncles. On 05.03.2017, when she had left for her parental home along with her cousin Ravindra, she had carried her luggage with her. She further stated that before leaving for Dhule, she had kept the golden ornaments in her luggage bag. The husband of respondent no. 2 along with his friends had dropped respondent no. 2 at Railway Station. Respondent no. 2 further stated in FIR that, when she reached her parental home, she checked her golden ornaments into the bag but she did not find the same. When she realized that her golden ornaments were stolen, she immediately registered complaint with the Police. Respondent no. 2 informed the said fact to her husband and his relatives but they had switched off their cell phones. Due to the said theft of golden ornaments, husband of respondent no. 2 and his relatives were disappointed with her.

2.3] Respondent no. 2 further stated in the FIR that, on 27.03.2017, her husband had come to receive her at Dhule and he
sgp

had made an unlawful monetary demand of Rs. 30.00 lakhs to her parents. Her husband said her parents that he would treat respondent no. 2 with love only if the monetary demand is fulfilled otherwise he will seek divorce and respondent no. 2 be maintained by them and further abused them in a loud voice and took respondent no. 2 to Nagpur for cohabitation. Her sister-in-law used to abuse and beat respondent no. 2 on the count of theft of golden ornaments. The respondent no. 2 then said to her sister-in-law and her husband that she has filed a complaint with the police station and on receipt of golden ornaments, she will handover the said ornaments to them.

2.4] The informant – respondent no. 2 has further stated in the FIR that her husband has a business in the name of ‘Empire Beer Bar and Restaurant’ at Nagpur. Her husband always talks with unknown people. In June-2017, she realized that her husband used to talk with unknown lady. When she asked her husband as to the reason of talking with unknown lady, he said, ‘bring the golden ornaments first and then ask’ and threatened her. Her husband used to abuse and beat her but respondent no. 2 had confidence that one day the things would get better and she was living on this hope. It is further stated in the FIR that, respondent no. 2 had informed about the said conversation of her husband with unknown lady to her maternal father-in-law. Respondent no. 2 had also informed about the ill-treatment and harassment to her parents and relatives.

2.5] Respondent no. 2 further stated in the FIR that, in June-2017, she had conceived and her husband was not paying attention to her. When she gave birth to a male child, neither the husband or his relatives came to see her son at Dhule nor they enquired about it on phone. Respondent no. 2 further stated that when she went back to her matrimonial home, she learnt that her husband has been
sgp

deserted and since then he lives in a rented room at Nagpur. Respondent no. 2 further stated in the FIR about the abuses and threatening language used by her husband. Husband of respondent no. 2 used to contact some ladies by name Rita and others and would talk to them. When respondent no. 2 saw the messages, photos and porn videos on his mobile phone, her husband caught hold of her hairs and took her into kitchen and abused and tried to cut thumb of her left hand by nutcracker. Respondent no.2 further stated that, in June-2018, she had tried to inform about the said harassment and ill-treatment to her paternal grand mother-in-law and two maternal uncles but they did not receive her call. Her husband used to check her mobile from time to time and used to threaten her. Due to constant ill-treatment and harassment, the health of parents of respondent no. 2 had deteriorated. Finally, on 03.11.2018, the husband of respondent no. 2 purchased a bus ticket for her to go to Dhule from Nagpur and since then she has been staying with her parents.

2.6] It is also alleged in the FIR that the husband of respondent no. 2 had illicit relations with one lady who has business of flower selling in Nagpur. Respondent no. 2 further alleged that she learnt about the second marriage of her husband with the said flower seller and respondent no. 2 has proof about the said marriage. When respondent no. 2 asked her husband about the said illegal marriage, he replied her that he got married with the said flower sellers and further said, now there is no relation between him and respondent no. 2 and demanded divorce. Respondent no. 2 further alleged that, her husband had threatened if she doesn't give him divorce, he will kill her and her son. Thereupon, respondent no. 2 tried to convince her husband but her efforts failed. On 26.05.2019 at about 07:30 pm, he along with his friends came at her parental home in Dhule
sgp

and abused parents of respondent no. 2 in filthy language and started shouting loudly. Thereafter, when husband of respondent no. 2 started beating her, the mother, father and other relatives of respondent no. 2 freed her from the custody of her husband.

2.7] It is further stated in the FIR that the husband of respondent no. 2 then snatched the son Chirag and said he will kill him. Further, he demanded Rs. 30.00 lakhs and threatened that if the demand is not fulfilled, he will not leave anyone Scot free and tried to press the neck of their son Chirag. Her husband also threatened her and her relatives of dire consequences. The people living in the adjoining areas when gathered on the spot, her husband and his friends left the spot.

2.8] When she realized that there will be no change in the behaviour of her husband, she approached the Women's Grievance Redressal Forum at Dhule but the said efforts yielded no fruits. Accordingly, respondent no. 2 registered FIR against her husband and sister-in-law (present applicant) with Dhule City Police Station, Dhule for the offences punishable under Section 498A, 494, 406, 323, 504, 506 r/w 34 of the Indian Penal Code.

