

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.889 OF 2022

SAPNA D/O VIJAYKUMAR SOLANKE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Nade Subhash S

APP for Respondents/State : Mr. S. J. Salgare

Advocate for Respondent No.2 : Mr. V. G. Kodale

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**CORAM : SARANG V. KOTWAL &
BHARAT P. DESHPANDE, JJ.**

DATE : 16th JUNE 2022.

Per Court :

1. This is an application for quashing of FIR registered vide Crime No. 38/2022 at Ambejogai (City) Police Station, Dist. Beed for the offences punishable under Sections 323, 34, 494, 498-A, 504 and 506 of the Indian Penal Code (I.P.C. for short).

2. We have heard the parties. The FIR is lodged by the Respondent No.2. She has stated that she got married with main accused, Amol Sarkate on 20.05.2006. During marriage, some cash and ornaments

were given in dowry. It is her case that for initially three years, she was treated well. The husband was addicted to gambling and therefore he was frequently demanding money from Respondent No.2. She was unable to get money from her parents. The husband used to threaten her that he would desert her and would contract second marriage. It is mentioned in the FIR that the husband used to take money from his own parents. The husband started losing money. However, since he wanted more money, he used to assault and abuse the Respondent No.2. In spite of that, she continued residing with him. Due to his financial difficulty, he left her and went to reside at Pune. The Informant had given her complaint at Ambejogai to Women Grievance Cell. The husband had agreed to pay monthly amount of Rs.3000/- as maintenance to the Respondent No.2 and their son. However, after some time, he stopped paying it. The Respondent No.2 went to Pune and pleaded with him for cohabitation. But he refused and informed the Respondent No.2 that he had got married with the present Applicant. The allegations mentioned in the FIR against the Applicant are that she had called the Respondent No.2 and had told her not to make telephone calls to the Respondent's husband. It is alleged that

the Applicant threatened to kill her. On this basis, the FIR is lodged.

3. Learned Counsel for the Applicant submitted that the FIR is mainly against the husband of the Respondent No.2. There are no allegations as far as offence under Section 498A is concerned, against the present Applicant. There are allegations regarding a phone call made by the Applicant. He submitted that offence under Section 494 of IPC was not applicable against the present Applicant. In support of his submission, he relied on the judgment of a Division Bench of this Court, Bench at Nagpur in the case of **Rekha Vs. State of Maharashtra** reported in 2020 SCC OnLine Bom 291.

4. Learned Counsel for Respondent No.2 as well as learned APP opposed this application. Learned Counsel for Respondent No.2 submitted that all the offences are made out against the Applicant and therefore, FIR should not be quashed. He relied on the judgment of another Division Bench of this Court, Bench at Nagpur in the case of **Shri Rajesh Pundkar Vs. State of Maharashtra and Anr.**, decided on 08.06.2022 in Criminal Application (APL) No. 233/2022.

5. We have considered these submissions. From the plain reading of FIR, it is clear that no offence under Section 498A of IPC is made out against the Applicant. All the allegations are specifically directed against the husband of the Respondent No.2 i.e. Amol Sarkate. There was demand and harassment attributed to him alone. No such allegations are made against the present Applicant. As far as Section 494 of IPC is concerned, learned Counsel for the Applicant has rightly relied on the judgment of this Court in the case of Rekha (supra).

. In a similar situation, it was held that the offence under Section 494 of I.P.C. was not made out. In the present case, also the offence under Section 494 of I.P.C. is made out only against the husband of the Respondent No.2 and not against the Applicant.

6. Section 494 of I.P.C. reads thus:

“494. Marrying again during lifetime of husband or wife. – Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

. This Section can apply only against husband of the Respondent No.2. It is not the case that the Applicant has contracted marriage second time, while her first marriage was subsisting. Similarly the Applicant can not be a 'relative' of the husband of the Informant for the purpose of Section 498-A of I.P.C. A Single Judge of this Court in the case of **Sangita d/o Natthulal Labhane Vs. Yashodhara w/o Krishna Bhitre** as reported in (2008)5 Mh.LJ 820 has taken similar view. We agree with that view.

7. The only allegation against the Applicant remains that she had called the Respondent No.2 telephonically. It appears from the entire contents of the FIR that, it is a vague allegation, as there are no specific details given. Date of the call is not mentioned and the allegations are made against the Applicant out of anger. The Applicant has nothing to do with the harassment caused to the Respondent No.2 by her husband, Amol Sarkate. The Applicant is dragged into the dispute between Amol Sarkate and Respondent No.2. Therefore continuation of proceedings against the Applicant, will be abuse of process of law. This is a fit case where the FIR against the Applicant can be quashed. Hence the

following order.

ORDER

- (i) The Criminal Application is allowed.
- (ii) The FIR registered vide Crime No. 38/2022 at Ambejogai (City) Police Station, Dist. Beed is quashed and set aside, only in respect of the Applicant.
- (iii) The criminal application is disposed of.

[BHARAT P. DESHPANDE, J.]

[SARANG V. KOTWAL, J.]

Najeeb...