3.1] The applicant has stated in the present Criminal Application that the applicant is the sister-in-law of respondent no. 2. She lives with her husband and children at village Patri, Tq. Saoli, Dist. Chandrapur whereas the respondent no. 2 lives with her husband at Nagpur, which is approximately 225 kms away from Patri. The FIR is maliciously instituted against the applicant with an ulterior motive for wreaking vengeance on the applicant just because she is sister-in-law of informant.

3.2] It is further stated in the present application that on the bare perusal of the FIR and entire charge-sheet in their entirety, no *prima facie* case under Section 498A of the IPC could be made out against the present applicant since the contents of the FIR lacks the ingredients of the offences alleged against the applicant. There are general and vague allegations of instigation to husband against the applicant. There is no specific allegation of harassment as defined under the provisions of law, thus the offence u/s 498A of the IPC could not be made out against the applicant.

4] Subsequently, the charge-sheet was filed before the learned Judicial Magistrate First Class, Dhule; and the same was culminated in R.C.C. No. 821/2019, which is pending before the Chief Judicial Magistrate, Dhule.

SUBMISSIONS: -

5] Heard learned advocate Mr. Rupesh A. Jaiswal for the applicant, Mr. A. M. Phule, learned APP for the State, and learned counsel Mr. A. P. Bhandari for respondent No.2.

6] Learned counsel for the applicant submits that the allegations levelled against the applicant are vague and general in nature. He further submits that the incidents in question took place at Nagpur whereas the applicant resides at Patri, Tq. Saoli, Dist. Chandrapur, which is approximately 225 kms. away from Nagpur. He further submits that the applicant is the sister-in-law of respondent no. 2- informant and she has nothing to do with the marital life of respondent no. 2. The applicant has been falsely implicated in the offence in question only for wreaking vengeance on the applicant.

sgp

There are no specific allegations against the applicant. The complaint is lodged only with an intention to pressurize the applicant. On the basis of the allegations made in the criminal complaint, no cognizable offence can be said to have made out. He, therefore, prayed that the Criminal Application be allowed. The learned Counsel for applicant to buttress his submission cited judgment of the Hon'ble Supreme Court passed in **Kahkashan Kausar @ Sonam vs. State of Bihar**, 2022 CJ (SC) 109.

7] Learned APP – Mr. A. M. Phule and learned counsel Mr.A. P. Bhandari for respondent no. 2 submitted that there are specific allegations against the applicant, hence there is no question of quashing of FIR and the criminal proceedings against the applicant.

ANALYSIS : -

8] For quashing the criminal proceedings under Section 482 of the Cr.P.C. we have to see, whether the allegations in the complaint and F.I.R. *prima facie* establish the ingredients of the offence alleged. We are of the view that under Section 482 of the Cr.P.C., we have inherent powers to make such orders as may be necessary to prevent abuse of the process of any law to secure the ends of justice.

9] Perusal of the FIR clearly depicts that the allegations levelled in the FIR are against her husband. The general and vague allegations have been made against the applicant. The applicant herein is the sister-in-law of the respondent no. 2, who resides at Patri, Tq. Saoli, Dist. Chandrapur, which is far away from the place where the incidents in question have taken place. No specific allegation is attributed to the applicant and only general allegations have been levelled against her.

sgp

10] We have in our recently decided Criminal Application No.2230/2020 [Narayan s/o Eknath Devkar and others Vs. State of Maharashtra and others, decided on 25.07.2022], after considering the various judgments in paragraph nos. 22 to 27, held that continuation of prosecution against far off relatives would amount to abuse of process of law.

11] The Apex Court in **Geeta Mehrotra Vs. State of U.P.**, reported in AIR 2013 SC 181 stated “It can thus be seen that mere reference to family members without any specific allegations against them would not justify taking cognizance against them. There is a tendency to involve the entire family members in a matrimonial dispute.

12] Our High Court in **Shaikh Mushrraf Pasha and others Vs. State of Maharashtra and another**, reported in 2021(2) AVR (Cri.) 343, has observed that continuance of prosecution against relative of husband is nothing but abuse of process of law.

13] Thus, we are of the considered view that the respondent No.2 only with an intention to harass and with an ulterior motive, has filed the complaint against the applicant. Continuation of prosecution against the applicant, who is relative of husband and who stays separately in her own house at a distance of 225 kms from the matrimonial house of respondent no. 2, in our opinion, would amount to abuse of process of law.

14] Taking into consideration the ratio laid down in the cases of **Geeta Mehrotra** and **Shaikh Mushrraf Pasha** (supra), we are of the considered view that there are no specific allegations against the

applicant and only with a view to harass her she has been arrayed as an accused in the FIR. 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 RCC as against the applicant.

ORDER

. Criminal Application is allowed in terms of prayer clause 'B' of the application.

**[RAJESH S. PATIL]
JUDGE**

**[SMT. VIBHA KANKANWADI]
JUDGE**